State of California
Department of
Consumer Affairs

Edmund G. Brown Jr.
Governor

CALIFORNIA BOARD OF PSYCHOLOGY LAWS AND REGULATIONS

2017 EDITION

Statutes Include Amendments Through Chapter 893 of the 2016 Regular Session and all 8 Chapters of the Second Extraordinary Session of the 2015-2016 Legislature, and all ballot measures approved by the Electorate at the June 7, 2016, Presidential Primary Election and the November 8, 2016, General Election.
Regulations Current Through January 1, 2017

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MISSION STATEMENT

OUR MISSION

The Board of Psychology advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

PREFACE

LexisNexis is pleased to offer to the psychology community the 2017 edition of **California Board of Psychology Laws and Regulations**. This volume is a compilation of selected laws and regulations that affect the psychology profession. It is fully up to date with statutes enacted up to and including Chapter 893 of the 2016 Regular Session and all 8 Chapters of the Second Extraordinary Session of the 2015-2016 Legislature, and all ballot measures approved by the Electorate at the June 7, 2016, Presidential Primary Election and the November 8, 2016, General Election, and regulations current through January 1, 2017.

Included herein is a Table of Sections Affected which may be utilized to facilitate research into recently enacted legislation affecting these Codes. Through the use of state-of-the-art computer software, attorney editors have updated the comprehensive descriptive word index with the enactments of the 2016 legislature.

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January 2017

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1380.5	Amended	7-1-2016
1395.2	Amended & Renumbered	1-1-2017
1397.12	Renumbered	1-1-2017

LAWS AND REGULATIONS RELATING TO THE PRACTICE OF PSYCHOLOGY

EXTRACTED FROM BUSINESS & PROFESSIONS CODE

GENERAL PROVISIONS

§ 25. Training in human sexuality

Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed professional clinical counselor shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that he or she has completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt from the requirements of this section any persons whose field of practice is such that they are not likely to have use for this training.

"Human sexuality" as used in this section means the study of a human being as a sexual being and how he or she functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

If a licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies that have established or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

Added Stats 1976 ch 1433 § 1, operative January 1, 1980. Amended Stats 2002 ch 1013 § 1 (SB 2026); Stats 2005 ch 658 § 1 (SB 229), effective January 1, 2006; Stats 2011 ch 381 § 1 (SB 146), effective January 1, 2012.

§ 27. Information to be provided on Internet; Entities in Department of Consumer Affairs required to comply

(a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798)

of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information on its licensees and registrants.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Cannabis Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

Added Stats 1997 ch 661 § 1 (SB 492). Amended Stats 1998 ch 59 § 1 (AB 969); Stats 1999 ch 655 § 1 (SB 1308); Stats 2000 ch 927 § 1 (SB 1889); Stats 2001 ch 159 § 1 (SB 662); Stats 2003 ch 849 § 1 (AB 1418); Stats 2009 ch 308 § 1 (SB 819), effective January 1, 2010, ch 310 § 1.5 (AB 48), effective January 1, 2010; Stats 2011 ch 381 § 2 (SB 146), effective January 1, 2012, ch 712 § 1 (SB 706), effective January 1, 2012; Stats 2014 ch 316 § 1 (SB 1466), effective January 1, 2015; Stats 2015 ch 689 § 1 (AB 266), effective January 1, 2016; Stats 2016 ch 32 § 1 (SB 837), effective June 27, 2016, Stats 2016 ch 489 § 1 (SB 1478), effective January 1, 2017.

§ 28. Child, elder, and dependent adult abuse assessment and reporting training

(a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse that will ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

(b) The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage

and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal.

(c) All persons applying for initial licensure or renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting that meets the requirements of this section, including detailed knowledge of the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The training shall meet all of the following requirements:

(1) Be obtained from one of the following sources:

(A) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, 4996.18, and 4999.12, including extension courses offered by those institutions.

(B) A continuing education provider as specified by the responsible board by regulation.

(C) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved or accepted by the responsible board.

(2) Have a minimum of seven contact hours.

(3) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(4) An applicant shall provide the appropriate board with documentation of completion of the required child abuse training.

(d) The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption fromthis section and who shows to the satisfaction of the board that there would be no need for the training in his or her practice because of the nature of that practice.

(e) It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist have minimal but appropriate training in the areas of child, elder, and dependent adult abuse assessment and reporting. It is not intended that, by solely complying withthis section, a practitioner is fully trained in the subject of treatment of child, elder, and dependent adult abuse victims and abusers.

(f) The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.

Added Stats 1995 ch 758 § 2.5 (AB 446), operative January 1, 1997. Amended Stats 2002 ch 1013 § 2 (SB 2026); Stats 2004 ch 695 § 1 (SB 1913); Stats 2009 ch 26 § 1 (SB 33), effective January 1, 2010; Stats 2010 ch 552 § 1 (AB 2435), effective January 1, 2011; Stats 2015 ch 426 § 1 (SB 800), effective January 1, 2016.

§ 29. Adoption of continuing education requirements regarding chemical dependency and alcoholism

(a) The Board of Psychology and the Board of Behavioral Sciences shall consider adoption of continuing education requirements including training in the area of recognizing chemical dependency and early intervention for all persons applying for renewal of a license as a psychologist, clinical social worker, marriage and family therapist, or professional clinical counselor.

(b) Prior to the adoption of any regulations imposing continuing education relating to alcohol and other chemical dependency, the boards are urged to consider coursework to include, but not necessarily be limited to, the following topics:

(1) Historical and contemporary perspectives on alcohol and other drug abuse.

(2) Extent of the alcohol and drug abuse epidemic and its effects on the individual, family, and community.

(3) Recognizing the symptoms of alcoholism and drug addiction.

(4) Making appropriate interpretations, interventions, and referrals.

(5) Recognizing and intervening with affected family members.

(6) Learning about current programs of recovery, such as 12 step programs, and how therapists can effectively utilize these programs.

Added Stats 1990 ch 1005 § 2 (AB 3314). Amended Stats 2002 ch 1013 § 3 (SB 2026); Stats 2004 ch 193 § 1 (SB 111); Stats 2011 ch 381 § 3 (SB 146), effective January 1, 2012.

§ 32. Legislative findings; AIDS training for health care professionals

(a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage and family therapists, licensed educational psychologists, clinical social workers, and professional clinical counselors.

Added Stats 1988 ch 1213 § 1. Amended Stats 1994 ch 26 § 2 (AB 1807), effective March 30, 1994; Stats 2002 ch 1013 § 4 (SB 2026); Stats 2011 ch 381 § 4 (SB 146), effective January 1, 2012.

DIVISION 1
Department of Consumer Affairs
CHAPTER 1
The Department

§ 101.6. Purpose

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

Added Stats 1980 ch 375 § 1.

§ 103. Compensation and reimbursement for expenses

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

Added Stats 1959 ch 1645 § 1. Amended Stats 1978 ch 1141 § 1; Stats 1985 ch 502 § 1; Stats 1987 ch 850 § 1; Stats 1993 ch 1264 § 1 (SB 574).

§ 104. Display of licenses or registrations

All boards or other regulatory entities within the department's jurisdiction that the department determines to be health-related may adopt regulations to require licensees to display their licenses or registrations in the locality in which they are treating patients, and to inform patients as to the identity of the regulatory agency they may contact if they have any questions or complaints regarding the licensee. In complying with this requirement, those boards may take into consideration the particular settings in which licensees practice, or other circumstances which may make the displaying or providing of information to the consumer extremely difficult for the licensee in their particular type of practice.

Added Stats 1998 ch 991 § 1 (SB1980).

§ 114. Reinstatement of expired license of licensee serving in military

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate his or her license or registration without examination or penalty, provided that all of the following requirements are satisfied:

(1) His or her license or registration was valid at the time he or she entered the California National Guard or the United States Armed Forces.

(2) The application for reinstatement is made while serving in the California National Guard or the United States Armed Forces, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) If application for reinstatement is filed and the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, then the licensing agency may require the applicant to pass an examination.

(d) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this state the profession or vocation for which he or she is licensed or registered shall be required to maintain his or her license in good standing even though he or she is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he or she is prevented from practicing his or her profession or vocation shall be excluded from said period of one year.

Added Stats 1951 ch 185 § 2. Amended Stats 1953 ch 423 § 1; Stats 1961 ch 1253 § 1; Stats 2010 ch 389 § 1 (AB 2500), effective January 1, 2011; Stats 2011 ch 296 § 1 (AB 1023), effective January 1, 2012.

§ 114.3. Waiver of fees and requirements for active duty members of armed forces and national guard

(a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

(1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.

(2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.

(3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

(b)(1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.

(2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.

(c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.

(d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.

(e) A board may adopt regulations to carry out the provisions of this section.

(f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

Added Stats 2012 ch 742 § 1 (AB 1588), effective January 1, 2013.

§ 114.5. Military service; Posting of information on Web site about application of military experience and training towards licensure

(a) Each board shall inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

(b) If a board's governing law authorizes veterans to apply military experience and training towards licensure requirements, that board shall post information on the board's Internet Web site about the ability of veteran applicants to apply military experience and training towards licensure requirements.

Added Stats 2013 ch 693 § 1 (AB 1057), effective January 1, 2014. Amended Stats 2016 ch 174 § 1 (SB 1348), effective January 1, 2017.

§ 115. Applicability of Section 114

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

Added Stats 1951 ch 1577 § 1.

§ 115.4. Licensure process expedited for honorably discharged veterans of Armed Forces

(a) Notwithstanding any other law, on and after July 1, 2016, a board within the department shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged.

(b) A board may adopt regulations necessary to administer this section.

Added Stats 2014 ch 657 § 1 (SB 1226), effective January 1, 2015.

§ 115.5. Board required to expedite licensure process for certain applicants; Adoption of regulations

(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

(b) A board may adopt regulations necessary to administer this section.

Added Stats 2012 ch 399 § 1 (AB 1904), effective January 1, 2013.

§ 118. Effect of withdrawal of application; Effect of suspension, forfeiture, etc., of license

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

Added Stats 1961 ch 1079 § 1.

§ 119. Misdemeanors pertaining to use of licenses

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

Added Stats 1965 ch 1083 § 1. Amended Stats 1990 ch 350 § 1 (SB 2084) (ch 1207 prevails), ch 1207 § 1 (AB 3242); Stats 1994 ch 1206 § 1 (SB 1775); Stats 2000 ch 568 § 1 (AB 2888).

§ 121. Practice during period between renewal and receipt of evidence of renewal

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

Added Stats 1979 ch 77 § 1.

§ 125. Misdemeanor offenses by licensees

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows his or her license to be used by that person.

(b) Acts as his or her agent or partner.

Added Stats 1949 ch 308 § 1. Amended Stats 1994 ch 1206 § 2 (SB 1775).

§ 125.6. Unlawful discrimination by licensees

(a)(1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b)(1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c)(1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

Added Stats 1974 ch 1350 § 1. Amended Stats 1977 ch 293 § 1; Stats 1980 ch 191 § 1; Stats 1992 ch 913 § 2 (AB 1077); Stats 2007 ch 568 § 2 (AB 14), effective January 1, 2008.

§ 125.9. System for issuance of citations to licensees; Contents; Fines

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or

commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

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

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

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

(c) The system may contain the following provisions:

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

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

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

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

Added Stats 1986 ch 1379 § 2. Amended Stats 1987 ch 1088 § 1; Stats 1991 ch 521 § 1 (SB 650); Stats 1995 ch 381 § 4 (AB 910), effective August 4, 1995, ch 708 § 1 (SB 609); Stats 2000 ch 197 § 1 (SB 1636); Stats 2001 ch 309 § 1 (AB 761), ch 728 § 1.2 (SB 724); Stats 2003 ch 788 § 1 (SB 362); Stats 2012 ch 291 § 1 (SB 1077), effective January 1, 2013.

§ 129. Handling of complaints; Reports to Legislature

(a) As used in this section, "board" means every board, bureau, commission, committee, and similarly constituted agency in the department that issues licenses.

(b) Each board shall, upon receipt of any complaint respecting an individual licensed by the board, notify the complainant of the initial administrative action taken on his or her complaint within 10 days of receipt. Each board shall notify the complainant of the final action taken on his or her complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of this action and of any other means that may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licensee in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licensee.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to those patterns of complaints to the director and to the Legislature at least once per year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once per year the statutory changes it deems necessary to implement the board's functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

(f) Notwithstanding any other law, upon receipt of a child custody evaluation report submitted to a court pursuant to Chapter 6 (commencing with Section 3110) of Part 2 of Division 8 of the Family Code, the board shall notify the noncomplaining party in the underlying custody dispute, who is a subject of that report, of the pending investigation.

Added Stats 1972 ch 1041 § 1. Amended Stats 2014 ch 283 § 1 (AB 1843), effective January 1, 2015.

§ 136. Notification of change of address; Punishment for failure to comply

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

Added Stats 1994 ch 26 § 7 (AB 1807), effective March 30, 1994.

§ 138. Notice that practitioner is licensed; Evaluation of licensing examination

Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its

licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

Added Stats 1998 ch 879 § 1 (SB 2238). Amended Stats 1999 ch 67 § 1 (AB 1105), effective July 6, 1999.

§ 139. Policy for examination development and validation, and occupational analysis

(a) The Legislature finds and declares that occupational analyses and examination validation studies are fundamental components of licensure programs. It is the intent of the Legislature that the policy developed by the department pursuant to subdivision (b) be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of these boards, programs, and bureaus.

(b) Notwithstanding any other provision of law, the department shall develop, in consultation with the boards, programs, bureaus, and divisions under its jurisdiction, and the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners, a policy regarding examination development and validation, and occupational analysis. The department shall finalize and distribute this policy by September 30, 1999, to each of the boards, programs, bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

(1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.

(2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.

(3) Standards for review of state and national examinations.

(4) Setting of passing standards.

(5) Appropriate funding sources for examination validations and occupational analyses.

(6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.

(7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.

(8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

(c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board

is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, program, or bureau, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(d) The evaluation may be conducted by the board, program, or bureau, the Office of Professional Examination Services of the department, the Osteopathic Medical Board of California, or the State Board of Chiropractic Examiners or pursuant to a contract with a qualified private testing firm. A board, program, or bureau that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity. The department shall compile this information, along with a schedule specifying when examination validations and occupational analyses shall be performed, and submit it to the appropriate fiscal, policy, and sunset review committees of the Legislature by September 30 of each year. It is the intent of the Legislature that the method specified in this report be consistent with the policy developed by the department pursuant to subdivision (b).

Added Stats 1999 ch 67 § 2 (AB 1105), effective July 6, 1999. Amended Stats 2009 ch 307 § 1 (SB 821), effective January 1, 2010.

§ 144. Requirement of fingerprints for criminal record checks; Applicability

(a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Board of Vocational Nursing and Psychiatric Technicians.

(10) Respiratory Care Board of California.

(11) Physical Therapy Board of California.

(12) Physician Assistant Committee of the Medical Board of California.

(13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.
(17) Cemetery and Funeral Bureau.
(18) Bureau of Security and Investigative Services.
(19) Division of Investigation.
(20) Board of Psychology.
(21) California Board of Occupational Therapy.
(22) Structural Pest Control Board.
(23) Contractors' State License Board.
(24) Naturopathic Medicine Committee.
(25) Professional Fiduciaries Bureau.
(26) Board for Professional Engineers, Land Surveyors, and Geologists.
(27) Bureau of Medical Cannabis Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

Added Stats 1997 ch 758 § 2 (SB 1346). Amended Stats 2000 ch 697 § 1.2 (SB 1046), operative January 1, 2001; Stats 2001 ch 159 § 4 (SB 662), ch 687 § 2 (AB 1409) (ch 687 prevails); Stats 2002 ch 744 § 1 (SB 1953), ch 825 § 1 (SB 1952); Stats 2003 ch 485 § 2 (SB 907), ch 789 § 1 (SB 364), ch 874 § 1 (SB 363); Stats 2004 ch 909 § 1.2 (SB 136), effective September 30, 2004; Stats 2009 ch 308 § 4 (SB 819), effective January 1, 2010; Stats 2011 ch 448 § 1 (SB 543), effective January 1, 2012; Stats 2015 ch 719 § 1 (SB 643), effective January 1, 2016; Stats 2016 ch 32 § 3 (SB 837), effective June 27, 2016.

§ 144.5. Board authority

Notwithstanding any other law, a board described in Section 144 may request, and is authorized to receive, from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. A local or state agency may provide those records to the board upon request.

Added Stats 2013 ch 516 § 1 (SB 305), effective January 1, 2014.

CHAPTER 1.5

Unlicensed Activity Enforcement

§ 148. Establishment of administrative citation system

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

Added Stats 1992 ch 1135 § 2 (SB 2044).

CHAPTER 2
The Director of Consumer Affairs

§ 159. Administration of oaths

The members and the executive officer of each board, agency, bureau, division, or commission have power to administer oaths and affirmations in the performance of any business of the board, and to certify to official acts.

Added Stats 1947 ch 1350 § 5.

CHAPTER 4
Consumer Affairs
ARTICLE 6
Information

§ 337. Informational brochure for victims of psychotherapist-patient sexual contact; Contents

(a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and advocates for those victims. This brochure shall be developed by the department in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.

(b) The brochure shall include, but is not limited to, the following:

(1) A legal and an informal definition of psychotherapist-patient sexual contact.

(2) A brief description of common personal reactions and histories of victims and victim's families.

(3) A patient's bill of rights.

(4) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option.

(5) A full description of administrative, civil, and professional associations complaint procedures.

(6) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the Medical Board of California and affiliated health boards or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual relations.

Added Stats 1987 ch 1448 § 1. Amended Stats 1989 ch 886 § 5; Stats 2007 ch 588 § 1 (SB 1048), effective January 1, 2008.

DIVISION 1.5
Denial, Suspension and Revocation of Licenses
CHAPTER 1
General Provisions

§ 475. Applicability of division

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 1; Stats 1992 ch 1289 § 5 (AB 2743).

§ 476. Exemptions

(a) Except as provided in subdivision (b), nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) Section 494.5 shall apply to the licensure of persons authorized to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3, and the licensure or registration of persons pursuant to Chapter 5 (commencing with Section 19800) of Division 8 or pursuant to Division 9 (commencing with Section 23000).

Added Stats 1972 ch 903 § 1. Amended Stats 1983 ch 721 § 1; Stats 2011 ch 455 § 2 (AB 1424), effective January 1, 2012.

§ 477. "Board"; "License"

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 2; Stats 1983 ch 95 § 1; Stats 1991 ch 654 § 5 (AB 1893).

§ 478. "Application"; "Material"

(a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

Added Stats 1992 ch 1289 § 6 (AB 2743).

CHAPTER 2
Denial of Licenses

§ 480. Grounds for denial; Effect of obtaining certificate of rehabilitation

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

Added Stats 1974 ch 1321 § 4. Amended Stats 1976 ch 947 § 1; Stats 1979 ch 876 § 2; Stats 2008 ch 179 § 2 (SB 1498), effective January 1, 2009; Stats 2014 ch 737 § 1 (AB 2396), effective January 1, 2015.

§ 480.5. Completion of licensure requirements while incarcerated

(a) An individual who has satisfied any of the requirements needed to obtain a license regulated under this division while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing his or her application or a

denial of the license solely on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.

(b) Nothing in this section shall be construed to apply to a petition for reinstatement of a license or to limit the ability of a board to deny a license pursuant to Section 480.

(c) This section shall not apply to the licensure of individuals under the initiative act referred to in Chapter 2 (commencing with Section 1000) of Division 2.

Added Stats 2014 ch 410 § 1 (AB 1702), effective January 1, 2015.

§ 481. Crime and job-fitness criteria

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

Added Stats 1974 ch 1321 § 6.

§ 482. Rehabilitation criteria

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 7.

§ 484. Attestation to good moral character of applicant

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 9.

§ 485. Procedure upon denial

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

Added Stats 1972 ch 903 § 1. Amended Stats 1997 ch 758 § 2.3 (SB 1346).

§ 486. Contents of decision or notice

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 9.5; Stats 1997 ch 758 § 2.4 (SB 1346).

§ 487. Hearing; Time

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 10; Stats 1986 ch 220 § 1, effective June 30, 1986.

§ 488. Hearing request

Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

(d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

Added Stats 2000 ch 568 § 2 (AB 2888).

§ 489. Denial of application without a hearing

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

Added Stats 1955 ch 1151 § 1, as B & P C § 116. Amended Stats 1978 ch 1161 § 2. Renumbered by Stats 1989 ch 1104 § 1. Amended Stats 1997 ch 758 § 2.5 (SB 1346).

CHAPTER 3
Suspension and Revocation of Licenses

§ 490. Grounds for suspension or revocation; Discipline for substantially related crimes; Conviction; Legislative findings

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

Added Stats 1974 ch 1321 § 13. Amended Stats 1979 ch 876 § 3; Stats 1980 ch 548 § 1; Stats 1992 ch 1289 § 7 (AB 2743); Stats 2008 ch 33 § 2 (SB 797) (ch 33 prevails), effective June 23, 2008, ch 179 § 3 (SB 1498), effective January 1, 2009; Stats 2010 ch 328 § 2 (SB 1330), effective January 1, 2011.

§ 490.5. Suspension of license for failure to comply with child support order

A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.

Added Stats 1994 ch 906 § 1 (AB 923), operative January 1, 1996. Amended Stats 2010 ch 328 § 3 (SB 1330), effective January 1, 2011.

§ 491. Procedure upon suspension or revocation

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

Added Stats 1972 ch 903 § 1. Amended Stats 1974 ch 1321 § 14; Stats 1975 ch 678 § 1.

§ 492. Effect of completion of drug diversion program on disciplinary action or denial of license

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

Added Stats 1987 ch 1183 § 1. Amended Stats 1994 ch 26 § 15 (AB 1807), effective March 30, 1994.

§ 493. Evidentiary effect of record of conviction of crime substantially related to licensee's qualifications, functions, and duties

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

Added Stats 1961 ch 934 § 1, as B & P C § 117. Amended Stats 1978 ch 1161 § 3. Renumbered by Stats 1989 ch 1104 § 1.3.

§ 494. Interim suspension or restriction order

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition

has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(*l*) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

Added Stats 1993 ch 840 § 1 (SB 842). Amended Stats 1994 ch 1275 § 4 (SB 2101).

§ 494.5. Agency actions when licensee is on certified list; Definitions; Collection and distribution of certified list information; Timing; Notices; Challenges by applicants and licensees; Release forms; Interagency agreements; Fees; Remedies; Inquiries and disclosure of information; Severability

(a)(1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a

license and shall suspend a license if a licensee's name is included on a certified list.

(2) The Department of Motor Vehicles shall suspend a license if a licensee's name is included on a certified list. Any reference in this section to the issuance, reactivation, reinstatement, renewal, or denial of a license shall not apply to the Department of Motor Vehicles.

(3) The State Bar of California may recommend to refuse to issue, reactivate, reinstate, or renew a license and may recommend to suspend a license if a licensee's name is included on a certified list. The word "may" shall be substituted for the word "shall" relating to the issuance of a temporary license, refusal to issue, reactivate, reinstate, renew, or suspend a license in this section for licenses under the jurisdiction of the California Supreme Court.

(4) The Department of Alcoholic Beverage Control may refuse to issue, reactivate, reinstate, or renew a license, and may suspend a license, if a licensee's name is included on a certified list.

(b) For purposes of this section:

(1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.

(2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code. "License" excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.

(3) "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. "State governmental licensing entity" shall not include the Contractors' State License Board.

(c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.

(d) Notwithstanding any other law, each state governmental licensing entity shall collect the social security number or the federal taxpayer identification number from all applicants for the purposes of matching the names of the certified lists provided by the State Board of Equalization and the Franchise Tax Board to applicants and licensees.

(e)(1) Each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.

(2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant's or licensee's last known mailing address on file with the state governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.

(A) The state governmental licensing entity shall issue a temporary license valid for a period of 90 days to any applicant whose name is on a certified list if the applicant is otherwise eligible for a license.

(B) The 90-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and the term of the temporary license shall coincide with the first 90 days of the regular license term. A license for the full term or the remainder of the license term may be issued or renewed only upon compliance with this section.

(C) In the event that a license is suspended or an application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the state governmental licensing entity.

(f)(1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.

(2) Notwithstanding any other law, if a board, bureau, or commission listed in Section 101, other than the Contractors' State License Board, fails to take action in accordance with this section, the Department of Consumer Affairs shall issue a temporary license or suspend or refuse to issue, reactivate, reinstate, or renew a license, as appropriate.

(g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph

(A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that upon expiration of that time period, the license will be denied unless the state governmental licensing entity has received a release from the State Board of Equalization or the Franchise Tax Board, whichever is applicable.

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the State Board of Equalization or the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(h) If the applicant or licensee wishes to challenge the submission of his or her name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.

(2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.

(3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. "Financial hardship" means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall submit any information, including information related to reasonable business

and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.

(i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that he or she diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.

(j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with this subdivision.

(k) The State Board of Equalization and the Franchise Tax Board may enter into interagency agreements with the state governmental licensing entities necessary to implement this section.

(*l*) Notwithstanding any other law, a state governmental licensing entity, with the approval of the appropriate department director or governing body, may impose a fee on a licensee whose license has been suspended pursuant to this section. The fee shall not exceed the amount necessary for the state governmental licensing entity to cover its costs in carrying out the provisions of this section. Fees imposed pursuant to this section shall be deposited in the fund in which other fees imposed by the state governmental licensing entity are deposited and shall be available to that entity upon appropriation in the annual Budget Act.

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

(n) Any state governmental licensing entity receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or who has been granted a temporary license under this section shall respond that the license was denied or suspended or the temporary license was issued only because the licensee appeared on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Any state governmental licensing entity that discloses on its Internet Web site or other publication that the licensee has had a license denied or suspended under this section or has been granted a temporary license under this section shall prominently disclose, in bold and adjacent to the information regarding the status of the license, that the only reason the license was denied, suspended, or temporarily issued is because the licensee failed to pay taxes.

(o) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(p) The State Board of Equalization, the Franchise Tax Board, and state governmental licensing entities, as appropriate, shall adopt regulations as necessary to implement this section.

(q)(1) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the State Board of Equalization or the Franchise Tax Board, pursuant to this section, except to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to this section. The release or other use of information received by a state governmental licensing entity pursuant to this section, except as authorized by this section, is punishable as a misdemeanor. This subdivision may not be interpreted to prevent the State Bar of California from filing a request with the

Supreme Court of California to suspend a member of the bar pursuant to this section.

(2) A suspension of, or refusal to renew, a license or issuance of a temporary license pursuant to this section does not constitute denial or discipline of a licensee for purposes of any reporting requirements to the National Practitioner Data Bank and shall not be reported to the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank.

(3) Upon release from the certified list, the suspension or revocation of the applicant's or licensee's license shall be purged from the state governmental licensing entity's Internet Web site or other publication within three business days. This paragraph shall not apply to the State Bar of California.

(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

(u) No provision of this section shall be interpreted to allow a court to review and prevent the collection of taxes prior to the payment of those taxes in violation of the California Constitution.

(v) This section shall apply to any licensee whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code on or after July 1, 2012.

Added Stats 2011 ch 455 § 3 (AB 1424), effective January 1, 2012. Amended Stats 2012 ch 327 § 1 (SB 937), effective January 1, 2013.

§ 494.6. Suspension under Labor Code Section 244

(a) A business license regulated by this code may be subject to suspension or revocation if the licensee has been determined by the Labor Commissioner or the court to have violated subdivision (b) of Section 244 of the Labor Code and the court or Labor Commissioner has taken into consideration any harm such a suspension or revocation would cause to employees of the licensee, as well as the good faith efforts of the licensee to resolve any alleged violations after receiving notice.

(b) Notwithstanding subdivision (a), a licensee of an agency within the Department of Consumer Affairs who has been found by the Labor Commissioner or the court to have violated subdivision (b) of Section 244 of the Labor Code may be subject to disciplinary action by his or her respective licensing agency.

(c) An employer shall not be subject to suspension or revocation under this section for requiring a prospective or current employee to submit, within three business days of the first day of work for pay, an I-9 Employment Eligibility Verification form.

Added Stats 2013 ch 577 § 1 (SB 666), effective January 1, 2014. Amended Stats 2014 ch 71 § 1 (SB 1304), effective January 1, 2015.

CHAPTER 4

Public Reprovals

§ 495. Public reproval of licentiate or certificate holder for act constituting grounds for suspension or revocation of license or certificate; Proceedings

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproval, public reproval and suspension, or public reproval and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

Added Stats 1977 ch 886 § 1. Amended Stats 1997 ch 220 § 2 (SB 68), effective August 4, 1997.

CHAPTER 5

Examination Security

§ 496. Grounds for denial, suspension, or revocation of license

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

Added Stats 1989 ch 1022 § 3.

§ 498. Fraud, deceit or misrepresentation as grounds for action against license

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

Added Stats 1992 ch 1289 § 8 (AB 2743).

§ 499. Action against license based on licentiate's actions regarding application of another

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

Added Stats 1992 ch 1289 § 9 (AB 2743).

DIVISION 2
Healing Arts
CHAPTER 1
General Provisions
ARTICLE 4
Frauds of Medical Records

§ 580. Sale or barter of degree, certificate, or transcript

No person, company, or association shall sell or barter or offer to sell or barter any medical degree, podiatric degree, or osteopathic degree, or chiropractic degree, or any other degree which is required for licensure, certification, or registration under this division, or any degree, certificate, transcript, or any other writing, made or purporting to be made pursuant to any laws regulating the licensing and registration or issuing of a certificate to physicians and surgeons, podiatrists, osteopathic physicians, chiropractors, persons lawfully engaged in any other system or mode of treating the sick or afflicted, or to any other person licensed, certified, or registered under this division.

Enacted Stats 1937. Amended Stats 1939 ch 269 § 1; Stats 1961 ch 215 § 1; Stats 1986 ch 220 § 2, effective June 30, 1986.

§ 581. Purchase or fraudulent alteration of diplomas or other writings

No person, company, or association shall purchase or procure by barter or by any unlawful means or method, or have in possession any diploma, certificate, transcript, or any other writing with intent that it shall be used as evidence of the holder's qualifications to practice as a physician and surgeon, osteopathic physician, podiatrist, any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000), or to practice as any other licentiate under this division or in any fraud of the law regulating this practice or, shall with fraudulent intent, alter in a material regard, any such diploma, certificate, transcript, or any other writing.

Enacted Stats 1937. Amended Stats 1937 ch 446; Stats 1961 ch 215 § 1.5; Stats 1984 ch 144 § 5; Stats 1986 ch 220 § 3, effective June 30, 1986.

§ 582. Use of illegally obtained, altered, or counterfeit diploma, certificate, or transcript

No person, company, or association shall use or attempt to use any diploma, certificate, transcript, or any other writing which has been purchased, fraudulently issued, illegally obtained, counterfeited, or materially altered, either as a certificate or as to character or color of certificate, to practice as a physician and surgeon, podiatrist, osteopathic physician, or a chiropractor, or to practice any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000) or to practice as any other licentiate under this division.

Enacted Stats 1937. Amended Stats 1961 ch 215 § 2; Stats 1984 ch 144 § 6; Stats 1986 ch 220 § 4, effective June 30, 1986.

§ 583. False statements in documents or writings

No person shall in any document or writing required of an applicant for examination, license, certificate, or registration under this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, willfully make a false statement in a material regard.

Enacted Stats 1937. Amended Stats 1984 ch 144 § 7; Stats 1986 ch 220 § 5, effective June 30, 1986.

§ 584. Violation of examination security; Impersonation

No person shall violate the security of any examination, as defined in subdivision (a) of Section 123, or impersonate, attempt to impersonate, or solicit the impersonation of, another in any examination for a license, certificate, or registration to practice as provided in this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or under any other law providing for the regulation of any other system or method of treating the sick or afflicted in this state.

Enacted Stats 1937. Amended Stats 1984 ch 144 § 8; Stats 1986 ch 220 § 6, effective June 30, 1986; Stats 1989 ch 1022 § 5.

§ 585. Punishment

Any person, company, or association violating the provisions of this article is guilty of a felony and upon conviction thereof shall be punishable by a fine of not less than two thousand dollars ($2,000) nor more than six thousand dollars ($6,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code. The enforcement remedies provided under this article are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy.

Enacted Stats 1937. Amended Stats 1976 ch 1139 § 1, operative July 1, 1977; Stats 1983 ch 1092 § 2, effective September 27, 1983, operative January 1, 1984; Stats 1986 ch 220 § 7, effective June 30, 1986; Stats 2011 ch 15 § 2 (AB 109), effective April 4, 2011, operative October 1, 2011.

ARTICLE 6

Unearned Rebates, Refunds, and Discounts

§ 650. Rebates for patient referrals; Consideration between supplier and health facility

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

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

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

(g) Notwithstanding the other subdivisions of this section or any other provision of law, the payment or receipt of consideration for advertising, wherein a licensee offers or sells services through a third-party advertiser, shall not constitute a referral of patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a licensee. The fee paid to the third-party advertiser shall be commensurate with the service provided by the third-party advertiser. If the licensee determines, after consultation with the purchaser of the service, that the service provided by the licensee is not appropriate for the purchaser or if the purchaser elects not to receive the service for any reason and requests a refund, the purchaser shall receive a refund of the full purchase price as determined by the terms of the advertising service agreement between the third-party advertiser and the licensee. The licensee shall disclose in the advertisement that a consultation is required and that the purchaser will receive a refund if not eligible to receive the service.

This subdivision shall not apply to basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code, or essential health benefits, as defined in Section 1367.005 of the Health and Safety Code and Section 10112.27 of the Insurance Code. The entity that provides the advertising shall be able to demonstrate that the licensee consented in writing to the requirements of this subdivision. A third-party advertiser shall make available to prospective purchasers advertisements for services of all licensees then advertising through the third-party advertiser in the applicable geographic region. In any advertisement offering a discount price for a service, the licensee shall also disclose the regular, nondiscounted price for that service.

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

Added Stats 1949 ch 899 § 1. Amended Stats 1971 ch 1568 § 1; Stats 1973 ch 142 § 5, effective June 30, 1973, operative July 1, 1973, ch 924 § 1, operative July 1, 1974; Stats 1975 ch 303 § 1; Stats 1977 ch 1252 § 4, operative July 1, 1978; Stats 1981 ch 610 § 1; Stats 1990 ch 1532 § 1 (SB 2365); Stats 2000 ch 843 § 1 (AB 2594); Stats 2001 ch 728 § 1.4 (SB 724); Stats 2006 ch 698 § 1 (AB 225), ch 772 § 1.5 (AB 2282), effective January 1, 2007; Stats 2007 ch 130 § 1 (AB 299), effective January 1, 2008, ch 483 § 1 (SB 1039), effective January 1, 2008 (ch 483 prevails); Stats 2008 ch 179 § 4 (SB 1498), effective January 1, 2009, ch 290 § 1 (AB 55), effective September 25, 2008 (ch 290 prevails); Stats 2009 ch 140 § 2 (AB 1164), effective January 1, 2010; Stats 2011 ch 15 § 3 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2016 ch 360 § 1 (AB 2744), effective January 1, 2017.

§ 651. Dissemination of false or misleading information concerning professional services or products; Permissible advertising

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3)(A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or

image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5)(A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(B) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(C) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an

organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(D) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded

against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

Added Stats 1955 ch 1050 § 1. Amended Stats 1972 ch 1361 § 1; Stats 1979 ch 653 § 2; Stats 1983 ch 691 § 1; Stats 1990 ch 1660 § 1 (SB 2036), operative January 1, 1993; Stats 1992 ch 783 § 1 (AB 2180); Stats 1998 ch 736 § 2 (SB 1981); Stats 1999 ch 631 § 1 (SB 450), ch 856 § 2 (SB 836); Stats 2000 ch 135 § 1 (AB 2539); Stats 2002 ch 313 § 1 (AB 1026); Stats 2011 ch 385 § 1 (SB 540), effective January 1, 2012.

§ 654.2. Referrals to organization in which licensee or family has significant beneficial interest; Required disclosure statement

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision *(l)* of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

(c) On and after July 1, 1987, persons licensed under this division or under any initiative act referred to in this division shall disclose in writing to any third-party payer for the patient, when requested by the payer, organizations in which the licensee, or any member of the licensee's immediate family, has a significant beneficial interest and to which patients are referred. The third-party payer shall not request this information from the provider more than once a year.

Nothing in this section shall be construed to serve as the sole basis for the denial or delay of payment of claims by third party payers.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Immediate family" includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

(2) "Significant beneficial interest" means any financial interest that is equal to or greater than the lesser of the following:

(A) Five percent of the whole.

(B) Five thousand dollars ($5,000).

(3) A third-party payer includes any health care service plan, self-insured employee welfare benefit plan, disability insurer, nonprofit hospital service plan, or private group or indemnification insurance program.

A third party payer does not include a prepaid capitated plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(e) This section shall not apply to a "significant beneficial interest" which is limited to ownership of a building where the space is leased to the organization at the prevailing rate under a straight lease agreement or to any interest held in publicly traded stocks.

(f)(1) This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, if the report indicates clearly the name of the laboratory performing the test.

(2) This section shall not apply to relationships governed by other provisions of this article nor is this section to be construed as permitting relationships or interests that are prohibited by existing law on the effective date of this section.

(3) The disclosure requirements of this section shall not be required to be given to any patient, customer, or his or her representative, if the licensee, organization, or entity is providing or arranging for health care services pursuant to a prepaid capitated contract with the State Department of Health Services.

Added Stats 1984 ch 639 § 1. Amended Stats 1985 ch 1542 § 1; Stats 1986 ch 881 § 1.

ARTICLE 7.5

Health Care Practitioners

§ 680. Health care practitioner's disclosure of name and license status

(a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Public Health, or the State Department of Health Care Services shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Public Health, and the State Department of Health Care Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

Added Stats 1998 ch 1013 § 1 (AB 1439). Amended Stats 1999 ch 411 § 1 (AB 1433); Stats 2000 ch 135 § 2 (AB 2539); Stats 2012 ch 34 § 2 (SB 1009), effective June 27, 2012; Stats 2013 ch 23 § 1 (AB 82), effective June 27, 2013.

§ 680.5. Additional disclosures of specified information; Applicability

(a)(1) A health care practitioner licensed under Division 2 (commencing with Section 500) shall communicate to a patient his or her name, state-granted practitioner license type, and highest level of academic degree, by one or both of the following methods:

(A) In writing at the patient's initial office visit.

(B) In a prominent display in an area visible to patients in his or her office.

(2) An individual licensed under Chapter 6 (commencing with Section 2700) or Chapter 9 (commencing with Section 4000) is not required to disclose the highest level of academic degree he or she holds.

(b) A person licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with requirements equivalent to a board described in paragraph (1) approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in the person's specialty or subspecialty, shall disclose the name of the board or association by either method described in subdivision (a).

(c) A health care practitioner who chooses to disclose the information required by subdivisions (a) and (b) pursuant to subparagraph (A) of paragraph (1) of subdivision (a) shall present that information in at least 24-point type in the following format:

HEALTH CARE PRACTITIONER INFORMATION

1. Name and license .....
2. Highest level of academic degree .....
3. Board certification (ABMS/MBC) .....

(d) This section shall not apply to the following health care practitioners:

(1) A person who provides professional medical services to enrollees of a health care service plan that exclusively contracts with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan.

(2) A person who works in a facility licensed under Section 1250 of the Health and Safety Code or in a clinical laboratory licensed under Section 1265.

(3) A person licensed under Chapter 3 (commencing with Section 1200), Chapter 7.5 (commencing with Section 3300), Chapter 8.3 (commencing with Section 3700), Chapter 11 (commencing with Section 4800), Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990.1), or Chapter 16 (commencing with Section 4999.10).

(e) A health care practitioner, who provides information regarding health care services on an Internet Web site that is directly controlled or administered by that health care practitioner or his or her office personnel, shall prominently display on that Internet Web site the information required by this section.

Added Stats 2010 ch 436 § 1 (AB 583), effective January 1, 2011. Amended Stats 2011 ch 381 § 5 (SB 146), effective January 1, 2012.

§ 683. Reporting name and license number of licensee prohibited from practicing

(a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Behavioral Sciences, and the California Board of Occupational Therapy.

(c) This section shall become operative on January 1, 2015.

Added Stats 2012 ch 154 § 2 (AB 367), effective January 1, 2013, operative January 1, 2015.

§ 686. Providing services via telehealth

A health care practitioner licensed under Division 2 (commencing with Section 500) providing services via telehealth shall be subject to the requirements and definitions set forth in Section 2290.5, to the practice act relating to his or her licensed profession, and to the regulations adopted by a board pursuant to that practice act.

Added Stats 2012 ch 782 § 1 (AB 1733), effective January 1, 2013.

ARTICLE 9

Inactive License

§ 702. Holder prohibited from engaging in active license activity

The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage in any activity for which an active license or certificate is required.

Added Stats 1977 ch 410 § 1, effective August 27, 1977.

ARTICLE 10.5
Unprofessional Conduct

§ 725. Excessive prescribing or treatment; Treatment for intractable pain

(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5.

Added Stats 1979 ch 348 § 2. Amended Stats 1984 ch 769 § 1; Stats 1998 ch 984 § 1 (AB 2305); Stats 2006 ch 350 § 2 (AB 2198), ch 659 § 1.5 (SB 1475), effective January 1, 2007; Stats 2007 ch 130 § 2 (AB 299), effective January 1, 2008.

§ 726. Commission of act of sexual abuse or misconduct with patient or client

(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under thisor under any initiative act referred to in this division.

(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

Added Stats 1979 ch 955 § 1, as B & P C § 730. Renumbered by Stats 1981 ch 714 § 3. Amended Stats 1983 ch 928 § 1; Stats 1993 ch 1072 § 1 (SB 743); Stats 2015 ch 510 § 3 (AB 179), effective January 1, 2016.

§ 727. Applicability of Evidence Code provisions

The provisions of subdivision (2) of Section 1103 of the Evidence Code shall apply in disciplinary proceedings brought against a licensee for acts in violation of Section 726.

Added Stats 1979 ch 955 § 1, as B & P C § 731. Amended and Renumbered by Stats 1981 ch 714 § 4.

§ 728. Provision of brochure by psychotherapist to patient alleging sexual intercourse or contact with previous psychotherapist during course of prior treatment

(a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapists. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a licensed professional clinical counselor, a psychological assistant, a marriage and family therapist registered intern or trainee, an intern or clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10), or an associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (g) and (e), respectively, of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

Added Stats 1987 ch 1448 § 2. Amended Stats 1989 ch 1104 § 1.5; Stats 1992 ch 890 § 1 (SB 1394); Stats 2002 ch 1013 § 6 (SB 2026); Stats 2009 ch 619 § 1 (SB 788), effective January 1, 2010; Stats 2010 ch 328 § 5 (SB 1330), effective January 1, 2011.

§ 729. Sexual exploitation of patient or client by physician and surgeon, or psychotherapist

(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not

exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars ($10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

Added Stats 1989 ch 795 § 1. Amended Stats 1993 ch 1072 § 2 (SB 743); Stats 1994 ch 146 § 2 (AB 3601); Stats 1995 ch 444 § 1 (SB 685); Stats 2011 ch 15 § 6 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 731. Violations at work as unprofessional conduct

(a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for the first offense, and not to exceed five thousand dollars ($5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

Added Stats 1998 ch 971 § 2 (AB 2721).

ARTICLE 11

Professional Reporting

§ 800. Central files of licensees' individual historical records

(a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Dental Hygiene Committee of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the State Board of Optometry the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licentiate pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b)(1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

(2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c)(1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

(2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

(3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

(4) These disclosures shall effect no change in the confidential status of these records.

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 2d Ex Sess 1975 ch 2 § 1.005, effective September 24, 1975, operative December 12, 1975; Stats 1976 ch 1185 § 1; Stats 1980 ch 1313 § 1; Stats 1987 ch 721 § 1; Stats 1989 ch 354 § 1, ch 886 § 10 (ch 354 prevails); Stats 1991 ch 359 § 5 (AB 1332), ch 1091 § 1 (AB 1487) (ch 359 prevails); Stats 1994 ch 26 § 15.5 (AB 1807), effective March 30, 1994; Stats 1995 ch 5 § 1 (SB 158), ch 60 § 6 (SB 42), effective July 6, 1995, ch 708 § 1.5 (SB 609); Stats 1997 ch 759 § 9 (SB 827); Stats 1999 ch 252 § 1 (AB 352), ch 655 § 2 (SB 1308); Stats 2002 ch 1085 § 1 (SB 1950), ch 1150 § 2.5 (SB 1955); Stats 2006 ch 659 § 2 (SB 1475), effective January 1, 2007; Stats 2009 ch 308 § 9 (SB 819), effective January 1, 2010; Stats 2010 ch 505 § 1 (SB 700), effective January 1, 2011; Stats 2012 ch 332 § 1 (SB 1236), effective January 1, 2013; Stats 2015 ch 426 § 5 (SB 800), effective January 1, 2016.

§ 801. Insurers' reports of malpractice settlements or arbitration awards; Insured's written consent to settlement

(a) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete

report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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

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

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 1979 ch 923 § 1; Stats 1989 ch 398 § 1, ch 886 § 11 (ch 398 prevails); Stats 1991 ch 359 § 6 (AB 1332), ch 1091 § 2 (AB 1487) (ch 359 prevails); Stats 1994 ch 468 § 1 (AB 559), ch 1206 § 8 (SB 1775); Stats 1995 ch 5 § 2 (SB 158); Stats 1997 ch 359 § 1 (AB 103); Stats 2002 ch 1085 § 2 (SB 1950); Stats 2004 ch 467 § 1 (SB 1548); Stats 2006 ch 223 § 3 (SB 1438) (ch 223 prevails), effective January 1, 2007, ch 538 § 2 (SB 1852); Stats 2009 ch 308 § 10 (SB 819), effective January 1, 2010; Stats 2011 ch 381 § 6 (SB 146), effective January 1, 2012.

§ 801.1. Report of settlement or arbitration award where state or local government acts as self-insurer in cases of negligence, error, omission in practice, or rendering of unauthorized services resulting in death or personal injury

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

(b) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of

unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

Added Stats 1995 ch 708 § 2 (SB 609). Amended Stats 2002 ch 1085 § 3 (SB 1950); Stats 2006 ch 223 § 5 (SB 1438), effective January 1, 2007; Stats 2011 ch 381 § 7 (SB 146), effective January 1, 2012.

§ 802. Reports of malpractice settlements or arbitration awards involving uninsured licensees; Penalties for noncompliance

(a) Every settlement, judgment, or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement, judgment, or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he

or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, his or her counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 1979 ch 923 § 2; Stats 1989 ch 398 § 2; Stats 1997 ch 359 § 2 (AB 103); Stats 2001 ch 728 § 1.5 (SB 724); Stats 2002 ch 1085 § 4 (SB 1950); Stats 2005 ch 674 § 4 (SB 231), effective January 1, 2006; Stats 2006 ch 223 § 6 (SB 1438), effective January 1, 2007; Stats 2011 ch 381 § 8 (SB 146), effective January 1, 2012.

§ 803. Report of crime or liability for death or injury on part of specified licensees to licensing agency

(a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, doctor of podiatric medicine, or physician assistant, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

Added Stats 1993 ch 1267 § 4 (SB 916). Amended Stats 1995 ch 708 § 4 (SB 609); Stats 1997 ch 359 § 3 (AB 103); Stats 2001 ch 728 § 2 (SB 724); Stats 2005 ch 216 § 3 (AB 268), effective January 1, 2006; Stats 2006 ch 223 § 9 (SB 1438), effective January 1, 2007; Stats 2009 ch 308 § 11 (SB 819), effective January 1, 2010; Stats 2012 ch 332 § 5 (SB 1236), effective January 1, 2013.

§ 803.5. Notice to board of filing charging licensee with felony; Transmittal of copy of conviction

(a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Physician Assistant Board, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged

and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

Added Stats 1990 ch 1597 § 3 (SB 2375). Amended Stats 1993 ch 1267 § 6 (SB 916); Stats 1994 ch 1206 § 12 (SB 1775); Stats 1995 ch 708 § 6 (SB 609); Stats 2000 ch 867 § 4 (SB 1988); Stats 2005 ch 216 § 4 (AB 268), effective January 1, 2006; Stats 2006 ch 223 § 13 (SB 1438), effective January 1, 2007; Stats 2012 ch 332 § 7 (SB 1236), effective January 1, 2013.

§ 803.6. Transmittal of felony preliminary hearing transcript concerning licensee to board; Transmittal of probation report

(a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the Physician Assistant Board, or other appropriate allied health board, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the board.

Added Stats 1990 ch 1597 § 4 (SB 2375). Amended Stats 1993 ch 1267 § 7 (SB 916); Stats 2005 ch 216 § 5 (AB 268), effective January 1, 2006; Stats 2012 ch 332 § 8 (SB 1236), effective January 1, 2013.

§ 804. Form and content of reports

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

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

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

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 2d Ex Sess 1975 ch 2 § 1.01, effective September 24, 1975, operative December 12, 1975; Stats 1994 ch 1206 § 13 (SB 1775); Stats 1995 ch 708 § 7 (SB 609); Stats 2006 ch 223 § 14 (SB 1438), effective January 1, 2007.

§ 805. Peer review; Reports

(a) As used in this section, the following terms have the following definitions:

(1)(A) "Peer review" means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

(B) "Peer review body" includes:

(i) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, professional clinical counselor, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, dentist, or physician assistant. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113 or 2168.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) If a licentiate takes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason, the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges or membership, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate takes the action.

(1) Resigns or takes a leave of absence from membership, staff privileges, or employment.

(2) Withdraws or abandons his or her application for staff privileges or membership.

(3) Withdraws or abandons his or her request for renewal of staff privileges or membership.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information, electronically or otherwise, pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report. The notice shall also advise the licentiate that information submitted electronically will be publicly disclosed to those who request the information.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained electronically by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by

the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

Added Stats 1987 ch 1044 § 3. Amended Stats 1988 ch 419 § 1; Stats 1989 ch 886 § 12 (ch 1070 prevails), ch 1070 § 1; Stats 1990 ch 196 § 1 (AB 1565), ch 1597 § 5 (SB 2375); Stats 1991 ch 359 § 7 (AB 1332); Stats 1993 ch 1267 § 8 (SB 916); Stats 1995 ch 279 § 1 (AB 1471); Stats 1997 ch 359 § 6 (AB 103); Stats 1999 ch 252 § 2 (AB 352); Stats 2001 ch 614 § 2 (SB 16); Stats 2002 ch 1012 § 3 (SB 2025), effective September 27, 2002; Stats 2006 ch 223 § 16 (SB 1438), effective January 1, 2007; Stats 2009 ch 307 § 2 (SB 821), effective January 1, 2010; Stats 2010 ch 505 § 3 (SB 700), effective January 1, 2011; Stats 2011 ch 381 § 9 (SB 146), effective January 1, 2012; Stats 2012 ch 332 § 9 (SB 1236), effective January 1, 2013.

§ 805.5. Request for report prior to grant or renewal of staff privileges; Penalties for violation

(a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, any health care service plan or medical care foundation, the medical staff of the institution, a facility certified to participate in the federal

Medicare Program as an ambulatory surgical center, or an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

Added Stats 1979 ch 602 § 2. Amended Stats 1983 ch 1092 § 4, effective September 27, 1983, operative January 1, 1984; Stats 1987 ch 721 § 2; Stats 1989 ch 886 § 14; Stats 1991 ch 359 § 9 (AB 1332); Stats 1999 ch 655 § 3 (SB 1308); Stats 2001 ch 614 § 5 (SB 16); Stats 2010 ch 505 § 6 (SB 700), effective January 1, 2011; Stats 2015 ch 287 § 1 (SB 396), effective January 1, 2016.

§ 806. Statistical reports and recommendations to Legislature

Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon these records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including by the type of peer review body, and, where applicable, type of health care facility, the number of reports received and a summary of administrative and disciplinary action taken with

respect to these reports and any recommendations for corrective legislation if the agency considers legislation to be necessary.

Added Stats 2d Ex Sess 1975 ch 1 § 2.3. Amended Stats 2001 ch 614 § 8 (SB 16).

§ 808.5. Filing of reports

For purposes of this article, reports affecting psychologists required to be filed under Sections 801, 801.1, 802, 803, 803.5, and 803.6 shall be filed with the Board of Psychology of the Department of Consumer Affairs.

Added Stats 1999 ch 655 § 4 (SB 1308).

ARTICLE 12

Insurance Fraud

§ 810. Grounds for disciplinary action against health care professional

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c)(1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing

with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi–Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) "Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

Added Stats 1978 ch 174 § 1, effective May 31, 1978. Amended Stats 1991 ch 116 § 1 (SB 1218); Stats 1997 ch 758 § 2.6 (SB 1346); Stats 2003 ch 595 § 1 (SB 359), ch 659 § 1.5 (AB 747); Stats 2004 ch 333 § 1 (AB 2835).

ARTICLE 12.5

Mental Illness or Physical Illness

§ 820. Examination of licentiate for mental illness or physical illness affecting competency

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate

and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Added Stats 1982 ch 1183 § 1. Amended Stats 1989 ch 1104 § 1.7.

§ 821. Effect of licentiate's failure to comply with order for examination

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

Added Stats 1982 ch 1183 § 1.

§ 822. Action by licensing agency

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Added Stats 1982 ch 1183 § 1.

§ 823. Reinstatement of licentiate

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

(a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

Added Stats 1982 ch 1183 § 1.

§ 824. Options open to licensing agency when proceeding against licentiate

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

Added Stats 1982 ch 1183 § 1.

§ 826. Format of proceedings under Sections 821 and 822; Rights and powers

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

Added Stats 1982 ch 1183 § 1.

§ 827. Authority of licensing agency to convene in closed session

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

Added Stats 1982 ch 1183 § 1.

§ 828. Determination of insufficient evidence to bring action against licentiate; Effect on records of proceedings

If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiates fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

Added Stats 1982 ch 1183 § 1.

ARTICLE 15

Sexual Orientation Change Efforts

§ 865. Definitions

For the purposes of this article, the following terms shall have the following meanings:

(a) "Mental health provider" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, intern, or trainee, a licensed marriage and family therapist, a registered marriage and family therapist, intern, or trainee, a licensed educational psychologist, a credentialed school psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, a registered clinical counselor, intern, or trainee, or any other person designated as a mental health professional under California law or regulation.

(b)(1) "Sexual orientation change efforts" means any practices by mental health providers that seek to change an individual's sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

(2) "Sexual orientation change efforts" does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

Added Stats 2012 ch 835 § 2 (SB 1172), effective January 1, 2013.

§ 865.1. Prohibited sexual orientation change efforts with patient under specified age

Under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age.

Added Stats 2012 ch 835 § 2 (SB 1172), effective January 1, 2013.

§ 865.2. Unprofessional conduct

Any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject a mental health provider to discipline by the licensing entity for that mental health provider.

Added Stats 2012 ch 835 § 2 (SB 1172), effective January 1, 2013.

CHAPTER 1.5

Exemption from Licensure

§ 900. Requirements for exemption; Immunity from liability

(a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this section, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this section, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

Added Stats 1989 ch 97 § 2, effective July 7, 1989. Amended Stats 2010 ch 270 § 1 (AB 2699), effective January 1, 2011.

§ 901. (Repealed January 1, 2018) Exemption from licensure requirements for services provided under enumerated circumstances; Prior authorization; Steps necessary for sponsoring entity; Report; List of health care practitioners providing health care services under this section; Compliance

(a) For purposes of this section, the following provisions apply:

(1) "Board" means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) "Health care practitioner" means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) "Sponsoring entity" means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) "Uninsured or underinsured person" means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she does all of the following:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that

request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (d).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to comply with this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any

change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j)(1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(*l*) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

Added Stats 2010 ch 270 § 2 (AB 2699), effective January 1, 2011, repealed January 1, 2014. Amended Stats 2011 ch 296 § 3 (AB 1023), effective January 1, 2012, repealed January 1, 2014; Stats 2013 ch 111 § 1 (AB 512), effective January 1, 2014, repealed January 1, 2018.

CHAPTER 5

Medicine

ARTICLE 12

Enforcement

§ 2290.5. Telehealth; Patient consent; Hospital privileges and approval of credentials for providers of telehealth services

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means either of the following:

(A) A person who is licensed under this division.

(B) A marriage and family therapist intern or trainee functioning pursuant to Section 4980.43.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h)(1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

Added Stats 2011 ch 547 § 4 (AB 415), effective January 1, 2012. Amended Stats 2014 ch 404 § 1 (AB 809), effective September 18, 2014; Stats 2015 ch 50 § 1 (AB 250), effective January 1, 2016.

CHAPTER 6.6
Psychologists

ARTICLE 1
General Provisions

§ 2900. Legislative findings

The Legislature finds and declares that practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

Added Stats 1967 ch 1677 § 2.

§ 2901. Citation

This chapter shall be known and may be cited as the "Psychology Licensing Law."

Added Stats 1967 ch 1677 § 2.

§ 2902. Definitions

As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided the following definitions apply:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, which license is in force and has not been suspended or revoked.

(b) "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," or "psychoanalyst," or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, or an institution that is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means an institution having "approval to operate", as defined in Section 94718 of the Education Code.

Added Stats 1995 ch 708 § 12 (SB 609), operative January 1, 1997. Amended Stats 1997 ch 758 § 34 (SB 1346); Stats 2004 ch 695 § 19 (SB 1913).

§ 2903. Licensure requirement; Practice of psychology; Psychotherapy

(a) No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render to individuals, groups, organizations, or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

(b) The application of these principles and methods includes, but is not restricted to: assessment, diagnosis, prevention, treatment, and intervention to increase effective functioning of individuals, groups, and organizations.

(c) Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes, and behaviors that are emotionally, intellectually, or socially ineffectual or maladaptive.

Added Stats 1967 ch 1677 § 2. Amended Stats 1973 ch 658 § 1; Stats 1978 ch 1208 § 2; Stats 2001 ch 728 § 24.2 (SB 724); Stats 2015 ch 529 § 1 (AB 1374), effective January 1, 2016.

§ 2903.1. Biofeedback instruments

A psychologist licensed under this chapter may use biofeedback instruments which do not pierce or cut the skin to measure physical and mental functioning.

Added Stats 1976 ch 734 § 1.

§ 2904. Excluded services

The practice of psychology shall not include prescribing drugs, performing surgery or administering electroconvulsive therapy.

Added Stats 1967 ch 1677 § 2.

§ 2904.5. Applicability of telemedicine provisions of § 2290.5

A psychologist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care provider subject to the provisions of Section 2290.5.

Added Stats 2003 ch 20 § 3 (AB 116). Amended Stats 2012 ch 799 § 17 (SB 1575), effective January 1, 2013.

§ 2905. Construction of other definitional statutes

The practice of psychology shall be defined as in Section 2903, any existing statute in the State of California to the contrary notwithstanding.

Added Stats 1967 ch 1677 § 2.

§ 2907. Rights of corporations

Corporations shall have no professional rights, privileges, or powers, and shall not be permitted to practice psychology, nor shall the liability of any licensed psychologist be limited by a corporation.

Added Stats 1967 ch 1677 § 2.

§ 2907.5. Right of psychological corporation to practice

Nothing in Section 2907 shall be deemed to apply to the acts of a psychological corporation practicing pursuant to the Moscone-Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code and Article 9 (commencing with Section 2995) when the psychological corporation is in compliance with (a)the Moscone-Knox Professional Corporation Act; (b)Article 9 (commencing with Section 2995); and (c)all other statutes now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

Added Stats 1969 ch 1436 § 2. Amended Stats 1973 ch 77 § 4; Stats 1980 ch 1314 § 11.

§ 2908. Exemption of other professions

Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrist," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing

with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

Added Stats 1967 ch 1677 § 2. Amended Stats 1973 ch 758 § 3; Stats 1978 ch 1208 § 4; Stats 1980 ch 324 § 1; Stats 1983 ch 928 § 2; Stats 2002 ch 1013 § 10 (SB 2026).

§ 2909. Applicability of chapter to credentialed school psychologists, and psychologists and psychological assistants employed by colleges, universities, or governmental organizations

This chapter shall not be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed, and do not render or offer to render psychological services, as defined in Section 2903:

(a) Persons who hold a valid and current credential as a school psychologist issued by the Commission on Teacher Credentialing.

(b) Persons who are employed in positions as psychologists or psychological assistants by accredited or approved colleges, junior colleges,or universities, or by federal, state, county, or municipal governmental organizations that are not primarily involved in the provision of direct health or mental health services, may conduct research and disseminate their research findings and scientific information.

Added Stats 1981 ch 412 § 2, effective September 11, 1981, operative January 1, 1984. Amended Stats 1989 ch 888 § 2; Stats 1990 ch 1207 § 3 (AB 3242); Stats 2005 ch 658 § 2 (SB 229), effective January 1, 2006; Stats 2015 ch 218 § 1 (AB 705), effective January 1, 2016.

§ 2909.5. Applicability of chapter to registered psychologists employed by nonprofit community agencies supported by governmental organizations

This chapter shall not be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which persons were employed on the part of persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not render or offer to render psychological services to the public, as defined in Section 2903. Those persons shall be registered by the agency with the board at the time of employment and shall be identified in the setting as a "registered psychologist." Those persons shall be exempt from this chapter for a maximum period of 30 months from the date of registration.

Added Stats 2015 ch 218 § 2 (AB 705), effective January 1, 2016. Amended Stats 2016 ch 484 § 1 (SB 1193), effective January 1, 2017.

§ 2910. Applicability of chapter to practice of psychology by certain salaried employees of academic institutions, public schools, or governmental agencies

(a) This chapter shall not be construed to restrict the practice of psychology on the part of persons who are salaried employees of accredited or approved academic institutions, public schools, or governmental agencies, if those employees are complying with the following:

(1) Performing those psychological activities as part of the duties for which they were hired.

(2) Performing those activities solely within the jurisdiction or confines of those organizations.

(3) Do not hold themselves out to the public by any title or description of activities incorporating the words "psychology," "psychological," or "psychologist."

(4) Are primarily gaining the supervised professional experience required for licensure that is being accrued consistent with the board's regulations and the employees have as the primary supervisor a psychologist licensed in the state.

(b) Commencing January 1, 2016, an individual employed or who becomes employed by one or more employers as described in subdivision (a) shall be exempt under this section for a cumulative total of five years.

Added Stats 1967 ch 1677 § 2. Amended Stats 1979 ch 996 § 3; Stats 2015 ch 218 § 3 (AB 705), effective January 1, 2016.

§ 2911. Applicability of chapter to students and interns

Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited or approved college or university and working in a training program, or a postdoctoral trainee working in a postdoctoral placement overseen by the American Psychological Association (APA), the Association of Psychology Postdoctoral and Internship Centers (APPIC), or the California Psychology Internship Council (CAPIC), provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title "psychological intern," "psychological trainee," "postdoctoral intern," or another title clearly indicating the training status appropriate to his or her level of training. The aforementioned terms shall be reserved for persons enrolled in the doctoral program leading to one of the degrees listed in subdivision (b) of Section 2914 at an accredited or approved college or university or in a formal postdoctoral internship overseen by APA, APPIC, or CAPIC.

Added Stats 1967 ch 1677 § 2. Amended Stats 2005 ch 658 § 3 (SB 229), effective January 1, 2006.

§ 2912. Temporary practice by licensees of other state or foreign country

Nothing in this chapter shall be construed to restrict or prevent a person who is licensed as a psychologist at the doctoral level in another state or territory of the United States or in Canada from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

Added Stats 1973 ch 757 § 2. Amended Stats 1978 ch 1161 § 196; Stats 2005 ch 658 § 4 (SB 229), effective January 1, 2006.

§ 2913. Services by psychological assistants

A person other than a licensed psychologist may perform psychological functions in preparation for licensure as a psychologist only if all of the following conditions are met:

(a) The person shall register himself or herself with the board as a "psychological assistant." This registration shall be renewed annually in accordance with regulations adopted by the board.

(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree that qualifies for licensure under Section 2914.

(c)(1) The psychological assistant is at all times under the immediate supervision, as defined in regulations adopted by the board, of a licensed psychologist, or a licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology or the American College of Osteopathic Board of Neurology and Psychiatry, who shall be responsible for insuring that the extent, kind, and quality of the psychological services that the psychological assistant performs are consistent with his or her training and experience and be responsible for the psychological assistant's compliance with this chapter and regulations.

(2) A licensed psychologist or board certified psychiatrist shall not supervise more than three psychological assistants at any given time. No psychological assistant may provide psychological services to the public except as a supervisee pursuant to this section.

(d) The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

Added Stats 1967 ch 1677 § 2. Amended Stats 1970 ch 470 § 1, effective July 21, 1970; Stats 1973 ch 949 § 1; Stats 1978 ch 1208 § 5; Stats 1980 ch 1314 § 12, ch 1315 § 1; Stats 1981 ch 714 § 8; Stats 1982 ch 462 § 1, ch 1172 § 1; Stats 1983 ch 207 § 1, effective July 13, 1983; Stats 1989 ch 888 § 3; Stats 2015 ch 529 § 2 (AB 1374), effective January 1, 2016; Stats 2016 ch 484 § 2 (SB 1193), effective January 1, 2017.

§ 2914. Applicant's requirements

Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475).

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (h), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

(c)(1) On or after January 1, 2020, possess an earned doctorate degree in psychology, in educational psychology, or in education with the field of

specialization in counseling psychology or educational psychology from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. Until January 1, 2020, the board may accept an applicant who possesses a doctorate degree in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is approved to operate in this state by the Bureau for Private Postsecondary Education.

(2) Paragraph (1) does not apply to any student who was enrolled in a doctoral program in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology at a nationally accredited or approved institution as of December 31, 2016.

(3) No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

(4) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(d)(1) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. The supervisor shall submit verification of the experience required by this subdivision to the trainee in a manner prescribed by the board. If the supervising licensed psychologist fails to provide verification to the trainee in a timely manner, the board may establish alternative procedures for obtaining the necessary documentation. Absent good cause, the failure of a supervising licensed psychologist to provide the verification to the board upon request shall constitute unprofessional conduct.

(2) The board shall establish qualifications by regulation for supervising psychologists.

(e) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(f) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(g)(1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and

intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(h) Until January 1, 2020, an applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if both of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the former Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.

Added Stats 2000 ch 625 § 2 (AB 400). Amended Stats 2001 ch 728 § 24.4 (SB 724); Stats 2002 ch 481 § 1 (SB 564); Stats 2005 ch 658 § 5 (SB 229), effective January 1, 2006; Stats 2015 ch 529 § 3 (AB 1374), effective January 1, 2016; Stats 2016 ch 484 § 3 (SB 1193), effective January 1, 2017.

§ 2914.1. Recommended courses in geriatric pharmacology

The board shall encourage every licensed psychologist to take continuing professional development in geriatric pharmacology.

Added Stats 1990 ch 1539 § 3 (SB 2827). Amended Stats 2016 ch 484 § 4 (SB 1193), effective January 1, 2017.

§ 2914.2. Psychopharmacology and biological basis of behavior courses

The board shall encourage licensed psychologists to take continuing professional development in psychopharmacology and biological basis of behavior.

Added Stats 1998 ch 822 § 1 (SB 983). Amended Stats 2016 ch 484 § 5 (SB 1193), effective January 1, 2017.

§ 2914.3. Guidelines for training

(a) The board shall encourage institutions that offer a doctorate degree program in psychology to include in their biobehavioral curriculum, education and training in psychopharmacology and related topics including pharmacology and clinical pharmacology.

(b) The board shall develop guidelines for the basic education and training of psychologists whose practices include patients with medical conditions and

patients with mental and emotional disorders, who may require psychopharmacological treatment and whose management may require collaboration with physicians and other licensed prescribers. In developing these guidelines for training, the board shall consider, but not be limited to, all of the following:

(1) The American Psychological Association's guidelines for training in the biological bases of mental and emotional disorders.

(2) The necessary educational foundation for understanding the biochemical and physiological bases for mental disorders.

(3) Evaluation of the response to psychotropic compounds, including the effects and side effects.

(4) Competent basic practical and theoretical knowledge of neuroanatomy, neurochemistry, and neurophysiology relevant to research and clinical practice.

(5) Knowledge of the biological bases of psychopharmacology.

(6) The locus of action of psychoactive substances and mechanisms by which these substances affect brain function and other systems of the body.

(7) Knowledge of the psychopharmacology of classes of drugs commonly used to treat mental disorders.

(8) Drugs that are commonly abused that may or may not have therapeutic uses.

(9) Education of patients and significant support persons in the risks, benefits, and treatment alternatives to medication.

(10) Appropriate collaboration or consultation with physicians or other prescribers to include the assessment of the need for additional treatment that may include medication or other medical evaluation and treatment and the patient's mental capacity to consent to additional treatment to enhance both the physical and the mental status of the persons being treated.

(11) Knowledge of signs that warrant consideration for referral to a physician.

(c) This section is intended to provide for training of clinical psychologists to improve the ability of clinical psychologists to collaborate with physicians. It is not intended to provide for training psychologists to prescribe medication. Nothing in this section is intended to expand the scope of licensure of psychologists.

Added Stats 1998 ch 822 § 2 (SB 983).

§ 2915. Continuing education requirements; Practice outside fields of competence

(a) Except as provided in this section, the board shall issue a renewal license only to an applicant who has completed 36 hours of approved continuing professional development in the preceding two years.

(b) Each person who applies to renew or reinstate his or her license issued pursuant to this chapter shall certify under penalty of perjury that he or she is in compliance with this section and shall retain proof of this compliance for submission to the board upon request. False statements submitted pursuant to this section shall be a violation of Section 2970.

(c) Continuing professional development means certain continuing education learning activities approved in four different categories:

(1) Professional.

(2) Academic.
(3) Sponsored continuing education coursework.
(4) Board certification from the American Board of Professional Psychology.

The board may develop regulations further defining acceptable continuing professional development activities.

(d)(1) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(2) Continuing education courses taken pursuant to this subdivision shall be applied to the 36 hours of approved continuing professional development required under subdivision (a).

(e) Continuing education courses approved to meet the requirements of this section shall be approved by organizations approved by the board. An organization previously approved by the board to provide or approve continuing education is deemed approved under this section.

(f) The board may accept continuing education courses approved by an entity that has demonstrated to the board in writing that it has, at a minimum, a 10-year history of providing educational programming for psychologists and has documented procedures for maintaining a continuing education approval program. The board shall adopt regulations necessary for implementing this section.

(g) The board may grant an exemption, or an extension of the time for compliance with, from the continuing professional development requirement of this section.

(h) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

Added Stats 2002 ch 481 § 3 (SB 564), operative January 1, 2004. Amended Stats 2016 ch 484 § 6 (SB 1193), effective January 1, 2017.

§ 2915.5. Coursework in aging and long-term care required for licensure of new applicant; Instruction on assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect

(a) Any applicant for licensure as a psychologist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which may include, but need not be limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

Added Stats 2002 ch 541 § 4 (SB 953). Amended Stats 2010 ch 552 § 2 (AB 2435), effective January 1, 2011.

§ 2915.7. Continuing education course in aging and long-term care required for first license renewal; Instruction on assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect

(a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of that course.

(b) The course should include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) A licensee whose practice does not include the direct provision of mental health services may apply to the board for an exception to the requirements of this section.

Added Stats 2002 ch 541 § 5 (SB 953). Amended Stats 2004 ch 695 § 20 (SB 1913); Stats 2010 ch 552 § 3 (AB 2435), effective January 1, 2011.

§ 2916. Separability clause

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any of the provisions or applications of this chapter which can be given effect without such invalid provisions or application, and to this end the provisions of this chapter are declared to be severable.

Added Stats 1967 ch 1677 § 2.

§ 2918. Privileged communications

The confidential relations and communications between psychologist and client shall be privileged as provided by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

Added Stats 1973 ch 757 § 4.

§ 2919. Retention of health service records

A licensed psychologist shall retain a patient's health service records for a minimum of seven years from the patient's discharge date. If the patient is a minor, the patient's health service records shall be retained for a minimum of seven years from the date the patient reaches 18 years of age.

Added Stats 2006 ch 89 § 1 (AB 2257), effective January 1, 2007.

ARTICLE 2

Administration

§ 2920. (Repealed January 1, 2021) Board of Psychology

(a) The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

Added Stats 1967 ch 1677 § 2. Amended Stats 1971 ch 716 § 45; Stats 1976 ch 1188 § 16; Stats 1978 ch 1208 § 7; Stats 1982 ch 676 § 12; Stats 1989 ch 886 § 56 (ch 888 prevails), ch 888 § 5; Stats 1990 ch 622 § 1 (SB 2720); Stats 1994 ch 908 § 19 (SB 2036); Stat 1998 ch 589 § 1 (SB 1983); Stats 2002 ch 1012 § 6 (SB 2025), effective September 27, 2002; Stats 2005 ch 658 § 6 (SB 229), effective January 1, 2006; Stats 2006 ch 658 § 50 (SB 1476), effective January 1, 2007; Stats 2008 ch 385 § 1 (SB 963), effective January 1, 2009, repealed January 1, 2011; Stats 2010 ch 695 § 10 (SB 294), effective January 1, 2011, repealed January 1, 2013; Stats 2012 ch 332 § 24 (SB 1236), effective January 1, 2013, repealed January 1, 2017; Stats 2016 ch 484 § 7 (SB 1193), effective January 1, 2017, repealed January 1, 2021.

§ 2920.1. Priority of board; Protection of the public

Protection of the public shall be the highest priority for the Board of Psychology in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Added Stats 2002 ch 107 § 12 (AB 269).

§ 2921. Tenure of committee members

Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.

Added Stats 1967 ch 1677 § 2. Amended Stats 1968 ch 455 § 1; Stats 1973 ch 757 § 5; Stats 1989 ch 888 § 6.

§ 2922. Appointment of members

In appointing the members of the board, except the public members, the Governor shall use his or her judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

The Governor shall appoint two of the public members and the five licensed members of the board qualified as provided in Section 2923. The Senate Rules

Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

Added Stats 1967 ch 1677 § 2. Amended Stats 1976 ch 1188 § 17; Stats 1982 ch 676 § 13; Stats 1989 ch 888 § 7; Stats 1998 ch 589 § 2 (SB 1983).

§ 2923. Qualifications

Each member of the board shall have all of the following qualifications:

(a) He or she shall be a resident of this state.

(b) Each member appointed, except the public members shall be a licensed psychologist.

The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

Added Stats 1967 ch 1677 § 2. Amended Stats 1976 ch 1188 § 18; Stats 1989 ch 888 § 8.

§ 2924. Removal from office

The Governor has power to remove from office any member of the board for neglect of any duty required by this chapter, for incompetency, or for unprofessional conduct.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 9.

§ 2925. Officers

The board shall elect annually a president and vice president from among its members.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 8; Stats 1989 ch 888 § 10; Stats 1998 ch 589 § 3 (SB 1983).

§ 2926. Meetings

The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the chairman or at the written request of any two members of the board.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 11.

§ 2927. Quorum

Five members of the board shall at all times constitute a quorum.

Added Stats 1967 ch 1677 § 2, as B & P C § 2932. Amended Stats 1989 ch 888 § 16. Renumbered by Stats 1994 ch 26 § 69 (AB 1807), effective March 30, 1994.

§ 2927.5. Notice of meetings

Notice of each regular meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

Added Stats 1973 ch 757 § 6. Amended Stats 1994 ch 26 § 66 (AB 1807), effective March 30, 1994.

§ 2928. Enforcement

The board shall administer and enforce this chapter.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 12; Stats 1997 ch 758 § 35 (SB 1346).

§ 2929. Seal

The board shall adopt a seal, which shall be affixed to all licenses issued by the board.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 13; Stats 1997 ch 758 § 36 (SB 1346).

§ 2930. Rule-making authority

The board shall from time to time adopt rules and regulations as may be necessary to effectuate this chapter. In adopting rules and regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 1967 ch 1677 § 2. Amended Stats 1984 ch 144 § 12; Stats 1989 ch 888 § 14.

§ 2931. Examining applicants

The board shall examine and pass upon the qualifications of the applicants for a license as provided by this chapter.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 15.

§ 2933. (Repealed January 1, 2021) Employees; Executive officer

(a) Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

Added Stats 1967 ch 1677 § 2. Amended Stats 1971 ch 716 § 46; Stats 1974 ch 1044 § 32.6, effective September 23, 1974; Stats 1984 ch 47 § 18, effective March 21, 1984; Stats 1989 ch 888 § 17; Stats 1994 ch 908 § 20 (SB 2036); Stats 1997 ch 758 § 37 (SB 1346); Stats 1998 ch 589 § 4 (SB 1983); Stats 2002 ch 1012 § 7 (SB 2025), effective September 27, 2002; Stats 2005 ch 658 § 7 (SB 229), effective January 1, 2006; Stats 2006 ch 658 § 51 (SB 1476), effective January 1, 2007; Stats 2008 ch 385 § 2 (SB 963), effective January 1, 2009, repealed January 1, 2011; Stats 2010 ch 695 § 11 (SB 294), effective January 1, 2011, repealed January 1, 2013; Stats 2012 ch 332 § 25 (SB 1236), effective January 1, 2013, repealed January 1, 2017; Stats 2016 ch 484 § 8 (SB 1193), effective January 1, 2017, repealed January 1, 2021.

§ 2934. Geographical directory of licensees

Notwithstanding Section 112, the board may issue, biennially, a current geographical directory of licensed psychologists. The directory may be sent to licensees and to other interested parties at cost.

Added Stats 1982 ch 462 § 2. Amended Stats 1989 ch 888 § 18.

§ 2934.1. Posting of license status on Web site

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

(1) Whether or not the licensee has a record of a disciplinary action.

(2) Any of the following enforcement actions or proceedings against the licensee:

(A) Temporary restraining orders.

(B) Interim suspension orders.

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

(D) Accusations filed by the board, including those accusations that are on appeal, excluding ones that have been dismissed or withdrawn where the action is no longer pending.

(E) Citations issued by the board. Unless withdrawn, citations shall be posted for five years from the date of issuance.

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

(1) Institutions that awarded the qualifying educational degree and type of degree awarded.

(2) A link to the licensee's professional Internet Web site. Any link that provides access to a licensee's professional Internet Web site, once clicked, shall be accompanied by a notification that informs the Internet Web site viewer that they are no longer on the board's Internet Web site.

(c) The board may also post other information designated by the board in regulation.

Added Stats 2016 ch 484 § 9 (SB 1193), effective January 1, 2017.

§ 2935. Compensation and expenses

Each member of the board shall receive a per diem and expenses as provided in Section 103.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 19.

§ 2936. Consumer and professional education in matters relevant to ethical practice; Standards of ethical conduct; Notice

The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

"NOTICE TO CONSUMERS: The Department of Consumer Affair's Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or complaints, you may contact the board by email at bopmail@dca.ca.gov, on the Internet at www.psychology.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology

1625 North Market Boulevard, Suite –215

Sacramento, California 95834"

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 10.3; Stats 1989 ch 886 § 57 (ch 888 prevails), ch 888 § 20; Stats 1991 ch 1091 § 4 (AB 1487); Stats 1998 ch 589 § 5 (SB 1983); Stats 2004 ch 695 § 21 (SB 1913); Stats 2005 ch 658 § 8 (SB 229), effective January 1, 2006; Stats 2011 ch 350 § 21 (SB 943), effective January 1, 2012; Stats 2014 ch 316 § 10 (SB 1466), effective January 1, 2015.

ARTICLE 3
License

§ 2940. Application and fee

Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.

The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the board.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 21; Stats 1997 ch 758 § 38 (SB 1346).

§ 2941. Examination and fee

Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 10.5; Stats 1989 ch 888 § 22; Stats 1997 ch 758 § 39 (SB 1346).

§ 2942. Time for examinations; Passing grades

The board may examine by written or computer-assisted examination or by both. All aspects of the examination shall be in compliance with Section 139. The examination shall be available for administration at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 12; Stats 1989 ch 888 § 23; Stats 1998 ch 589 § 6 (SB 1983); Stats 2005 ch 658 § 9 (SB 229), effective January 1, 2006.

§ 2943. Examination subjects

The board may examine for knowledge in whatever theoretical or applied fields in psychology as it deems appropriate. It may examine the candidate with regard to his or her professional skills and his or her judgment in the utilization of psychological techniques and methods.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 24.

§ 2944. Written examinations

The board shall grade the written examination and keep the written examination papers for at least one year, unless a uniform examination is conducted pursuant to Section 2942.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 13; Stats 1989 ch 888 § 25.

§ 2946. Reciprocity licenses; Temporary practice by out-of-state licensees; Waiver of examination requirement

The board shall grant a license to any person who passes the board's supplemental licensing examination and, at the time of application, has been

licensed for at least five years by a psychology licensing authority in another state or Canadian province if the requirements for obtaining a certificate or license in that state or province were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state or province and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive the examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by the examinations. The board at its discretion may waive the examinations for diplomates of the American Board of Professional Psychology.

Added Stats 1967 ch 1677 § 2. Amended Stats 1979 ch 955 § 3; Stats 1989 ch 888 § 27; Stats 1990 ch 622 § 2 (SB 2720); Stats 1998 ch 589 § 7 (SB 1983); Stats 2000 ch 836 § 19 (SB 1554); Stats 2005 ch 658 § 11 (SB 229), effective January 1, 2006.

§ 2947. [Section repealed 2017.]

Added Stats 1978 ch 1208 § 13.2. Amended Stats 1982 ch 462 § 3; Stats 1989 ch 888 § 28. Repealed Stats 2016 ch 484 § 10 (SB 1193), effective January 1, 2017. The repealed section related to appointment and qualifications of commissioners on examination.

§ 2948. Issuance of license

The board shall issue a license to all applicants who meet the requirements of this chapter and who pay to the board the initial license fee provided in Section 2987.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 29; Stats 1990 ch 622 § 3 (SB 2720); Stats 1997 ch 758 § 40 (SB 1346).

ARTICLE 4

Denial, Suspension and Revocation

§ 2960. Grounds for action

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

Added Stats 1967 ch 1677 § 2. Amended Stats 1970 ch 1318 § 3; Stats 1973 ch 757 § 9; Stats 1977 ch 509 § 5; Stats 1978 ch 1208 § 15; Stats 1979 ch 955 § 4; Stats 1982 ch 462 § 4; Stats 1984 ch 1635 § 6; Stats 1985 ch 990 § 2, effective September 26, 1985; Stats 1988 ch 800 § 2; Stats 1989 ch 888 § 30; Stats 1992 ch 1099 § 2 (AB 3034); Stats 1994 ch 26 § 76 (AB 1807), effective March 30, 1994; Stats 1994 ch 1275 § 21 (SB 2101); Stats 1998 ch 879 § 2 (SB 2238); Stats 1999 ch 655 § 43 (SB 1308); Stats 2000 ch 836 § 20 (SB 1554).

§ 2960.05. Limitations period for filing accusation against licensee

(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period

provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

Added Stats 1999 ch 459 § 1 (SB 809). Amended Stats 2001 ch 617 § 2 (AB 1616).

§ 2960.1. Sexual contact with patient; Revocation

Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

Added Stats 1994 ch 1274 § 1.8 (SB 2039). Amended Stats 1998 ch 879 § 3 (SB 2238).

§ 2960.2. Licensee's physical, emotional and mental condition evaluated

(a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 777 § 2 (AB 1669), operative January 1, 2005.

§ 2960.5. Mental illness or chemical dependency

The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

Added Stats 1992 ch 384 § 1 (SB 1773).

§ 2960.6. Actions by other states

The board may deny any application for, or may suspend or revoke a license or registration issued under this chapter for, any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state or country on a license, certificate, or registration issued by that

state or country to practice psychology shall constitute grounds for disciplinary action for unprofessional conduct against that licensee or registrant in this state. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by any board established in this division, or the equivalent action of another state's or country's licensing agency, of the license of a healing arts practitioner shall constitute grounds for disciplinary action against that licensee or registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action.

Added Stats 1992 ch 384 § 2 (SB 1773). Amended Stats 1994 ch 1275 § 22 (SB 2101).

§ 2961. Scope of action

The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2965.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 16; Stats 1986 ch 1163 § 1; Stats 1989 ch 888 § 31.

§ 2962. Petition for reinstatement or modification of penalty

(a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination of probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

Added Stats 1994 ch 1275 § 24 (SB 2101). Amended Stats 2000 ch 836 § 21 (SB 1554).

§ 2963. Matters deemed conviction

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions and duties of a psychologist or psychological assistant is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal

or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 17; Stats 1986 ch 1163 § 2; Stats 1989 ch 888 § 33.

§ 2964. Report of license revocation or restoration

Whenever the board orders a license revoked for cause, with the exception of nonpayment of fees, or restores a license, these facts shall be reported to all other state psychology licensing boards.

Added Stats 1982 ch 462 § 5. Amended Stats 1989 ch 888 § 34.

§ 2964.3. Persons required to register as sex offenders

Any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.

Added Stats 1998 ch 589 § 8 (SB 1983).

§ 2964.5. Conditions of probation or suspension

The board at its discretion may require any licensee placed on probation or whose license is suspended, to obtain additional professional training, to pass an examination upon the completion of that training, and to pay the necessary examination fee. The examination may be written or oral or both, and may include a practical or clinical examination.

Added Stats 1982 ch 462 § 6. Amended Stats 1991 ch 1091 § 5 (AB 1487).

§ 2964.6. Payment of probationary costs

An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation.

Added Stats 1995 ch 708 § 12 (SB 609).

§ 2965. Conduct of proceedings

The proceedings under this article shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 1967 ch 1677 § 2. Amended Stats 1989 ch 888 § 35.

§ 2966. Suspension during incarceration for felony conviction; Determination of substantial relationship of felony to functions of psychologist; Discipline or denial of license

(a) A psychologist's license shall be suspended automatically during any time that the holder of the license is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the psychologist has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the psychologist of the license suspension

and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a psychologist, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board. The issue of substantial relationship shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a psychologist and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the psychology profession.

(d)(1) Discipline or the denial of the license may be ordered in accordance with Section 2961, or the board may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. The hearing shall not be commenced until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a psychologist. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

Added Stats 1998 ch 589 § 9 (SB 1983).

§ 2969. Penalties for failure to provide medical records; Failure to comply with court order; Multiple acts

(a)(1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authoriza-

tion for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b)(1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to

exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) The imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

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

Added Stats 2000 ch 836 § 22 (SB 1554).

ARTICLE 5
Penalties

§ 2970. Violation of chapter as misdemeanor

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand dollars ($2,000), or by both.

Added Stats 1967 ch 1677 § 2. Amended Stats 1982 ch 462 § 7; Stats 1983 ch 1092 § 12, effective September 27, 1983, operative January 1, 1984.

§ 2971. Injunctions

Whenever any person other than a licensed psychologist has engaged in any act or practice that constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7, Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the board may commence action in the superior court under this section.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1161 § 206; Stats 1982 ch 517 § 10 (ch 462 prevails), ch 462 § 8; Stats 1989 ch 888 § 36; Stats 1995 ch 279 § 17 (AB 1471); Stats 1997 ch 758 § 41 (SB 1346).

ARTICLE 7
Revenue

§ 2980. Psychology Fund

There is in the State Treasury the Psychology Fund. The board shall report to the Controller at the beginning of each calendar month, for the month preceding, the amount and source of all revenue received by it, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into that fund. All revenue received by the board from fees authorized to be charged relating to the practice of psychology shall be deposited into that fund as provided in this section.

Added Stats 1980 ch 1313 § 9.2, operative July 1, 1981. Amended Stats 1989 ch 886 § 58 (ch 888 prevails), ch 888 § 37; Stats 1990 ch 622 § 4 (SB 2720); Stats 1997 ch 758 § 42 (SB 1346).

§ 2981. Funding

The money in the Psychology Fund shall be used for the administration of this chapter.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 23; Stats 1980 ch 1313 § 9.3, operative July 1, 1981; Stats 2005 ch 74 § 9 (AB 139), effective July 19, 2005.

§ 2982. Expiration of licenses; Renewal of unexpired licenses

(a) All licenses expire and become invalid at 12 midnight on the last day of February, 1980, and thereafter shall expire at 12 midnight of the last date of the two-year period from the date the license was issued.

(b) To renew an unexpired license, the licensee, on or before the date on which it would otherwise expire, shall apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

Added Stats 1967 ch 1677 § 1. Amended Stats 1968 ch 455 § 2; Stats 1969 ch 53 § 2; Stats 1973 ch 757 § 10; Stats 1978 ch 1208 § 23.3; Stats 1989 ch 888 § 38; Stats 2015 ch 336 § 1 (AB 773), effective January 1, 2016.

§ 2983. Initial license fee

Every person to whom a license is issued shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 23.4; Stats 1989 ch 888 § 39; Stats 2005 ch 658 § 12 (SB 229), effective January 1, 2006.

§ 2984. Renewal of expired licenses

Except as provided in Section 2985, a license that has expired may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

Added Stats 1967 ch 1677 § 2. Amended Stats 1978 ch 1208 § 24; Stats 1989 ch 888 § 40; Stats 1994 ch 26 § 80 (AB 1807), effective March 30, 1994; Stats 1997 ch 758 § 43 (SB 1346); Stats 1998 ch 970 § 12.5 (AB 2802); Stats 2001 ch 435 § 8 (SB 349).

§ 2985. Renewal of suspended licenses; Reinstatement of revoked licenses

A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

Added Stats 1967 ch 1677 § 2.

§ 2986. Effect of failure to renew within prescribed time

A person who fails to renew his or her license within the three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the requirements of this chapter provided that he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure.

(b) Establishes to the satisfaction of the board that with due regard for the public interest, he or she is qualified to practice psychology.

(c) Pays all of the fees that would be required if application for licensure was being made for the first time.

The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without examination pursuant to this section.

Added Stats 1967 ch 1677 § 2. Amended Stats 1982 ch 462 § 9; Stats 1989 ch 888 § 41; Stats 1994 ch 26 § 81 (AB 1807), effective March 30, 1994.

§ 2987. Fee schedule

The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400). The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).

(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy-five dollars ($75).

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).
(h) The delinquency fee is twenty-five dollars ($25).
(i) The endorsement fee is five dollars ($5).

Notwithstanding any other provision of law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.

Added Stats 1967 ch 1677 § 2, as B & P C § 2949. Amended Stats 1973 ch 659 § 1. Amended and Renumbered by Stats 1978 ch 1208 § 13.4. Amended Stats 1988 ch 929 § 1; Stats 1989 ch 886 § 59 (ch 888 prevails), ch 888 § 42; Stats 1990 ch 622 § 5 (SB 2720); Stats 1992 ch 1289 § 25 (AB 2743); Stats 1994 ch 26 § 82 (AB 1807), effective March 30, 1994; Stats 2005 ch 658 § 13 (SB 229), effective January 1, 2006.

§ 2987.2. Additional fee at time of renewal

In addition to the fees charged pursuant to Section 2987 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

Added Stats 2003 ch 437 § 2 (AB 938).

§ 2987.5. Exemption from payment of renewal fee

Every person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

While engaged in full-time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista.

Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full-time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full-time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

The time spent in that full-time active service or full-time training and active service shall not be included in the computation of the three-year period for renewal of a license provided in Section 2986.

The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full-time service in the Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista.

Added Stats 1978 ch 1208 § 24.3. Amended Stats 1996 ch 829 § 71 (AB 3473).

§ 2988. Inactive licenses

A licensed psychologist who for reasons, including, but not limited to, retirement, ill health, or absence from the state, is not engaged in the practice of psychology, may apply to the board to request that his or her license be placed on an inactive status. A licensed psychologist who holds an inactive license shall pay a biennial renewal fee, fixed by the board, of no more than forty dollars ($40). A psychologist holding an inactive license shall be exempt from continuing education requirements specified in Section 2915, but shall otherwise be subject to this chapter and shall not engage in the practice of

psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed the continuing education requirements specified in Section 2915 may, upon their request have their license to practice psychology placed on active status.

Added Stats 1982 ch 462 § 10. Amended Stats 1989 ch 888 § 43; Stats 1992 ch 260 § 3 (SB 774); Stats 2005 ch 658 § 14 (SB 229), effective January 1, 2006.

§ 2988.5. Retired license

(a) The board may issue, upon an application prescribed by the board and payment of a fee not to exceed seventy-five dollars ($75), a retired license to a psychologist who holds a current license issued by the board, or one capable of being renewed, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active license is required. A psychologist holding a retired license shall be permitted to use the title "psychologist, retired" or "retired psychologist." The designation of retired shall not be abbreviated in any way.

(c) A retired license shall not be subject to renewal.

(d) The holder of a retired license may apply to obtain an active status license as follows:

(1) If that retired license was issued less than three years prior to the application date, the applicant shall meet all of the following requirements:

(A) Has not committed an act or crime constituting grounds for denial or discipline of a license.

(B) Pays the renewal fee required by this chapter.

(C) Completes the continuing professional development required for the renewal of a license within two years of the date of application for restoration.

(D) Complies with the fingerprint submission requirements established by the board.

(2) Where the applicant has held a retired license for three or more years, the applicant shall do all of the following:

(A) Submit a complete application for a new license.

(B) Take and pass the California Psychology Law and Ethics Examination.

(C) Pay all fees required to obtain a new license.

(D) Comply with the fingerprint submission requirements established by the board.

(E) Be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Section 2914.

(F) Establish that he or she has not been subject to denial or discipline of a license.

Added Stats 2016 ch 484 § 11 (SB 1193), effective January 1, 2017.

§ 2989. Determination of fees

The fees in this article shall be fixed by the board and shall be set forth with the regulations which are duly adopted under this chapter.

Added Stats 1967 ch 1677 § 2, as B & P C § 2950; Renumbered by Stats 1978 ch 1208 § 14. Amended Stats 1989 ch 888 § 44.

ARTICLE 9
Psychological Corporations

§ 2995. Psychological corporation

A psychological corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage and family therapists, licensed clinical social workers, chiropractors, acupuncturists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

Added Stats 1980 ch 1314 § 15. Amended Stats 1981 ch 621 § 3; Stats 1989 ch 886 § 60 (ch 888 prevails), ch 888 § 45; Stats 1990 ch 622 § 6 (SB 2720); Stats 2000 ch 836 § 23 (SB 1554); Stats 2001 ch 159 § 10 (SB 662).

§ 2996. Violation as unprofessional conduct

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

Added Stats 1980 ch 1314 § 15.

§ 2996.1. Conduct of practice

A psychological corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person licensed under this chapter.

Added Stats 1980 ch 1314 § 15.

§ 2996.2. Accrual of income to shareholder while disqualified prohibited

The income of a psychological corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the psychological corporation.

Added Stats 1980 ch 1314 § 15.

§ 2997. Shareholders, directors and officers to be licensees

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a psychological corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

Added Stats 1980 ch 1314 § 15.

§ 2998. Name

The name of a psychological corporation and any name or names under which it may render professional services shall contain one of the words

specified in subdivision (c) of Section 2902, and wording or abbreviations denoting corporate existence.

Added Stats 1980 ch 1314 § 15.

§ 2999. Regulation by committee

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a psychological corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of that corporation within any time as those regulations may provide, and (b) that a psychological corporation shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.

Added Stats 1980 ch 1314 § 15. Amended Stats 1989 ch 888 § 46.

DIVISION 7
General Business Regulations

PART 3
Representations to the Public

CHAPTER 1
Advertising

ARTICLE 1
False Advertising in General

§ 17500. False or misleading statements generally

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise,

so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

Added Stats 1941 ch 63 § 1. Amended Stats 1955 ch 1358 § 1; Stats 1976 ch 1125 § 4; Stats 1979 ch 492 § 1; Stats 1998 ch 599 § 2.5 (SB 597).

§ 17500.1. Prohibition against enactment of rule, regulation, or code of ethics restricting or prohibiting advertising not violative of law

Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

Added Stats 1949 ch 186 § 1. Amended Stats 1971 ch 716 § 180; Stats 1979 ch 653 § 12.

§ 17506.5. "Board within the Department of Consumer Affairs"; "Local consumer affairs agency"

As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

Added Stats 1979 ch 897 § 4.

§ 17507. Disclosure of price differentials respecting more than one article of merchandise or type of service within same class

It is unlawful for any person, firm, corporation or association to make an advertising claim or representation pertaining to more than one article of merchandise or type of service, within the same class of merchandise or service, if any price is set forth in such claim or representation does not clearly and conspicuously identify the article of merchandise or type of service to which it relates. Disclosure of the relationship between the price and particular article of merchandise or type of service by means of an asterisk or other symbol, and corresponding footnote, does not meet the requirement of clear and conspicuous identification when the particular article of merchandise or type of service is not represented pictorially.

Added Stats 1971 ch 682 § 1.

§ 17508. Purportedly fact-based or brand-comparison advertisements

(a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, or any city attorney, county counsel, or district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney, county counsel, or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, or any city attorney, county counsel, or district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if the Director of Consumer Affairs, Attorney General, city attorney, county counsel, or district attorney shall have reason to believe that the advertising claim is false or misleading, do either or both of the following:

(1) Seek an immediate termination or modification of the claim by the person in accordance with Section 17535.

(2) Disseminate information, taking due care to protect legitimate trade secrets, concerning the veracity of the claims or why the claims are misleading to the consumers of this state.

(d) The relief provided for in subdivision (c) is in addition to any other relief that may be sought for a violation of this chapter. Section 17534 shall not apply to violations of this section.

(e) Nothing in this section shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertising claims referred to in subdivision (a), unless the publisher or broadcaster is the person making the claims.

(f) The plaintiff shall have the burden of proof in establishing any violation of this section.

(g) If an advertisement is in violation of subdivision (a) and Section 17500, the court shall not impose a separate civil penalty pursuant to Section 17536 for the violation of subdivision (a) and the violation of Section 17500 but shall impose a civil penalty for the violation of either subdivision (a) or Section 17500.

Added Stats 1972 ch 1417 § 1. Amended Stats 1974 ch 23 § 1; Stats 1976 ch 1002 § 1; Stats 1989 ch 947 § 1; Stats 2006 ch 538 § 24 (SB 1852), effective January 1, 2007; Stats 2016 ch 38 § 1 (SB 1130), effective January 1, 2017.

ARTICLE 2

Particular Offenses

§ 17535. Obtaining injunctive relief

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be

necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

Added Stats 1941 ch 63 § 1. Amended Stats 1972 ch 244 § 1, ch 711 § 3; amendment approved by voters, Prop. 64 § 5, effective November 3, 2004.

§ 17535.5. Penalty for violating injunction; Proceedings; Disposition of proceeds

(a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

Added Stats 1973 ch 1042 § 1. Amended Stats 1974 ch 712 § 1; Stats 1979 ch 897 § 5.

EXTRACTED FROM CALIFORNIA CODE OF REGULATIONS

TITLE 16
Professional and Vocational Regulations

DIVISION 13.1
Board of Psychology

ARTICLE 1.
General Provisions

§ 1380. Citation and Authority.

This chapter may be cited and referred to as the "Psychology Regulations."

NOTE: Authority and reference cited: Section 2930, Business and Professions Code.

History

1. Renumbering of Section 1380 to Section 1380.1 and new Section 1380 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Register 76, No. 52.

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1380.1. Location of Principal Office.

The principal office of the Board of Psychology is located at 1625 North Market Boulevard, Suite N-215, Sacramento, California 95834.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2930, Business and Professions Code.

History

1. Renumbering of section 1380 to section 1380.1 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Register 76, No. 52.

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

3. Amendment filed 2-29-2000; operative 3-30-2000 (Register 2000, No. 9).

4. Change without regulatory effect amending section filed 4-14-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

5. Change without regulatory effect amending section filed 5-8-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 19).

§ 1380.3. Definitions.

For the purpose of the regulations contained in this chapter, the term "board" means the Board of Psychology, and the term "code" means the Business and Professions Code.

NOTE: Authority and reference cited: Section 2930, Business and Professions Code.

History

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76,No. 52).

2. Renumbering of section 1380.2 to section 1380.3 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1380.4. Delegation of Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (section 11500 et seq. of the Government Code), the Board delegates and confers upon the executive officer for the Board, or in his or her absence, his or her designee, all functions necessary to the dispatch of business of the Board in connection with investigative and administrative proceedings under the jurisdiction of the Board, including the authority to order an examination pursuant to section 820 of the Code or section 1381, or to approve a settlement agreement for the revocation, surrender, or interim suspension of a license or registration.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2928 and 2965, Business and Professions Code; and Sections 11415.60 and 11500, Government Code.

History

1. Renumbering and amendment of section 1380.3 to section 1380.4 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

3. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment filed 6-14-93; operative 7-1-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 25).

5. Amendment of section and Note filed 7-23-2012; operative 8-22-2012 (Register 2012, No. 30).

§ 1380.5. Filing of Address.

(a) Each person holding a license as a psychologist shall file with the board his or her address of record, which shall be used as the mailing address for the licensee and shall be disclosable to the public. The licensee may provide a post office box number or other alternate address as his or her address of record; if a post office box number or other alternate address is used as the address of record, however, the licensee shall also provide a physical business or residential address for the Board's internal administrative use, and not for disclosure to the public.

(b) Each applicant and licensee who has an electronic mail address shall provide to the Board that electronic mail address and shall maintain a current electronic mail address, if any, with the Board.

(c) Within 30 days after a change of any address above, the applicant or licensee shall report to the Board any and all changes, giving both his or her old and new address(es).

(d) Failure to comply with the requirements of this section may subject the licensee to enforcement action.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 12.5, 27, 136 and 2948, Business and Professions Code.

History

1. Renumbering of section 1380.4 to section 1380.5 filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment of section heading, section and Note filed 3-21-2016; operative 7-1-2016 (Register 2016, No. 13).

§ 1380.6. Display of License Number.

Pursuant to Section 137 of the code, every licensed psychologist shall include his or her number in any advertising, public directory or solicitation, regardless of whether such a presentment is made under the licensee's own name, a fictitious business or group name or a corporate name.

This requirement shall not apply to psychologists practicing in governmental organizations, nonprofit organizations which are engaged in research, education or services which services are defined by a board composed of community representatives and professionals.

NOTE: Authority cited: Sections 137 and 2930, Business and Professions Code. Reference: Section 137, Business and Professions Code.

History

1. New section filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

§ 1380.7. Declaratory Decisions.

No decision or opinion issued by the Board of Psychology is a declaratory decision under Government Code Sections 11465.10-11456.70 unless the decision or opinion specifically states that it is a "Declaratory Decision".

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 11465.10-11465.70, Government Code.

History

1. New section filed 7-2-99; operative 8-1-99 (Register 99, No. 27).

ARTICLE 2.
Applications

§ 1381. Applications.

All applications shall be accompanied by such evidence, statements or documents as therein required to establish that the applicant meets all of the requirements for licensing or registration as set forth in the code.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2940 and 2941, Business and Professions Code.

History

1. Amendment filed 7-14-76; effective thirtieth day thereafter (Register 76, No. 29).

2. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).

3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations

filed 3-5-90 (Register 90, No. 20).

5. Amendment filed 9-23-2004; operative 10-23-2004 (Register 2004, No. 39).

§ 1381.1. Abandonment of Applications.

An application shall be denied without prejudice when, in the discretion of the board, an applicant does not exercise due diligence in the completion of his or her application, in furnishing additional information or documents requested or in the payment of any required fees.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2940, Business and Professions Code.

History

1. Amendment filed 12-22-76, effective thirtieth day thereafter (Register 76, No. 52.).

2. Editorial correction to add section erroneously omitted (Register 78, No. 12).

3. Amendment filed 3-31-78; effective thirtieth day thereafter (Register 78, No. 13).

4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1381.2. Petition for Hearing.

An applicant for examination or licensure whose credentials indicate ineligibility shall be notified of the deficiency. The applicant may correct the deficiency indicated or in the alternative file a request for hearing before the appropriate committee.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2940, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1381.4. Failure to Appear for Examination—Withdrawal of Application.

Any applicant approved to take or retake a board licensing examination who fails to appear for such examination in any twelve month period shall have his or her application withdrawn. An applicant who subsequently decides to take the examination shall be required to file a new application and pay the current application and examination fees.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2914, 2931, 2940, 2941, and 2942, Business and Professions Code.

History

1. New section filed 3-31-78; effective thirtieth day thereafter (Register 78, No.13).

2. Amendment of NOTE filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

5. Repealer and new section filed 7-11-2001; operative 8-10-2001 (Register 2001, No. 28).

§ 1381.5. Failure to Pay Initial License Fee.

An application shall be deemed to have been abandoned if an applicant fails to pay the initial license fee within three years after notification by the board. An applicant whose application has been deemed abandoned may again

be eligible for licensure upon the filing of a new application and meeting all current licensing requirements, including payment of any fees. Such applicant shall not be required to take the Examination for Professional Practice in Psychology (EPPP) but shall take and pass the California Psychology Supplemental Examination (CPSE).

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2940 and 2983, Business and Professions Code.

History

1. New section filed 3-31-78; effective thirtieth day thereafter (Register 78, No.13).

2. Renumbering from section 1382 to section 1381. 5 filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

5. Change without regulatory effect amending section filed 8-11-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 33).

6. Amendment filed 4-9-2007; operative 5-9-2007 (Register 2007, No. 15).

7. Amendment filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

§ 1381.6. Permit Processing Times.

"Permit" as defined by the Permit Reform Act of 1981 means any license, certificate, registration permit or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the board's various programs are set forth below. The actual processing times apply to those applicants who have passed all appropriate examinations.

Program	*Maximum time for notifying the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required*	*Maximum time after receipt of a complete application to issue or deny license*	ACTUAL PROCESSING TIMES FOR ISSUANCE OF A LICENSE BASED ON PRIOR TWO YEARS		
			Minimum	*Median*	*Maximum*
Psychological Assistants	60	60	31	69	202
Psychologists	60	180	102	403	1,832

Program	*Maximum time for notifying the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required*	*Maximum time after receipt of a complete application to issue or deny license*	ACTUAL PROCESSING TIMES FOR ISSUANCE OF A LICENSE BASED ON PRIOR TWO YEARS		
			Minimum	*Median*	*Maximum*
Registered Psychologists	180	-0- (Retroactive approval to date of completion)	1	15	216

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 15736, Government Code.

History

1. New section filed 5-14-91; operative 6-13-91 (Register 91, No. 27).

§ 1381.7. Renewal of License.

(a) A renewal application shall be accompanied by the fee or fees specified in section 1392 or 1392.1.

(b) For a license or registration that expires after December 31, 2010, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom an electronic record of the submission of fingerprints does not exist in the Department of Justice's criminal offender record identification database, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license or registration is grounds for discipline by the board. The licensee or registrant shall certify on the renewal application whether the fingerprints have been submitted. This requirement is waived if the licensee or registrant renews in an inactive status, or is actively serving in the military outside the country.

(c) As a condition of renewal, an applicant for renewal shall disclose on the renewal application whether, since he or she last renewed his or her license or registration, he or she has been convicted of any violation of the law in this or any other state, the United States or its territories, military court, or other country, omitting traffic infractions under $500.00 not involving alcohol, a dangerous drug, or a controlled substance.

(d) As a condition of renewal, an applicant for renewal shall disclose on the renewal application whether, since he or she last renewed his or her license or registration, he or she has had a license disciplined by a government agency or other disciplinary body. Discipline includes, but is not limited to, suspension, revocation, voluntary surrender, probation, reprimand, or any other restriction on a license or registration held.

(e) Failure to provide all of the information required by this section renders any application for renewal incomplete and the license or registration ineligible for renewal.

NOTE: Authority cited: Sections 144, 2930 and 2982, Business and Professions Code. Reference: Sections 2960, 2960.6, 2963, 2982, 2984, 2986 and 2988, Business and Professions Code; and Sections 11105(b)(10) and 11105(e), Penal Code.

History

1. New section filed 2-2-2011; operative 3-4-2011 (Register 2011, No. 5).

§ 1381.8. Inactive License.

A license may be maintained in an inactive status by providing the renewal application and fee specified in section 1392.

In addition to any other requirements, a licensee activating a license pursuant to section 2988 of the Code shall furnish a full set of fingerprints as required by and set out in section 1381.7(b) as a condition of activation.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2988, Business and Professions Code; and Section 11105(b)(10), Penal Code.

History

1. New section filed 2-2-2011; operative 3-4-2011 (Register 2011, No. 5).

§ 1381.9. Renewal of Expired License.

In the event a licensee does not renew his or her license as provided in section 2982 of the Code, the license expires. In addition to any other requirements, a licensee renewing pursuant to section 2984 of the Code shall furnish a full set of fingerprints as required by and set out in section 1381.7(b) as a condition of renewal.

NOTE: Authority cited: Sections 2930 and 2982, Business and Professions Code. Reference: Sections 2984 and 2986, Business and Professions Code; and Section 11105(b)(10), Penal Code.

History

1. New section filed 2-2-2011; operative 3-4-2011 (Register 2011, No. 5).

ARTICLE 3.
Education and Experience

§ 1382. Human Sexuality Training.

Unless otherwise exempted, all persons applying for a license as a

psychologist shall, in addition to all other requirements for licensure, have completed coursework or training in human sexuality which meets the requirements of this section. Such training shall:

(a) Be completed after January 1, 1970.

(b) Be obtained

(1) In an accredited or approved educational institution, as defined in section 2901 of the Code, including extension courses offered by such institutions, or

(2) In an educational institution approved by the Department of Education pursuant to section 94310 of the Education Code, or

(3) From a continuing education provider approved by a professional association, or

(4) In a course sponsored or offered by a professional association, or

(5) In a course sponsored, offered or approved by a local, county or state department of health or mental health or by health agencies of the Federal Government.

(c) Have a minimum length of ten (10) contact hours.

(d) Include the study of physiological-psychological and social-cultural variables associated with sexual identity, sexual behavior or sexual disorders.

All applicants shall provide the board with documentation of completion of the required human sexuality training.

It is the intent of the board that all persons licensed to practice psychology have minimal training in human sexuality. It is not intended that by complying with the requirements of this section only, a practitioner is fully trained in the subject of sex therapy.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 25, Business and Professions Code.

History

1. Renumbering of section 1382 to section 1381.5 and new section 1382 filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39). For history of former Section 1382, see Register 78, No. 13.

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1382.3. Training in Alcoholism/Chemical Dependency Detection and Treatment.

The requirements set forth in Section 2914 (e) of the code shall be satisfied by completion of a graduate level course which meets the following criteria:

(a) The course shall be devoted solely to the topic of alcoholism and chemical dependency detection and treatment and shall not be less than a; semester or a quarter term in length.

(b) The course must be obtained at an educational institution, or in an extension course offered by an institution, which is either credited under Education Code Section 94310.1, or approved under Education Code Section 94310.2, by the State Department of Education.

(c) An original transcript indicating successful completion of the course shall be deemed sufficient evidence for purposes of satisfying this requirement.

(d) The course shall include training in each of the following subjects as

they relate to alcoholism and chemical dependency:

(1) The definition of alcoholism and other chemical dependency, and the evaluation of the user.

(2) Current theories of, and research on, the etiology of substance abuse.

(3) Physiological and medical aspects and effects of alcoholism and other chemical dependency.

(4) Psychopharmacology and the interaction of various classes of drugs, including alcohol.

(5) Diagnosing and differentiating alcoholism and substance abuse in patients referred for' other clinical symptoms, such as depression, anxiety, psychosis, and impotence.

(6) Populations at risk with regard to substance abuse.

(7) Cultural and ethnic considerations.

(8) Prenatal effects.

(9) Adolescent substance abuse.

(10) Implications for the geriatric population.

(11) Iatrogenic dependency.

(12) Major treatment approaches to alcoholism and chemical dependency, including research and application.

(13) The role of persons and systems which support or compound abuse.

(14) Family issues which include treatment approaches with families of alcoholics and/or substance abusers.

(15) The process of referring affected persons.

(16) Community resources offering assessment, treatment and follow up for the abuser and family.

(17) Ethical and Legal issues for clinical practice.

(18) Prevention of substance abuse.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914(e), Business and Professions Code.

History

1. Change without regulatory effect renumbering former section 1387.6 to section 1382.3 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).

2. Change without regulatory effect amending first paragraph and subsection (d)(1) and adding subsection (d)(5) designator filed 8-20-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 34).

§ 1382.4. Child Abuse Assessment Training Requirements.

All persons applying for a license or renewal of a license as a psychologist shall in addition to all other requirements for licensure, have completed coursework or training in child abuse assessment and reporting and shall submit documentation thereof to the board. The coursework or training in child abuse assessment and reporting shall consist of not less than 7 instructional hours and shall include training in each of the subject areas described in section 28 of the Code. The coursework or training shall be:

(a) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board or

approved by the State Department of Education pursuant to section 94310.2 of the Education Code; or

(b) Obtained from a statewide professional association representing the professions of psychology, social work, or marriage, family and child counseling; or

(c) Obtained from or sponsored by a local county, state or federal governmental entity.

(d) Completed after January 1, 1983.

Note: Authority cited: Sections 28 and 2930, Business and Professions Code. Reference: Section 28, Business and Professions Code.

History

1. Change without regulatory effect renumbering former section 1387.7 to section 1382.4 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).

§ 1382.5. Spousal or Partner Abuse Assessment, Detection, and Intervention Strategies Training Requirements.

All persons applying for a license as a psychologist who began their graduate training on or after January 1, 1995 shall, in addition to all other requirements for licensure, have completed coursework in spousal or partner abuse assessment, detection, and intervention strategies and shall submit documentation thereof to the board. The coursework in spousal or partner abuse assessment, detection, and intervention strategies shall consist of not less than a combined total of two (2) hours focused on this topic. All persons applying for a license as a psychologist who began their graduate training on or after January 1, 2004 shall also meet the above requirement, however, such course shall consist of at least fifteen (15) contact hours.

The coursework shall be:

(a) taken in fulfillment of other educational requirements in the applicant's graduate and/or doctoral training, or

(b) taken in a separate course approved by the board's recognized continuing education accrediting agency, or

(c) taken in a separate course provided by a sponsor approved by the American Psychological Association.

(d) completed after January 1, 1995.

An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

Note: Authority cited: Sections 2914(f) and 2930, Business and Professions Code. Reference: Section 2914(f), Business and Professions Code.

History

1. Change without regulatory effect renumbering former section 1387.8 to section 1382.5 filed 2-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 8).

2. Amendment of section heading, first paragraph and subsection (d) filed 10-22-2004; operative 11-21-2004 (Register 2004, No. 43).

§ 1382.6. Aging and Long-Term Care Training Requirements.

All persons applying for a license as a psychologist who began their graduate training on or after January 1, 2004, shall, in addition to all other

requirements for licensure, have completed coursework in aging and long-term care which shall include but not be limited to the biological, social, and psychological aspects of aging, and shall submit documentation thereof of the board. The coursework in aging and long-term care shall consist of not less than a combined total of ten (10) contact hours focused on this topic.

The coursework shall be:

(a) taken in fulfillment of other educational requirements in the applicant's graduate and/or doctoral training, or

(b) taken in a separate course approved by the board's recognized continuing education accrediting agency, or

(c) taken in a separate course provided by a sponsor approved by the American Psychological Association.

(d) completed after January 1, 2004.

Note: Authority cited: Section 2915.5 and 2930, Business and Professions Code. Reference: Section 2915.5, Business and Professions Code.

History

1. New section filed 10-22-2004; operative 11-21-2004 (Register 2004, No. 43).

§ 1386. Revised Criteria for Evaluation of Education.

(a) Only those doctorate degrees which are designated as being earned in a department or school of psychology, educational psychology or education with the field of specialization in counseling psychology or educational psychology shall be accepted as an earned doctorate degree as specified in section 2914, subdivisions (b)(1) through (3), of the code. If it is not evident on the official transcript, the board may require that any doctorate degree earned in education with the field of specialization in counseling psychology or educational psychology be certified by the registrar as such a degree.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. Renumbering and amendment of former section 1386 to section 1387.5, and renumbering of former section 1384.6 to section 1386 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 80, No. 9; 79, No. 17; and 78, No. 39.

2. Amendment filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31).

3. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment of subsections (a) and (b) filed 5-24-91; operative 6-23-91 (Register 91, No. 27).

5. Amendment of subsection (c) filed 8-18-93; operative 9-17-93 (Register 93, No. 34).

6. Change without regulatory effect amending subsection (a) and repealing subsections (b)-(f) filed 8-24-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

§ 1387. Supervised Professional Experience.

This section applies to all trainees, pre-or post-doctoral, who intend for hours of supervised professional experience (SPE) to count toward meeting the licensing requirement stated in section 2914(c) of the Business and Professions Code. Those trainees accruing hours of supervised experience in areas of psychology that do not include direct mental health services should refer to section 1387.3 for information on establishing an alternate plan for SPE.

SPE is defined as an organized program that consists of a planned, structured

and administered sequence of professionally supervised comprehensive clinical training experiences. SPE shall have a logical training sequence that builds upon the skills and competencies of trainees to prepare them for the independent practice of psychology once they become licensed.

SPE shall include socialization into the profession of psychology and shall be augmented by integrated modalities including mentoring, didactic exposure, role-modeling, enactment, observational/ vicarious learning, and consultative guidance.

SPE shall include activities which address the integration of psychological concepts and current and evolving scientific knowledge, principles, and theories to the professional delivery of psychological services to the consumer public.

SPE shall include only the time spent by the trainee engaged in psychological activities that directly serve to prepare the trainee for the independent practice of psychology once licensed. SPE shall not include custodial tasks such as filing, transcribing or other clerical duties.

The term "trainee" as used in these regulations means a psychology trainee working under one of the conditions listed in subsections (a)(1) and (a)(2) of this section.

(a) Pursuant to section 2914(c) of the code, two years of qualifying SPE shall be completed and documented prior to licensure. One year of SPE shall be defined as 1500 hours. At least one year of SPE shall be completed postdoctorally. Each year of SPE shall be completed within a thirty (30) consecutive month period. If both years of SPE (3000 hours) are completed postdoctorally, they shall be completed within a sixty (60) month period. Upon showing of good cause as determined by the board, these specified time limitations may be reasonably modified.

(1) Predoctoral SPE: Up to 1500 hours of SPE may be accrued predoctorally but only after completion of 48 semester/trimester or 72 quarter units of graduate coursework in psychology not including thesis, internship or dissertation. Predoctoral SPE may be accrued only as follows:

(A) In a formal internship placement pursuant to section 2911 of the code, which is accredited by the American Psychological Association (APA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC) or the California Psychology Internship Council (CAPIC) and registration with the board is not required. A formal internship placement that actually began prior to January 1, 2007 that meets the membership requirements of, but is not a member of, APPIC or CAPIC will satisfy the requirements of this section; or

(B) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(C) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(D) Pursuant to a Department of Mental Health Waiver (5751.2 Welfare and Institutions Code) for which registration with the board is not required.

(2) Postdoctoral SPE: At least 1500 hours of SPE shall be accrued postdoctorally. "Postdoctorally" means after the date certified as "meeting all the requirements for the doctoral degree" by the Registrar or Dean of the educational institution, or by the Director of Training of the doctoral program.

Postdoctoral SPE may be accrued only as follows:

(A) For postdoctoral SPE accrued on or after January 1, 2006, in a formal postdoctoral training program pursuant to section 2911 of the code, which is accredited by the American Psychological Association (APA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC) or the California Psychology Internship Council (CAPIC) and registration with the board is not required; or

(B) As a registered psychologist pursuant to section 2909(d) of the code and registration with the board prior to commencing work is required; or

(C) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(D) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(E) Pursuant to a Department of Mental Health Waiver (5751.2 Welfare and Institutions Code) for which registration with the board is not required.

(b) Supervision Requirements:

(1) Primary supervisors shall meet the requirements set forth in section 1387.1.

(2) Delegated supervisors shall meet the requirements set forth in section 1387.2.

(3) Trainees shall have no proprietary interest in the business of the primary or delegated supervisor(s) and shall not serve in any capacity which would hold influence over the primary or delegated supervisor(s)' judgment in providing supervision.

(4) Trainees shall be provided with supervision for 10% of the total time worked each week. At least one hour per week shall be face-to-face, direct, individual supervision with the primary supervisor.

(5) A maximum of forty four (44) hours per week will be credited toward meeting the SPE requirement. This shall include the required 10% supervision.

(6) The primary supervisor shall be employed by the same work setting as the trainee and be available to the trainee 100% of the time the trainee is accruing SPE. This availability may be in-person, by telephone, by pager or by other appropriate technology.

(7) Primary supervisors shall ensure that a plan is in place to protect the patient/client in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the trainee is working. The primary supervisor shall ensure that the trainee thoroughly understands the plan in the event of a crisis/emergency.

(8) SPE shall not be obtained from supervisors who have received payment, monetary or otherwise, from the trainee for the purpose of providing such supervision.

(9) SPE gained while the trainee is functioning under another mental health license shall not be credited toward meeting the requirements for the psychologist's license.

(10) Except for the accrual of SPE by a psychological assistant in a private practice setting as provided for in section 1387(b)(11), prior to the start of the experience, the primary supervisor and the supervisee shall together prepare a document that identifies at least the following:

- Name, license number and signature of primary supervisor;
- Name and signature of supervisee;
- Statutory authority under which the supervisee will function;
- Start date of the experience and the anticipated completion date;
- Duties to be performed in a sequential structured plan as defined in this section;
- Address of the locations at which the duties will be performed; and
- Goals and objectives of the plan for SPE, including how socialization into the profession will be achieved.

Additionally, the document shall reflect that both supervisor and supervisee have discussed and understand each term of SPE as required by the California Code of Regulations. The primary supervisor shall maintain the document until the hours of supervised experience are completed. Once the supervised experience outlined in the document has been completed, the primary supervisor shall submit directly to the Board both the document and a verification of the experience signed by the primary supervisor under penalty of perjury. The verification shall certify to completion of the hours consistent with the terms of the supervision agreement document. The supervisor must indicate, in his/her best professional judgment, whether the supervisee demonstrated an overall performance at or above the level of minimal competence expected for the supervisee's level of education, training and experience. When SPE is accrued in a formal predoctoral internship or postdoctoral training program, the program's training director shall be authorized to perform the verification and rating duties of the primary supervisor provided that the internship training director is a licensed psychologist who possesses a valid, active license free of any disciplinary action.

(11) Due to lack of standardization in training, a psychological assistant in a private practice setting shall submit the plan as described in subsection (b)(10) for supervised professional experience to the Board for prior approval as provided for in section 2914(c) of the Code prior to the accrual of SPE. A private practice setting is defined as those settings allowed pursuant to section 1387(a)(1)(C) and 1387(a)(2)(D), except a Welfare and Institutions Code section 5614 clinic or a Health and Safety Code section 1204.1 clinic. SPE that is accrued prior to the approval of the plan will not count toward qualifying the applicant for licensure.

(c) Delegated Supervision Requirements:

(1) Except as provided in 1391.5, which regulates the supervision of psychological assistants, primary supervisors may delegate supervision to other qualified psychologists or to other qualified mental health professionals including licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers and board certified psychiatrists.

(2) The primary supervisor remains responsible for providing the minimum one hour per week of direct, individual face-to-face supervision.

(3) The primary supervisor remains responsible for ensuring compliance with this section.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2911 and 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history see Register 93, No. 34.

2. Editorial correction deleting former section 1387 "Revised Criteria for Evaluation of Experience" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).

3. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

4. New fifth and seventh paragraphs and amendment of subsection (b)(10) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

5. Repealer of sixth paragraph, amendment of subsection (a)(1)(A), new subsection (a)(2)(A), subsection relettering, amendment of subsections (b)(9)-(10) and amendment of Note filed 4-27-2007; operative 5-27-2007 (Register 2007, No. 17).

6. Amendment of subsection (a)(2)(A) filed 12-30-2008; operative 12-30-2008 pursuant to Government Code section 11343.4 (Register 2009, No. 1).

7. Amendment of subsection (b)(10) and new subsection (b)(11) filed 7-24-2009; operative 8-23-2009 (Register 2009, No. 30).

8. Change without regulatory effect amending subsection (b)(11) filed 10-20-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 43).

9. Change without regulatory effect amending subsection (b)(9) filed 1-21-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 4).

§ 1387.1. Qualifications and Responsibilities of Primary Supervisors.

All primary supervisors shall be licensed psychologists, except that board certified psychiatrists may be primary supervisors of their own registered psychological assistants. In this regard, a maximum of 750 hours of experience out of the required 3000, can be supervised by a board certified psychiatrist and can be counted toward meeting the SPE licensing requirements.

(a) Primary supervisors shall possess and maintain a valid, active license free of any formal disciplinary action, and shall immediately notify the supervisee of any disciplinary action, including revocation, surrender, suspension, probation terms, or changes in licensure status including inactive license, delinquent license or any other license status change that affects the primary supervisor's ability or qualifications to supervise.

(b) Primary supervisors who are licensed by the board shall complete a minimum of six (6) hours of supervision coursework every two years.

(1) Primary supervisors shall certify under penalty of perjury to completion of this coursework requirement each time the supervisor completes a verification form as referenced in section 1387(b)(10).

(c) Primary supervisors shall be in compliance at all times with the provisions of the Psychology Licensing Law and the Medical Practice Act, whichever is applicable, and the regulations adopted pursuant to these laws.

(d) Primary supervisors shall be responsible for ensuring compliance at all times by the trainee with the provisions of the Psychology Licensing Law and the regulations adopted pursuant to these laws.

(e) Primary supervisors shall be responsible for ensuring that all SPE including record keeping is conducted in compliance with the Ethical Principles and Code of Conduct of the American Psychological Association.

(f) Primary supervisors shall be responsible for monitoring the welfare of

the trainee's clients.

(g) Primary supervisors shall ensure that each client or patient is informed, prior to the rendering of services by the trainee (1) that the trainee is unlicensed and is functioning under the direction and supervision of the supervisor; (2) that the primary supervisor shall have full access to the treatment records in order to perform supervision responsibilities and (3) that any fees paid for the services of the trainee must be paid directly to the primary supervisor or employer.

(h) Primary supervisors shall be responsible for monitoring the performance and professional development of the trainee.

(i) Primary supervisors shall ensure that they have the education, training, and experience in the area(s) of psychological practice they will supervise.

(j) Primary supervisors shall have no familial, intimate, business or other relationship with the trainee which would compromise the supervisor's effectiveness, and/or which would violate the Ethical Principles and Code of Conduct of the American Psychological Association.

(k) Primary supervisors shall not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(l) Primary supervisors shall not exploit trainees or engage in sexual relationships or any other sexual contact with trainees.

(m) Primary supervisors shall require trainees to review the pamphlet "Professional Therapy Never Includes Sex."

(n) Primary supervisors shall monitor the supervision performance of all delegated supervisors.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).

2. Repealer of first paragraph, amendment of subsection (b), new subsections (c)-(c)(3) and subsection relettering filed 7-17-2002; operative 1-1-2003 (Register 2002, No. 29).

3. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

4. Amendment of subsection (m) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

5. Change without regulatory effect amending subsection (g) filed 10-20-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 43).

§ 1387.2. Qualifications and Responsibilities of Delegated Supervisors.

Delegated supervisors shall be qualified psychologists or those other qualified mental health professionals listed in section 1387(c). The delegated supervisor(s) shall be employed in the same work setting as the trainee.

(a) Delegated supervisors shall have and shall maintain a valid, active license free of any formal disciplinary action, shall immediately notify the trainee and the primary supervisor of any disciplinary action, including revocation, surrender, suspension, probation terms, or changes in licensure status including inactive license, or any other license status change that affects the supervisor's ability or qualifications to supervise.

(b) Delegated supervisors shall be in compliance at all times with the

provisions of the Psychology Licensing Law, and the regulations adopted pursuant to these laws.

(c) Delegated supervisors shall be responsible for ensuring compliance by the trainee with the provisions of the Psychology Licensing Law and the regulations adopted pursuant to these laws.

(d) Delegated supervisors shall be responsible for ensuring that all SPE and record keeping performed under the supervision delegated to them is conducted in compliance with the Ethical Principles and Code of Conduct of the American Psychological Association.

(e) Delegated supervisors shall be responsible for monitoring the welfare of the trainee's clients while under their delegated supervision.

(f) Delegated supervisors shall be responsible for monitoring the performance and professional development of the trainee and for reporting this performance and development to the primary supervisor.

(g) Delegated supervisors shall ensure that they have the education, training, and experience in the area(s) of psychological practice to be supervised.

(h) Delegated supervisors shall have no familial, intimate, business or other relationship with the trainee which would compromise the supervisor's effectiveness and/or which would violate the Ethical Principles and Code of Conduct of the American Psychological Association.

(i) Delegated supervisors shall not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(j) Delegated supervisors shall not exploit trainees or engage in sexual relationships, or any other sexual contact with trainees.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).

2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

3. Amendment of first paragraph filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.3. Alternate Plan for Supervised Professional Experience in Non–Mental Health Services.

This section pertains only to those trainees who are preparing for practice, once licensed, in the non-mental health areas of the profession of psychology.

Due to lack of training sites and qualified supervisors, typically in the area of applied psychological research, industrial-organizational psychology, media and social-experimental psychology, but not including those involving direct mental health services, trainees in these areas of psychology shall submit a plan for supervised professional experience to the board for approval on a case-by-case basis as provided for in section 2914(c) of the code. In all such cases, the proposed plan must be submitted by the supervisee and approved by the board prior to commencement of supervision. Supervised professional experience (SPE) which is accrued prior to the approval of the plan will not count towards licensure.

(a) Supervision Plan Required

The proposed supervision plan ("plan") submitted by the trainee for approval

shall be signed by all participants involved. It shall describe the qualifications and responsibilities of the supervisor (and co-supervisor, if appropriate) for supervision. The plan shall be developed for and shall demonstrate appropriate preparation of the trainee to practice effectively in non-mental health services, and within the specific non-mental health setting. The plan shall address how the quality of work done by the trainee working in a non-mental health role will be monitored and assure protection of the client. As used in this section, "trainee" means a psychology trainee working under the provisions of this section.

(b) Hours and Setting Requirements

(1) Pursuant to section 2914(c) of the code, two years of qualifying SPE shall be completed and documented prior to licensure. One year of SPE shall be defined as 1500 hours. At least one year of SPE shall be completed postdoctorally. Each year of SPE shall be completed within a thirty (30) consecutive month period. If both years of SPE (3000 hours) are completed postdoctorally, they shall be completed within a sixty (60) month period. Upon showing of good cause as determined by the board, these specified time limitations may be reasonably modified.

(2) Predoctoral SPE under this section may be accrued only as follows:

(A) In a formal internship placement pursuant to section 2911 of the code and registration with the board is not required; or

(B) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required; or

(C) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required.

(3) Postdoctoral SPE may be accrued only as follows:

(A) As a psychological assistant pursuant to section 2913 of the code and registration with the board prior to commencing work is required; or

(B) As a registered psychologist pursuant to section 2909(d) of the code and registration with the board prior to commencing work is required; or

(C) As an employee of an exempt setting pursuant to section 2910 of the code and registration with the board is not required.

(c) Supervision Requirements

(1) The trainee shall be provided with supervision for 10% of the total time worked each month. At least four hours per month shall be face-to-face, direct, individual supervision with the primary supervisor. The plan shall address how the supervision will be provided. The remainder of the 10% may be provided by the delegated supervisor or co-supervisor and may include supervision via electronic means.

(2) A maximum of forty-four (44) hours per week, including the required 10% supervision, may be credited toward meeting the supervised professional experience requirement.

(3) The trainee shall have no proprietary interest in the business of the primary, delegated or co-supervisor and shall not serve in any capacity that would hold influence over the primary, delegated or co-supervisor's judgment in providing supervision.

(4) Neither the primary supervisor nor any delegated or co-supervisor shall receive payment, monetary or otherwise, from the trainee for the purpose of

providing supervision.

(5) The trainee will not function under any other license with the same client or in the same setting during the supervised experience accrued pursuant to the plan.

(6) A clear and accurate record of the trainee's supervision shall be maintained. The trainee shall maintain this record in an SPE log pursuant to section 1387.5 but shall also include information relevant to the co-supervisor;

(7) Except as provided in section 1391.5(c), a primary supervisor who is a licensed psychologist may delegate supervision pursuant to section 1387.2.

(8) If the primary supervisor is unlicensed, the trainee shall also obtain a co-supervisor who meets the requirements of subsection (f).

(d) Qualifications and Responsibilities of Primary Supervisors

The primary supervisor shall:

(1) possess a degree that meets the requirements of section 2914(b) of the code;

(2) meet the requirements of section 2913 of the code if supervising a psychological assistant;

(3) if licensed, possess and maintain a valid, active license issued by the board free of any formal disciplinary action during the period of supervision covered by the plan. The primary supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision. If not licensed, the primary supervisor shall never have been denied, or possessed a professional license for providing psychological or other mental health services issued by any jurisdiction that was subject to discipline, or surrendered with charges pending;

(4) be employed or contracted by the same organization as the trainee;

(5) be available to the trainee 100% of the time the trainee is accruing SPE pursuant to the plan. This availability may be in person, through telephone, pager or other appropriate technology(ies);

(6) if licensed, complete a minimum of six hours of supervision coursework every two years as described in section 1387.1(b);

(7) ensure that all parties work together throughout the training experience to ensure that the trainee will be engaged in duties that are considered doctoral level;

(8) maintain ongoing communication between all parties regarding supervisory needs and experiences;

(9) ensure that all parties to the plan comply at all times with the provisions of the Psychology Licensing Law or the Medical Practice Act, whichever might apply, and the regulations adopted pursuant to these laws;

(10) ensure that all SPE accrued under the plan complies with the Ethical Principles and Code of Conduct of the American Psychological Association;

(11) monitor the welfare of the trainee's clients;

(12) ensure that each client of the trainee is informed prior to rendering of services by the trainee that the trainee is unlicensed and is functioning under the direction and supervision of the primary supervisor;

(13) monitor the performance and professional development of the trainee which shall include socialization into the practice of psychology;

(14) have the education, training, and experience in the area(s) of

psychological practice for which they are providing supervision;

(15) have or have had no familial, intimate, sexual, social, or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association;

(16) not supervise a trainee who is a current or former client of psychological services provided by the supervisor; and

(17) monitor the supervision performance of all delegated supervisors and co-supervisors.

(e) Qualifications and Responsibilities of Delegated Supervisors

Except as provided in section 1391.5, which regulates the supervision of psychological assistants, primary supervisors may delegate supervision to other qualified psychologists or to other qualified mental health professionals including licensed marriage and family therapists, licensed educational psychologists, licensed clinical social workers and board certified psychiatrists.

The delegated supervisor shall:

(1) possess and maintain a valid, active license free of any formal disciplinary action during the period covered by the plan. The supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision;

(2) be employed or contracted by the same organization as the trainee;

(3) be responsible for ensuring compliance by the trainee with the provisions of the Psychology Licensing Law, the licensing laws of the Board of Behavioral Sciences, or the Medical Practice Act, whichever might apply, and the regulations adopted pursuant to these laws.

(4) ensure that all SPE accrued under the supervision delegated to them complies with the Ethical Principles and Code of Conduct of the American Psychological Association;

(5) monitor the welfare of the trainee's clients while under their delegated supervision;

(6) monitor the performance and professional development of the trainee and is responsible for reporting this performance and development to the primary supervisor;

(7) have the education, training, and experience in the area(s) of psychological practice to be supervised;

(8) have or have had no familial, intimate, social, sexual or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association; and

(9) not supervise a trainee who is now or has ever been a psychotherapy client of the supervisor.

(f) Qualifications and Responsibilities of the Co-Supervisor (This section only applies when the primary supervisor is not licensed)

The co-supervisor shall:

(1) possess and maintain a valid, active license issued by the board free of any formal disciplinary action during the period covered by the plan. The co-supervisor shall notify the trainee of any disciplinary action that disqualifies him or her from providing supervision;

(2) complete a minimum of six hours of supervision coursework every two years as described in section 1387.1(b);

(3) monitor the performance and professional development of the trainee and is responsible for reporting this performance and development to the primary supervisor;

(4) not supervise a trainee who is a current or former client of psychological services provided by the supervisor;

(5) have or have had no familial, intimate, social, sexual or professional relationship with the trainee which could compromise the supervisor's effectiveness, or would violate the Ethical Principles and Code of Conduct of the American Psychological Association;

(6) ensure that all parties work together throughout the training experience to ensure that the trainee will be engaged in duties that are considered doctoral level;

(7) maintain ongoing communication between all parties regarding supervisory needs and experiences; and

(8) not supervise more than five trainees under any section at any given time.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history see Register 93, No. 34.

2. Editorial correction deleting former section 1387.3 "Qualifications of Supervisors" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).

3. Amendment of section heading and section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

4. New first paragraph and amendment of subsection (a) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

5. Amendment of section heading and section filed 4-24-2008; operative 5-24-2008 (Register 2008, No. 17).

§ 1387.4. Out of State Experience.

(a) All out of state SPE must be (1) supervised by a primary supervisor who is a psychologist licensed at the doctoral level in the state, U.S. territory or Canadian province in which the SPE is taking place, (2) in compliance with all laws and regulations of the jurisdiction in which the experience was accrued and (3) in substantial compliance with all the supervision requirements of section 1387.

(b) Supervised professional experience can be accrued at a U.S. military installation so long as the experience is supervised by a qualified psychologist licensed at the doctoral level in the U.S. or Canada.

(c) SPE can be accrued in countries outside the U.S. or Canada which regulate the profession of psychology pursuant to the same requirements as set forth in section 2914 of the code. SPE accrued in countries outside the U.S., its Territories or Canada must comply with all the supervision requirements of section 1387. The burden shall be upon the applicant to provide the necessary documentation and translation that the board may require to verify the

qualification of the SPE.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27).

2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1387.5. SPE Log.

(a) The trainee shall maintain a written weekly log of all hours of SPE earned toward licensure. The log shall contain a weekly accounting of the following information and shall be made available to the board upon request:

(1) The specific work setting in which the SPE took place.

(2) The specific dates for which the log is being completed.

(3) The number of hours worked during the week.

(4) The number of hours of supervision received during the week.

(5) An indication of whether the supervision was direct, individual, face-to-face, group, or other (specifically listing each activity).

(6) An indication of whether the SPE performed that week was satisfactory.

(b) This log must also contain the following information:

(1) The trainee's legibly printed name, signature and date signed.

(2) The primary supervisor's legibly printed name, signature, license type and number, and date signed.

(3) Any delegated supervisors' legibly printed name, license type and number, and date signed.

(4) A description of the psychological duties performed during the period of supervised professional experience.

(5) A statement signed by the primary supervisor attesting to the accuracy of the information.

(c) When SPE is accrued as part of a formal internship, the internship training director shall be authorized to provide all information required in section 1387.5(b).

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

History

1. New section filed 7-6-2000; operative 8-5-2000 (Register 2000, No. 27). For prior history, see Register 83, No. 25.

2. Editorial correction deleting former section 1387.5 "Pre-Doctoral Experience" which expired by its own term effective 12-31-2000 (Register 2003, No. 1).

3. Repealer of first paragraph and amendment of subsections (a) and (b)(1) filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

4. New subsection (a)(6) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1387.6. Psychological Assistants.

In order to accrue hours of SPE, a psychological assistant shall at all times be in compliance with the supervision requirements of section 1387 and with the requirements for psychological assistants set forth in Article 5.1 of this chapter. A psychological assistant accruing SPE in a private setting shall submit a plan for SPE to the Board for approval as provided for in section

1387(b)(11). The proposed supervision plan submitted by the psychological assistant for approval shall be signed by all participants involved. It shall describe the qualifications and responsibilities of the supervisor and/or the delegated supervisor. The plan shall be developed for, and shall demonstrate appropriate preparation of, the psychological assistant to practice effectively, and within the specific private practice setting. The plan shall address how the quality of work done by the psychological assistant will be monitored and assure protection of the client.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2913 and 2914, Business and Professions Code.

History

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51). For prior history, see Register 2002, No. 8.

2. Amendment filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

3. Amendment of section and Note filed 7-24-2009; operative 8-23-2009 (Register 2009, No. 30).

§ 1387.7. Registered Psychologists.

Persons working as registered psychologists pursuant to section 2909 of the code in order to accrue postdoctoral hours of SPE shall at all times be in compliance with the supervision requirements of section 1387 and with the requirements for registered psychologists set forth in Article 5 of this chapter.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

History

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51). For prior history, see Register 2002, No. 8.

ARTICLE 4.
Examination

§ 1388. Examinations.

(a) The board recognizes the expertise of the Department of Consumer Affairs' (DCA) Office of Professional Examination Services (OPES). The board shall utilize the services of the OPES in licensing examination development and validation through an interagency agreement.

(b) An applicant shall successfully take and pass the licensing examinations prior to being licensed. The licensing examination shall consist of the Association of State and Provincial Psychology Boards' (ASPPB) Examination for Professional Practice in Psychology (EPPP), and the California Psychology Laws and Ethics Examination (CPLEE), except that the EPPP shall be waived for those applicants who meet the criteria in section 1388.6 of this chapter. Such applicants shall be required to take and pass the CPLEE.

(c) An applicant is eligible to take the EPPP upon completion of a qualifying doctorate degree and 1500 hours of qualifying professional experience. An applicant shall pass the EPPP and complete all 3000 hours of supervised professional experience prior to being eligible for the CPLEE, whichever is applicable, pursuant to section 1388.6.

(d) Upon application, the board will notify applicants of their eligibility to take the EPPP. Applicants are responsible for completing any administrative requirements for taking the EPPP established by ASPPB or its agent, including paying any fees. This subsection applies to those re-taking the EPPP as well as to those taking it for the first time.

(e) For forms of the EPPP taken prior to September 1, 2001, the passing score is the score that was recognized by the board at that time. For computer administered forms of the EPPP, the board shall apply a scaled score as recommended by ASPPB.

(f) Qualified applicants desiring to take the CPLEE shall submit to the board the fee set forth in section 1392 of this chapter. Applicants shall comply with all instructions established by the DCA examination vendor for taking the CPLEE.

(g) The passing score on the CPLEE shall be determined for each form of the examination by a criterion referenced procedure performed by OPES.

(h) An applicant for whom English is his or her second language may be eligible for additional time when taking the EPPP and/or the CPLEE. The applicant must complete and submit a request for additional time that states under penalty of perjury that English is his or her second language. The Test of English as a Foreign Language (TOEFL) certification score of 85 or below must be sent by Educational Testing Service directly to the board. The TOEFL must have been taken within the previous two years prior to application. If approved, the applicant will be allotted time-and-a-half (1.5x) when taking the examination.

NOTE: Authority cited: Sections 2930 and 2942, Business and Professions Code. Reference: Sections 123, 496, 2941, 2942, 2943 and 2960, Business and Professions Code.

History

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).

2. Amendment of subsection (b) filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).

3. Repealer and new section filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

4. Amendment of subsection (b) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

6. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

7. Amendment of subsection (b) and Note filed 6-14-93; operative 7-1-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 25).

8. Amendment of subsection (c) and Note filed 8-11-95; operative 9-10-95 (Register 95, No. 32).

9. Amendment of subsection (b) filed 1-8-99 as an emergency; operative 1-8-99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-8-99 order transmitted to OAL 5-7-99 and filed 6-15-99 (Register 99, No. 25).

11. Amendment of subsections (a)-(c) and new subsections (d)-(g) filed 7-11-2001; operative 8-10-2001 (Register 2001, No. 28).

12. Change without regulatory effect amending subsection (f) filed 8-13-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 33).

13. Amendment of subsections (a)-(c) and (e) and new subsections (h)-(i) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.

14. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

15. Amendment filed 2-11-2003; operative 3-1-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 7).

16. Amendment of subsections (b), (c), (f) and (g) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

17. Amendment of subsections (b), (c), (f) and (g) filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

18. Amendment of subsections (a)-(c) and (e)-(g) and new subsection (h) filed 6-10-2015; operative 7-1-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 24).

§ 1388.6. License Requirements and Waiver of Examination.

(a) When a California-licensed psychologist has been licensed for at least five years and has allowed his/her license to cancel by not renewing the license for at least three years, the psychologist shall not be required to take the EPPP.

(b) If an applicant for licensure as a psychologist has been licensed in another state, Canadian province, or U.S. territory, for at least five years the applicant shall not be required to take the EPPP.

(c) An applicant for licensure as a psychologist who holds a Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB), shall not be required to take the EPPP. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(d) An applicant for licensure as a psychologist who is credentialed as a Health Service Provider in Psychology by the National Register of Health Service Providers in Psychology (NRHSPP) and has been licensed based on a doctoral degree in another state, Canadian province, or U.S. territory for a minimum of five years shall not be required to take the EPPP. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(e) An applicant for licensure as a psychologist who is certified by the American Board of Professional Psychology (ABPP) and has been licensed based on a doctoral degree in another state, Canadian province, or U.S. territory for a minimum of five years shall not be required to take the EPPP. Such an applicant shall be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Code section 2914.

(f) Although the EPPP is waived under this section, an applicant must file a complete application and meet all current licensing requirements not addressed above, including payment of any fees, take and pass the California Psychology Law and Ethics Examination (CPLEE), and not been subject to discipline.

NOTE: Authority cited: Sections 2930 and 2946, Business and Professions Code. Reference: Section 2946, Business and Professions Code.

History

1. New section filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

2. Amendment of subsections (a)-(c), new subsection (d), subsection relettering, and amendment of newly designated subsection (e) filed 12-1-98; operative 12-31-98 (Register 98, No. 49).

3. Amendment filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).

4. Amendment filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

6. Amendment of section heading and section filed 8-7-2003; operative 9-6-2003 (Register 2003, No. 32).

7. Amendment of subsection (f) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

8. New subsection (e) and subsection relettering filed 4-9-2007; operative 5-9-2007 (Register 2007, No. 15).

9. Amendment filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

10. Amendment filed 6-10-2015; operative 7-1-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 24).

§ 1389. Reconsideration of Examinations.

(a) There shall be no reconsideration of the grade received on the EPPP or on the CPLEE.

(b) Nothing in this section shall be construed to deprive an applicant of his or her rights of appeal as afforded by other provisions of law.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2942 and 2944, Business and Professions Code.

History

1. Repealer and new section filed 2-14-77; effective thirtieth day thereafter (Register 77, No. 8).

2. Amendment filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

3. Amendment of subsection (c) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

4. Amendment of subsections (b) and (c) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83,No. 25).

6. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

7. Amendment of subsection (a), repealer of subsection (b), subsection relettering, and amendment of newly designated subsection (c) filed 8-11-95; operative 9-10-95 (Register 95, No. 32).

8. Repealer of subsections (a)-(b), subsection relettering, and amendment of newly designated subsection (a) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

10. Amendment of subsection (a) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

11. Amendment of subsection (a) filed 6-10-2015; operative 7-1-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 24).

§ 1389.1. Inspection of Examinations.

(a) All examination materials, except those owned by an examination service, shall be retained by the board at the board's office in Sacramento for a period of two (2) years after the date of the examination.

(b) No inspection is allowed of the written examination administered by the board.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2942 and 2944, Business and Professions Code; and Section 12944, Government Code.

History

1. Renumbering of former section 1390 to new section 1389.1 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

ARTICLE 5.
Registered Psychologists

§ 1390. Citation.

This article may be cited and referred to as the "Registered Psychologist Regulations."

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

History

1. Amendment filed 12-22-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Editorial correction (Register 77, No. 15).
3. Amendment filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).
4. New subsection (c) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
5. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).
6. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).
7. Amendment of subsections (a)-(b) filed 8-11-95; operative 9-10-95 (Register 95, No. 32).
8. Change without regulatory effect repealing subsection (b) and relettering former subsection (c) to new subsection (b) filed 4-7-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).
9. Relocation and amendment of article 5 heading from preceding section 1391 to preceding section 1390, renumbering of former section 1390 to section 1389.1 and renumbering of former section 1391 to section 1390 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).
10. Amendment of article heading, section and Note filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1390.1. Registration.

Any person desiring to register at a qualifying agency as a registered psychologist shall submit an application on a form provided by the board.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

History

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1390.2. Withdrawal of Applications.

Applications for registration which have not been completed within ninety (90) days after additional information has been requested shall be deemed to be withdrawn.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

History

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1390.3. Statement of Purpose.

A person meeting the requirements set forth in section 2909(d) of the code, may provide psychological services under supervision at a non-profit community agency that receives at least 25% of its funding from a governmental source for the purpose of training and providing services so long as that person registers with the board as a registered psychologist. The employing agency must provide the board with evidence of the requisite level of government funding.

(a) The registered psychologist is authorized to function only in the agency to which he or she is registered and only after a registration number has been issued by the board;

(b) The registration shall be in effect for a period of 30 months from the date of issuance and cannot be renewed and the registrant cannot re-register as a registered psychologist to the same agency;

(c) The registered psychologist shall at all times be under the primary supervision of a qualified licensed psychologist who is employed by the same agency. The primary supervisor shall be available to the trainee 100% of the time that the trainee is working in such a capacity. This availability can be in-person, by telephone, by pager or by other appropriate technology.

(1) The primary supervisor shall comply with the coursework requirements set forth in section 1387.1(b) of the code.

(2) The primary supervisor shall ensure that a plan is in place in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the trainee is working. The primary supervisor shall ensure that the trainee thoroughly understands the plan in the event of such an emergency.

(d) In order to qualify as "supervised professional experience" pursuant to section 2914(c) of the code, experience gained as a registered psychologist must comply with section 1387.

(e) Each patient or client of a registered psychologist shall be informed, prior to the rendering of services, that the registrant is unlicensed and under the supervision of a qualified licensed psychologist as an employee of the agency and that the supervisor shall have access to the patient's chart in fulfilling his/her supervisorial duties.

(f) No supervisor or employing agency of a registered psychologist may charge a fee or otherwise require monetary payment in consideration for the employment or supervision of a registered psychologist.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2909, Business and Professions Code.

History

1. New section filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

2. Amendment of subsection (c)(1) filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

3. Amendment of subsection (b) filed 4-27-2007; operative 5-27-2007 (Register 2007, No. 17).

ARTICLE 5.1.
Psychological Assistants

§ 1391. Citation.

This article may be cited and referred to as the "Psychological Assistant Regulations."

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. New Article 4.5 (Sections 1391-1391.14) filed 11-21-77; effective thirtieth day thereafter (Register 77, No. 48).

2. Renumbering of Article 4.5 to Article 5 filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

4. Relocation and amendment of article 5 heading from preceding section 1391 to preceding section 1390 and renumbering of former section 1391 to section 1390 filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

5. New article 5.1 and new section filed 7-28-2005; operative 8-27-2005 (Register 2005, No. 30).

§ 1391.1. Registration; Limitation of Registration Period.

(a) Any person desiring to supervise a psychological assistant shall submit an application on a form provided by the Board.

(b) Registration as a psychological assistant shall be limited to a cumulative total of six years (72 months). Each registration shall be subject to annual renewal pursuant to section 1391.12.

For any psychological assistant registered prior to the effective date of this subdivision, subsequent renewals or registrations shall be limited to a cumulative total of six years (72 months) from the date of the psychological assistant's next registration or renewal, whichever occurs first.

Upon showing of good cause as determined by the Board, these specified time limitations may be reasonably modified.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment of section heading and section filed 9-23-2010; operative 10-23-2010 (Register

2010, No. 39).

§ 1391.2. Withdrawal of Applications.

Applications for registration which have not been completed within ninety (90) days after additional information has been requested shall be deemed to be withdrawn.

§ 1391.3. Required Training.

Any person who possesses a doctorate degree which will qualify for licensure as a psychologist pursuant to Section 2914 of the code, shall be deemed to have completed "one fully matriculated year of graduate training in psychology" and will be eligible for registration as a psychological assistant upon compliance with other provisions of Section 2913 of the code.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.4. Limited Psychological Functions.

As used in Section 2913 of the code, the phrase "limited psychological functions" means those functions which are performed under the direction and supervision of the qualified supervisor pursuant to the American Psychological Association's (APA) January 1, 1997 version of the Guidelines and Principles for Accreditation of Programs in Professional Psychology and the APA Code of Conduct and Ethical Principles.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment of section and new Note filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.5. Statement of Purpose; Supervision Required.

(a) A psychological assistant shall be under the direction and supervision of a licensed psychologist or board-certified psychiatrist who is employed in the same setting in which the psychological assistant is employed. A licensed psychologist who is supervising psychological assistants must comply with the supervision course requirements set forth in section 1387.1.

(b) The supervisor shall provide a minimum of one (1) hour per week of individual supervision to the psychological assistant, unless more such supervision is required under Section 1387 or by the nature of the psychological functions performed by the psychological assistant.

(c) A registered psychological assistant employed by one of the organizations specified in section 2913 of the code may receive delegated supervision pursuant to section 1387(c) from a qualified psychologist or a board certified psychiatrist other than the supervisor to whom he/she is registered if the delegated supervisor is also employed within the same organization. Otherwise, supervision may not be delegated under a psychological assistant registration.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913,

Business and Professions Code.

History

1. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).

2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.6. Supervisor's Responsibility.

(a) Every supervisor of a psychological assistant shall be responsible for supervising the psychological functions performed by the psychological assistant and ensuring that the extent, kind and quality of the psychological functions performed by the assistant are consistent with the supervisor's training and experience, and that the assistant complies with the provisions of the code, the board's regulations, and the standards established by the American Psychological Association.

(b) The supervisor shall inform each client or patient prior to the rendering of services by the psychological assistant that the assistant is unlicensed and is under the direction and supervision of the supervisor as an employee and that the supervisor shall have access to the patient's chart in fulfilling his/her supervision duties.

(c) The supervisor shall be available to the assistant 100% of the time the assistant is performing psychological functions. The availability can be in-person, by telephone, by pager or by other appropriate technology.

(d) The supervisor shall ensure that a plan is in place to protect the patient or client in the event a patient/client crisis or emergency occurs during any time the supervisor is not physically present at the established site at which the supervisee is working. The supervisor shall ensure that the supervisee thoroughly understands the plan in the event a patient crisis or emergency occurs.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.7. Supervised Professional Experience.

In order to qualify as "supervised professional experience" pursuant to Section 2914(c) of the code, experience gained as a psychological assistant must comply with Section 1387.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Change without regulatory effect amending section filed 1-18-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 3).

§ 1391.8. Employer-Employee Business Relationship.

(a) No supervisor or employer of a psychological assistant may charge a fee or otherwise require monetary payment in consideration for the employment or supervision of a psychological assistant. The supervisor or employer shall supply all provisions necessary to function as a psychological assistant.

(b) The psychological assistant shall have no proprietary interest in the business of the supervisor or the employer.

(c) The psychological assistant shall not rent, lease, sublease, or lease-purchase office space from any entity for purposes of functioning as a psychological assistant.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).

2. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

§ 1391.10. Annual Reports.

On or before the expiration of a registration, every supervisor of a psychological assistant shall submit to the Board on a form provided by the Board a report for the registration period showing:

(a) The nature of the psychological functions performed by the psychological assistant being supervised.

(b) Certification of employment.

(c) The locations at which the psychological assistant provided the psychological functions and the type, extent and amount of supervision.

(d) A certification that the psychological functions performed by the psychological assistant were performed at a level satisfactory to ensure safety to the public.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Amendment filed 12-29-88; operative 12-29-88 (Register 89, No. 2).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

4. Amendment filed 12-16-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

5. Amendment of first paragraph and subsection (a) filed 7-24-2009; operative 8-23-2009 (Register 2009, No. 30).

§ 1391.11. Notification of Termination.

Within thirty (30) days after the termination of the employment of a psychological assistant, the employer shall notify the board in writing of such termination, setting forth the date thereof.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1391.12. Psychological Assistant Renewals.

(a) A new registration shall expire one year after issuance. The registration of a psychological assistant shall be renewed by the employer annually, on or before its expiration.

(b) A registration renewed 30 days after its expiration must be accompanied by the delinquency fee required in section 1392.1 in order to be renewed.

(c) A psychological assistant who has been registered with the Board but whose registration has expired and has not been renewed by the employer shall not function as a psychological assistant.

(d) A psychological assistant employed and registered by more than one employer shall have his or her registration renewed by each employer.

(e) A registration not renewed within 60 days after its expiration shall become void and a new application for registration shall be submitted by the employer.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2913, Business and Professions Code.

History

1. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

3. Change without regulatory effect amending subsection (b) filed 10-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 42).

4. Amendment filed 7-24-2009; operative 8-23-2009 (Register 2009, No. 30).

ARTICLE 6.
Fees

§ 1392. Psychologist Fees.

(a) The application fee for a psychologist is $40.00.

(b) The fee for the California Psychology Laws and Ethics Examination (CPLEE) is $129.00.

(c) An applicant taking or repeating the licensing examination shall pay the full fee for that examination.

(d) The initial license fee and the biennial renewal fee for a psychologist are $400.00, except that if an initial license will expire less than one year after its issuance, then the initial license fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(e) The biennial renewal fee for an inactive license is $40.00.

NOTE: Authority cited: Sections 2930, 2987 and 2989, Business and Professions Code. Reference: Sections 2987, 2988 and 2989, Business and Professions Code.

History

1. Amendment of subsections (a) and (b) filed 7-10-89; operative 8-9-89 (Register 89, No. 49). For prior history, see Register 83, No. 25.

2. New subsection (d) filed 12-1-89; operative 12-31-89 (Register 89, No. 49).

3. Amendment of subsection (c) filed 5-17-90; operative 6-16-90 (Register 90, No. 26).

4. Amendment of subsection (c) filed 5-24-91; operative 6-23-91 (Register 91, No. 27).

5. Amendment of subsections (b) and (c) and Note filed 6-14-93; operative 7-1-93 pursuant to Government Code section 113462(d) (Register 93, No. 25).

6. Amendment of subsection (c) filed 3-8-95; operative 4-7-95 (Register 95, No. 10).

7. Amendment of subsection (b) and Note filed 3-24-97; operative 4-23-97 (Register 97, No. 13).

8. Amendment of subsection (b) filed 10-22-98; operative 11-21-98 (Register 98, No. 43).

9. Amendment of subsections (b) and (c) filed 2-14-2000; operative 3-15-2000 (Register 2000, No. 7).

10. Amendment of subsection (b) filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).

11. Repealer of subsections (b)-(c), new subsections (b)-(e) and subsection relettering filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

13. Repealer of subsection (b) and subsection relettering filed 2-11-2003; operative 3-1-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 7).

14. Amendment of subsection (b) filed 5-12-2006; operative 5-12-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

15. New subsection (c), subsection relettering and amendment of newly designated subsection (e) filed 4-1-2008; operative 4-1-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 14).

16. Repealer of subsection (b), subsection relettering and amendment of newly designated subsection (c) filed 6-10-2015; operative 7-1-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 24).

§ 1392.1. Psychological Assistant Fees.

(a) The application fee for registration of a psychological assistant which is payable by the supervisor is $40.00.

(b) The annual renewal fee for registration of a psychological assistant is $40.00.

(c) The delinquency fee for a psychological assistant is $20.00.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2688 and 2689, Business and Professions Code.

History

1. New section filed 1-22-79 as an emergency; effective upon filing (Register 79, No. 4).

2. Certificate of Compliance filed 3-7-79 (Register 79, No. 10).

3. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

ARTICLE 7.
Standards Related to Denial, Discipline, and Reinstatement of Licenses or Registrations

§ 1393. Requirements for Psychologists on Probation.

Each psychologist who has been placed on probation by the board shall

be subject to the board's probation program and shall be required to fully cooperate with the assigned probation monitor.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960 and 2961, Business and Professions Code.

History

1. Repealer of former section 1393, and renumbering and amendment of former section 1395 to section 1393 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 79, No. 17.

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

3. Amendment filed 3-6-2003; operative 4-5-2003 (Register 2003, No. 10).

4. Amendment of article heading filed 7-23-2012; operative 8-22-2012 (Register 2012, No. 30).

§ 1394. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license or registration under the Psychology Licensing Law (Chapter 6.6 of Division 2 of the Code), if to a substantial degree it evidences present or potential unfitness of a person holding a license or registration to perform the functions authorized by his or her license or registration or in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of that law.

(b) Conviction of a crime involving fiscal dishonesty.

NOTE: Authority cited: Sections 481 and 2930, Business and Professions Code. Reference: Sections 481, 490, 2960 and 2963, Business and Professions Code.

1. Repealer of former Section 1394, and renumbering and amendment offormer Section 1396 to Section 1394 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; 75, Nos. 24 and 8; and 74, No. 8.

§ 1395. Rehabilitation Criteria for Denials and Reinstatements.

When considering the denial of a license or registration under section 480 of the code, or a petition for reinstatement under section 11522 of the Government Code, the board in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s)

referred

to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

NOTE: Authority cited: Sections 482 and 2930, Business and Professions Code. Reference: Sections 480, 482, 2960, 2962 and 2963, Business and Professions Code.

History

1. Renumbering and amendment of former section 1395 to section 1393, and renumbering and amendment of former section 1396.1 to section 1395 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; and 75, Nos. 24 and 18.

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1395.1. Rehabilitation Criteria for Suspensions or Revocations.

When considering the suspension or revocation of a license or registration on the ground that a person holding a license or registration under the Psychology Licensing Law (chapter 6.6 of division 2 of the code) has been convicted of a crime the board in evaluating the rehabilitation of such person and his or her eligibility for a license or registration will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registration holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

NOTE: Authority cited: Sections 482 and 2930, Business and Professions Code. Reference: Sections 482, 2960 and 2963, Business and Professions Code.

History

1. Renumbering and amendment of former section 1396.2 to section 1395.1 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 79, No. 17; 76, No. 52; and 75, Nos. 24 and 18.

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations filed 3-5-90 (Register 90, No. 20).

§ 1395.2. Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider and apply the "Disciplinary Guidelines and Uniform Standards related to Substance Abusing Licensees (4/15)," which is hereby incorporated by reference.

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

(c) Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code

HISTORY:

1. Renumbering of former section 1397.12 to new section 1395.2, including amendment of section heading, section and Note, filed 8-3-2016; operative 1-1-2017 (Register 2016, No. 32).

ARTICLE 8.
Rules of Professional Conduct

§ 1396. Competence.

A psychologist shall not function outside his or her particular field or fields of competence as established by his or her education, training and experience.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

History

1. Repealer of Article 8 heading, renumbering of Article 9 to Article 8 (Sections 1396-1397.40, not consecutive), renumbering and amendment of former Section 1396 to Section 1394, and renumbering and amendment of former Section 1397.3 to Section 1396 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 76, No. 52.

§ 1396.1. Interpersonal Relations.

It is recognized that a psychologist's effectiveness depends upon his or her ability to maintain sound interpersonal relations, and that temporary or more enduring problems in a psychologist's own personality may interfere with this ability and distort his or her appraisals of others. A psychologist shall not knowingly undertake any activity in which temporary or more enduring personal problems in the psychologist's personality integration may result in inferior professional services or harm to a patient or client. If a psychologist is already engaged in such activity when becoming aware of such personal problems, he or she shall seek competent professional assistance to determine whether services to the patient or client should be continuedor terminated.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

History

1. Renumbering and amendment of former Section 1396.1 to Section 1395, and renumbering of former Section 1397.4 to Section 1396.1 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 76, No. 52.

§ 1396.2. Misrepresentation.

A psychologist shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products and/or services with which he or she is associated.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

History

1. Renumbering and amendment of former Section 1396.2 to Section 1395.1, and renumbering of former Section 1397.5 to Section 1396.2 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 76, No. 52; and 68, No. 9.

§ 1396.3. Test Security.

A psychologist shall not reproduce or describe in public or in publications subject to general public distribution any psychological tests or other assessment devices, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the techniques; and shall limit access to such tests or devices to persons with professional interests who will safeguard their use.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Section 2936, Business and Professions Code.

History

1. Renumbering and amendment of former Section 1397.7 to Section 1396.3 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 68, No. 42.

§ 1396.4. Professional Identification.

(a) When engaged in any professional psychological activity, whether for a fee orotherwise, a psychologist shall at all times and under all circumstances identify himself or herselfas a psychologist.

(b) A psychological assistant shall at all times and under all circumstances identify himself or herself to patients or clients as a psychological assistant to his or her employer or responsible supervisor when engaged in any psychological activity in connection with that employment.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Sections 2913 and 2936, Business and Professions Code.

History

1. Renumbering of former Section 1397.8 to Section 1396.3 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 76, No. 52; and 73, No. 4.

§ 1396.5. Consumer Information.

Licensed psychologists who provide services to a client in a language other than English shall:

(a) provide to the client as appropriate the translations of required or approved notices or publications made available by the board in that language;

(b) discuss with the client as appropriate the content of any required or approved notice or publication for those notices or publications not available in

the language in which services are provided;

(3) post the Notice to Consumers pursuant to section 2936 of the Code, if made available by the board in that language.

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 728, 2930 and 2936, Business and Professions Code.

History

1. New section filed 2-28-2007; operative 3-30-2007 (Register 2007, No. 9).

§ 1397. Advertising.

A licensed psychologist may advertise the provision of any services authorized to be provided by such license within the psychologist's field of competence in a manner authorized under Section 651 of the code, so long as such advertising does not promote the excessive or unnecessary use of such services.

NOTE: Authority cited: Sections 651, 2930 and 2936, Business and Professions Code. Reference: Sections 651, 2936 and 2960, Business and Professions Code.

History

1. Renumbering and amendment of former Section 1397.11 to Section 1397 filed 7-31-84; effective thirtieth day thereafter (Register 84, No. 31). For history of former Section 1397, see Register 83, No. 25.

§ 1397.1. Child Abuse Reporting Requirements.

Failure to comply with the reporting requirements contained in Penal Code Section 11166 shall constitute unprofessional conduct.

NOTE: Authority cited: Sections 2930 and 2936, Business and Professions Code. Reference: Sections 2936 and 2960 (i), Business and Professions Code.

History

1. New section filed 4-6-88; operative 5-6-88 (Register 88, No. 17).

§ 1397.2. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2960 of the Code, "unprofessional conduct" also includes but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's or registrant's practice to which the licensee or registrant is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating with, or filing a complaint with the Board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the Board.

(b) Failure to provide to the Board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee or registrant is unable to provide the certified documents with this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee or registrant who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any Board investigation pending against the licensee or registrant. This subsection shall not be

construed to deprive a licensee or registrant of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee or registrant to cooperate with a request that would require the licensee or registrant to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's or registrant's practice. Any exercise by a licensee or registrant of any constitutional or statutory privilege shall not be used against the licensee or registrant in a regulatory or disciplinary proceeding against the licensee or registrant.

(d) Failure to report to the Board within 30 days any of the following:

(1) The conviction of the licensee or registrant, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2963 and 2969, Business and Professions Code.

History

1. New section filed 7-23-2012; operative 8-22-2012 (Register 2012, No. 30). For prior history, see Register 83, No. 25.

§ 1397.12. Disciplinary Guidelines. [Renumbered]

Note: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

History

1. New section filed 3-7-97; operative 4-6-97 (Register 97, No. 10).

2. Amendment filed 3-1-2000; operative 3-31-2000 (Register 2000, No. 9).

3. Amendment of "Disciplinary Guidelines" (incorporated by reference) and amendment of section and Note filed 3-3-2003; operative 4-2-2003 (Register 2003, No. 10).

4. Amendment filed 12-5-2006 as an emergency; operative 1-4-2006 (Register 2006, No. 49).

5. Change without regulatory effect amending Disciplinary Guidelines (incorporated by reference) and amending section filed 2-8-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 6).

6. Renumbering of former section 1397.12 to new section 1395.2 filed 8-3-2016; operative 1-1-2017 (Register 2016, No. 32).

§ 1397.30. Citation.

These regulations may be cited and referred to as the "Psychology Corporation Regulations."

NOTE: Authority and reference cited: Sections 2930 and 2999, Business and Professions Code.

History

1. New Article 10 (Sections 1397.30-1397.41) filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).

2. Repealer of Article 10 heading and amendment of section filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.35. Requirements for Professional Corporations.

A professional corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of the Moscone-Knox Professional Corporation Act (Part 4, Division 3, Title 1 of the Corporations Code).

(b) Each shareholder, director and officer (except as provided in Section 13403 of the Corporations Code and Section 2997 of the code) holds a valid psychology license; provided that, a licensed physician, podiatrist, marriage, family, and child counselor, licensed clinical social worker, chiropractor, optometrist or registered nurse may be a shareholder, director or officer of a psychology corporation so long as such licensees own no more than 49% of the total shares issued by the psychology corporation and the number of licensed physicians, podiatrists, marriage, family, and child counselors, licensed clinical social workers, chiropractors, optometrists or registered nurses owning shares in the psychology corporation does not exceed the number of psychologists owning shares in such a corporation. A psychologist may be a shareholder in more than one psychology corporation.

(c) Each professional employee of the applicant who will practice psychology, podiatry, medicine, marriage, family and child counseling, clinical social work, chiropractic, optometry or professional nursing, whether or not a shareholder, director or officer, holds a valid license.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2995, Business and Professions Code; and Sections 13401, 13401.5, 13403, 13406 and 13407, Corporations Code.

History

1. Amendment of subsections (b) and (d) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

3. Amendment of subsections (b) and (c) filed 3-13-97; operative 4-12-97 (Register 97, No. 11).

§ 1397.37. Shares: Ownership and Transfer.

(a) Where there are two or more shareholders in a psychology corporation and one of the shareholders:

(1) Dies; or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, his or her shares shall be sold and transferred to the corporation, its shareholders or other eligible licensed persons on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and ninety (90) days after the shareholder becomes a disqualified person. The requirements of this subsection shall be set forth in the psychology corporation's articles of incorporation or bylaws.

(b) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again becomes an eligible shareholder.

(c) The share certificates of a psychology corporation shall contain an appropriate legend setting forth the restrictions of subsection (a).

(d) Nothing in these regulations shall be construed to prohibit a psychology

corporation from owning shares in a nonprofessional corporation.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2999, Business and Professions Code; and Sections 13401, 13403, 13406 and 13407, Corporations Code.

History

1. Amendment of subsections (e) and (f) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.39. Corporate Activities.

(a) A psychology corporation may perform any act authorized in its articles of incorporation or bylaws so long as that act is not in conflict with or prohibited by these rules, the Psychology Licensing Law, the Medical Practice Act, the Optometry Law or the Nursing Practice Act or the regulations adopted pursuant thereto.

(b) A psychology corporation may enter into partnership agreements with other psychologists practicing individually or in a group or with other psychology corporations.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Section 2996.6, Business and Professions Code; and Sections 13403, 13408 and 13410, Corporations Code.

History

1. Amendment of subsection (a) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 1397.40. Trusts.

The restrictions on the ownership of the shares of psychology corporations shall apply to both the legal and equitable title to such shares.

NOTE: Authority cited: Sections 2930 and 2999, Business and Professions Code. Reference: Sections 13406 and 13407, Corporations Code.

History

1. Repealer of subsection (b) filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

ARTICLE 9.
Citations and Fines

§ 1397.50. Citations and Fines.

(a) For purposes of this article, "board official" shall mean the executive officer of the board or his or her representative.

(b) A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed psychologist of the statutes referred to in section 1397.51.

(c) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall

be served upon the individual personally or by certified mail, return receipt requested.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New article 9 (sections 1397.50-1397.55) and section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.51. Amount of Fines.

The amount of any fine to be levied by a board official shall take into consideration the factors listed in subdivision (b)(3) of section 125.9 of the code and shall be within the range set forth below.

(a) A board official may issue a citation under section 1397.50 for a violation of the provisions listed in this section. The fine for a violation of the following code sections shall be from $100 to $2500:

(1) Business and Professions Code section 125
(2) Business and Professions Code section 125.6
(3) Business and Professions Code section 475(a)(1)
(4) Business and Professions Code section 490
(5) Business and Professions Code section 496
(6) Business and Professions Code section 580
(7) Business and Professions Code section 581
(8) Business and Professions Code section 582
(9) Business and Professions Code section 583
(10) Business and Professions Code section 584
(11) Business and Professions Code section 650
(12) Business and Professions Code section 651
(13) Business and Professions Code section 654.2
(14) Business and Professions Code section 702
(15) Business and Professions Code section 810
(16) Business and Professions Code section 2903
(17) Business and Professions Code section 2960(a)
(18) Business and Professions Code section 2960(c)
(19) Business and Professions Code section 2960(d)
(20) Business and Professions Code section 2960(f)
(21) Business and Professions Code section 2960(g)
(22) Business and Professions Code section 2960(h)
(23) Business and Professions Code section 2960(i)
(24) Business and Professions Code section 2960(k)
(25) Business and Professions Code section 2960(l)
(26) Business and Professions Code section 2960(m)
(27) Business and Professions Code section 2960(n)
(28) Business and Professions Code section 2960(p)
(29) Business and Professions Code section 2960(q)
(30) Business and Professions Code section 2960(r)
(31) Business and Professions Code section 2960.6
(32) Business and Professions Code section 17500
(33) Penal Code section 11166.5

(34) Business and Professions Code section 2913(c)
(35) Business and Professions Code section 2914(c)
(36) Business and Professions Code section 2915

(b) At his or her discretion, a board official may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.

(c) Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between $2,501 and $5,000 if one or more of the following circumstances apply:

(1) The citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) The cited person has a history of two or more prior citations of the same or similar violations;

(3) The citation involves multiple violations that demonstrate a willful disregard of the law;

(4) The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.

Note: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).
2. New subsections (a)(34)-(36) filed 7-2-99; operative 8-1-99 (Register 99, No. 27).
3. New subsections (c)-(c)(4) filed 7-11-2005; operative 8-10-2005 (Register 2005, No. 28).

§ 1397.52. Compliance with Orders of Abatement.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction with the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the board official who issued the citation. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the Board of Psychology or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.53. Citations for Unlicensed Practice.

A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who

are performing or who have performed services for which licensure as a psychologist is required under the laws and regulations relating to the practice of psychology. Each citation issued shall contain an order of abatement. Where appropriate, a board official shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of section 125.9 of the code. The provisions of section 1397.50 and 1397.52 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.54. Contest of Citations.

(a) In addition to requesting a hearing as provided for in subdivision (b)(4) of section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the board official who issued the citation in writing of his or her request for an informal conference with the board official regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The board official who issued the citation shall, within 30 days from the receipt of the request, hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. At the conclusion of the informal conference the board official may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The board official shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the person cited within ten (10) days from the date of the informal conference, as provided in subsection (b) of section 1397.52. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by a board official. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 of the code.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

§ 1397.55. Disconnection of Telephone Service.

(a) If, upon investigation, the board official has probable cause to believe

that an unlicensed person, who is not otherwise exempt from licensure, has advertised to provide psychological services in an alphabetical or classified directory in violation of section 2903 of the code, the board official may issue a citation containing an order of abatement pursuant to section 1397.50 of these regulations. The order of abatement shall require the unlicensed person to cease the unlawful advertising and to notify the telephone company furnishing services to the cited person to (1) disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to that number shall not be referred by the telephone company to any new number obtained by that person. The cited person shall provide written evidence of compliance to the board official.

(b) If the person to whom a citation is issued under subdivision (a) submits a written request to the board official to appeal the citation, the board official shall afford an opportunity for a hearing, as provided in section 1397.54 of these regulations.

(c) If the person to whom the citation and order of abatement is issued fails to comply with the order of abatement after the order is final as provided in section 1398.54(b) of these regulations, the board official shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

NOTE: Authority cited: Sections 125.9, 148 and 2930, Business and Professions Code. Reference: Sections 125.9, 148 and 149, Business and Professions Code.

History

1. New section filed 4-26-96; operative 5-26-96 (Register 96, No. 17).

ARTICLE 10.
Continuing Education

§ 1397.60. Definitions. [Effective until January 1, 2013.]

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

As used in this article:

(a) An "accreditation agency" means an organization recognized by the board which evaluates and approves each provider of continuing education, evaluates and approves each course offering, and monitors the quality of the approved continuing education courses.

(b) A "provider" means an organization, institution, association, university, or other person or entity assuming full responsibility for the course offered, whose qualifications as a continuing education provider have been approved by a board recognized accreditation agency.

(c) A "course" or "presentation" means an approved systematic learning experience of at least one hour in length. One hour shall consist of 60 minutes of actual instruction. Courses or presentations less than one hour in duration shall not be approved.

(d) "Continuing education" means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, seminars, workshops, grand rounds, in-service training programs, video conferencing,

and independent learning technologies.

(e) A "conference" means a course consisting of multiple concurrent or sequential free-standing presentations. Approved presentations must meet all standards of an approved continuing education course.

(f) "Grand rounds" or "in-service training program" means a course consisting of sequential, free-standing presentations designed to meet the internal educational needs of the staff or members of an organization and is not marketed, advertised or promoted to professionals outside of the organization. Approved presentations must meet all standards of an approved continuing education course.

(g) "Independent learning" means the variety of forms of organized and directed learning experiences that occur when the instructor and the student are not in direct visual or auditory contact. These include, but are not limited to, courses delivered via the Internet, CD-ROM, satellite downlink, correspondence and home study. Self-initiated, independent study programs without an approved CE sponsor are not acceptable for continuing education. Except for qualified individuals with a disability who apply to and are approved by the board pursuant to section 1397.62(c), independent learning can be used to meet no more than 75% (27 hours) of the continuing education required in each renewal cycle. Independent learning courses must meet all standards of an approved continuing education course.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29 and 2915, Business and Professions Code.

History

1. New Article 10 (sections 1397.60-1397.69) and section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsections (c) and (d) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Amendment of subsection (d), new subsections (e)-(g) and amendment of Note filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

4. Amendment of subsection (g) filed 12-17-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 51).

5. Amendment of subsections (d) and (g) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

6. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

7. Editorial correction of History 6 (Register 2012, No. 10).

§ 1397.60. Definitions. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

As used in this article:

(a) "Conference" means a course consisting of multiple concurrent or sequential free-standing presentations. Acceptable presentations must meet the requirements of section 1397.61(c).

(b) "Continuing education" means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, seminars, workshops, grand rounds, in-service training programs, video conferencing, and independent learning technologies.

(c) "Course" or "presentation" means an approved systematic learning experience of at least one hour in length. One hour shall consist of 60 minutes of actual instruction. Courses or presentations less than one hour in duration shall not be acceptable.

(d) "Grand rounds" or "in-service training program' means a course consisting of sequential, free-standing presentations designed to meet the internal educational needs of the staff or members of an organization and is not marketed, advertised or promoted to professionals outside of the organization. Acceptable presentations must meet the requirements of section 1397.61(c).

(e) "Independent learning' means the variety of forms of organized and directed learning experiences that occur when the instructor and the student are not in direct visual or auditory contact. These include, but are not limited to, courses delivered via the Internet, CD-ROM, satellite downlink, correspondence and home study. Self-initiated, independent study programs that do not meet the requirements of section 1397.61(c) are not acceptable for continuing education. Except for qualified individuals with a disability who apply to and are approved by the Board pursuant to section 1397.62(c), independent learning can be used to meet no more than 75% (27 hours) of the continuing education required in each renewal cycle. Independent learning courses must meet the requirements of section 1397.61(c).

(f) "Provider' means an organization, institution, association, university, or other person or entity assuming full responsibility for the course offered, whose courses are accepted for credit pursuant to section 1397.61(c)(1).

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29 and 2915, Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.60 is inoperative (Register 2012, No. 7).

§ 1397.61. Continuing Education Requirements. [Effective until January 1, 2013.]

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) Except as provided in section 2915(e) of the Business and Professions Code and section 1397.62 of these regulations, each licensed psychologist shall submit with the application for license renewal proof satisfactory to the board that he or she has completed the continuing education requirements set forth in section 2915 of the code. A licensee who renews his or her license for the first time after the initial issuance of the license is only required to accrue continuing education for the number of months that the license was in effect, including the month the license was issued, at the rate of 1.5 hours of approved continuing education per month. Continuing education earned via independent learning pursuant to section 1397.60(g) shall be accrued at no more than 75% of the continuing education required for the first time renewal. The required hours of continuing education may not be accrued prior to the effective date of the initial issuance of the license. A licensee who falsifies or makes a material misrepresentation of fact on a renewal application or who cannot verify completion of continuing education by producing verification of

attendance certificates, whenever requested to do so by the board, is subject to disciplinary action under section 2960 of the code.

(b) Any person renewing or reactivating his or her license shall certify under penalty of perjury to the Board of Psychology as requested on the application for license renewal, that he or she has obtained training in the subject of laws and ethics as they apply to the practice of psychology in California. The training shall include recent changes/updates on the laws and regulations related to the practice of psychology; recent changes/updates in the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association; accepted standards of practice; and other applications of laws and ethics as they affect the licensee's ability to practice psychology with safety to the public. Training pursuant to this section may be obtained in one or more of the following ways:

(1) Formal coursework in laws and ethics taken from an accredited educational institution;

(2) Approved continuing education course in laws and ethics;

(3) Workshops in laws and ethics;

(4) Other experience which provide direction and education in laws and ethics including, but not limited to, grand rounds or professional association presentation.

If the licensee chooses to apply a specific continuing education course on the topic of laws and ethics to meet the foregoing requirement, such a course must meet the content requirements named above, must comply with section 1397.60(c) of this Article, and may be applied to the 36 hours of approved continuing education required in Business and Professions Code section 2915(a).

(c) Those licensees who began graduate training prior to January 1, 2004, shall, prior to his or her first license renewal after January 1, 2004, take continuing education instruction in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Such course shall be taken within the two years prior to the licensee's renewal date and shall be no less than one (1) hour in length. This is a one-time only continuing education requirement.

(d) Those licensees who began graduate training prior to January 1, 2004, shall, prior to his or her first license renewal after January 1, 2005, take continuing education instruction in the biological, social, and psychological aspects of aging and long-term care. Such course shall be taken within the two years prior to the licensee's renewal date and shall be no less than three (3) hours in length. This is a one-time only continuing education requirement.

(e) Licensees are encouraged to participate in periodic training in subject matter for which the Legislature or the board finds cause, including but not limited to: geriatric pharmacology; the characteristics and methods of assessment and treatment of HIV disease; and issues of human diversity.

(f) This subsection shall become effective on January 1, 2006.

(1) The Board of Psychology recognizes and accepts for continuing education credit courses that are:

(A) provided by American Psychological Association (APA) approved sponsors;

(B) Continuing Medical Education (CME) courses specifically applicable and pertinent to the practice of psychology and that are accredited by the California Medical Association (CMA) or the Accreditation Council for Continuing Medical Education (ACCME);

(C) sponsored by the Academies of the specialty boards of the American Board of Professional Psychology (ABPP).

(2) The board may recognize other entities to perform an accrediting function if the entity:

(A) Has had at least 10 years experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:

(i) Maintaining and managing records and data related to continuing education programs.

(ii) Monitoring and approving courses.

(B) Has a means to avoid a conflict of interest between any provider and accreditation functions.

(C) Submits a detailed plan of procedures for monitoring and approving the provider functions. The plan must demonstrate that it has the capacity to evaluate each course, including provisions requiring the following:

(i) Topics and subject matter shall be pertinent to the practice of psychology. Courses predominantly focused on business issues, marketing, or exploring opportunities for personal growth are not eligible for credit. Course material must have a relevance or direct application to a consumer of psychological services.

(ii) Each continuing education course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.

(iii) Instructors shall be competent in the subject matter of the course and shall be qualified by education, training, experience, scope of practice and licensure.

(iv) Each continuing education course shall have a syllabus which provides a general outline of the course.

(v) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.

(vi) An evaluation mechanism shall be completed by each participant to evaluate the continuing education course.

(vii) Respond to complaints from the board concerning its activities.

(viii) The entity agency shall provide services to all licensees without discrimination.

(D) An entity must submit, in writing, evidence that it meets the qualifications in this subdivision.

(E) Upon written confirmation from the board that the entity has been recognized, the entity may advertise that it has been recognized by the board.

(3) Any licensee who receives approved continuing education course credit hours pursuant to this section shall submit verification of course completion and the participant report recording fee specified in section 1397.69 to a board recognized accrediting agency.

(g) Failure of the entity to substantially comply with the provisions as set forth in subsection (f) shall constitute cause for revocation of recognition by the board. Recognition can be revoked only by a formal board action, after notice and hearing, and for good cause.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29, 2915 and 2915.7, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsections (b) and (d), new subsections (e)-(f) and amendment of Note filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Amendment of subsection (b), new subsection (c), subsection relettering, and amendment of newly designated subsections (e) and (g) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

4. Repealer of subsection (g) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

5. Amendment of subsection (a), repealer of subsections (b) and (e), subsection relettering and new subsections (d)-(e) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).

6. Amendment of subsections (d)-(f) and new subsections (g)-(h) filed 9-2-2003; operative 10-2-2003 (Register 2003, No. 36).

7. Amendment of section and Note filed 9-24-2004; operative 10-24-2004 (Register 2004, No. 39).

8. Amendment of subsection (a) filed 11-21-2005; operative 12-21-2005 (Register 2005, No. 47).

9. Amendment of subsections (f)-(f)(3) filed 11-29-2005; operative 1-1-2006 (Register 2005, No. 48).

10. Amendment of subsection (a) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

11. Amendment of subsection (b) and new subsections (b)(1)-(4) filed 12-20-2006; operative 1-19-2007 (Register 2006, No. 51).

12. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

13. Editorial correction of History 12 (Register 2012, No. 10).

§ 1397.61. Continuing Education Requirements. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

(a) Except as provided in section 2915(e) of the Business and Professions Code and section 1397.62 of these regulations, each licensed psychologist shall certify on the application for license renewal that he or she has completed the continuing education requirements set forth in section 2915 of the Code. A licensee who renews his or her license for the first time after the initial issuance of the license is only required to accrue continuing education for the number of months that the license was in effect, including the month the license was issued, at the rate of 1.5 hours of approved continuing education per month. Continuing education earned via independent learning pursuant to section 1397.60(e) shall be accrued at no more than 75% of the continuing education required for the first time renewal. The required hours of continuing education may not be accrued prior to the effective date of the initial issuance of the license. A licensee who falsifies or makes a material misrepresentation of fact on a renewal application or who cannot verify completion of continuing

education by producing verification of attendance certificates, whenever requested to do so by the Board, is subject to disciplinary action under section 2960 of the Code.

(b) Any person renewing or reactivating his or her license shall certify under penalty of perjury to the Board of Psychology as requested on the application for license renewal, that he or she has obtained training in the subject of laws and ethics as they apply to the practice of psychology in California. The training shall include recent changes/updates on the laws and regulations related to the practice of psychology; recent changes/updates in the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association; accepted standards of practice; and other applications of laws and ethics as they affect the licensee's ability to practice psychology with safety to the public. Training pursuant to this section may be obtained in one or more of the following ways:

(1) Formal coursework in laws and ethics taken from an accredited educational institution;

(2) Approved continuing education course in laws and ethics;

(3) Workshops in laws and ethics;

(4) Other experience which provide direction and education in laws and ethics including, but not limited to, grand rounds or professional association presentation.

If the licensee chooses to apply a specific continuing education course on the topic of laws and ethics to meet the foregoing requirement, such a course must meet the content requirements named above, must comply with section 1397.60(c), and may be applied to the 36 hours of approved continuing education required in Business and Professions Code section 2915(a).

(c) The Board recognizes and accepts for continuing education credit courses pursuant to this section. A licensee will earn one hour continuing education credit for each hour of approved instruction.

(1) Continuing education courses shall be:

(A) provided by American Psychological Association (APA), or its approved sponsors;

(B) Continuing Medical Education (CME) courses specifically applicable and pertinent to the practice of psychology and that are accredited by the California Medical Association (CMA) or the Accreditation Council for Continuing Medical Education (ACCME); or

(C) provided by the California Psychological Association, or its approved sponsors.

(D) approved by an accrediting agency for continuing education courses taken prior to January 1, 2013, pursuant to this section as it existed prior to January 1, 2013.

(2) Topics and subject matter for all continuing education shall be pertinent to the practice of psychology. Course or learning material must have a relevance or direct application to a consumer of psychological services.

(3) No course may be taken and claimed more than once during a renewal period, nor during any twelve (12) month period, for continuing education credit.

(4) An instructor may claim the course for his/her own credit only one time

that he/she teaches the acceptable course during a renewal cycle, or during any twelve (12) month period, receiving the same credit hours as the participant.

(d) Examination Functions. A licensee who serves the Board as a selected participant in any examination development related function will receive one hour of continuing education credit for each hour served. Selected Board experts will receive one hour of continuing education credit for each hour attending Board sponsored Expert Training Seminars. A licensee who receives approved continuing education credit as set forth in this paragraph shall maintain a record of hours served for submission to the Board pursuant to section 1397.61(e).

(e) A licensee shall maintain documentation of completion of continuing education requirements for four (4) years following the renewal period, and shall submit verification of completion to the Board upon request. Documentation shall contain the minimum information for review by the Board: name of provider and evidence that provider meets the requirements of section 1397.61(c)(1); topic and subject matter; number of hours or units; and a syllabus or course description. The Board shall make the final determination as to whether the continuing education submitted for credit meets the requirements of this article.

(f) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Sections 29, 32, 2915 and 2915.7, Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.61 is inoperative (Register 2012, No. 7).

§ 1397.62. Continuing Education Exemptions and Exceptions. [Effective until January 1, 2013.]

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

At the time of making application for renewal of a license, a psychologist may as provided in this section request an exemption or an exception from all or part of the continuing education requirements.

(a) The board shall grant an exemption only if the psychologist verifies in writing that, during the two year period immediately prior to the expiration date of the license, he or she:

(1) Has been residing in another country or state for at least one year reasonably preventing completion of the continuing education requirements; or

(2) Has been engaged in active military service; or

(3) Has been prevented from completing the continuing education requirements for reasons of health or other good cause which includes:

(A) Total physical and/or mental disability of the psychologist for at least one year; or

(B) Total physical and/or mental disability of an immediate family member for at least one year where the psychologist has total responsibility for the care of that family member.

Verification of a physical disability under subsection (a)(3) shall be by a licensed physician and surgeon or, in the case of a mental disability, by a licensed psychologist or a board certified or board eligible psychiatrist.

(b) An exception to the requirements of Business and Professions Code section 2915(d) may be granted to licensed psychologists who are not engaged in the direct delivery of mental health services for whom there is an absence of available continuing education courses relevant to their specific area of practice.

(1) An exception granted pursuant to this subsection means that the board will accept continuing education courses that are not approved pursuant to sections 1397.61(d), (e), (f) provided that they are directly related to the licensee's specific area of practice and offered by recognized professional organizations. The board will review the licensee's area of practice, the subject matter of the course, and the provider on a case-by-case basis. This exception does not mean the licensee is exempt from completing the continuing education required by Business and Professions Code section 2915 and this article.

(2) Licensees seeking this exception shall provide all necessary information to enable the board to determine the lack of available approved continuing education and the relevance of each course to the continuing competence of the licensee. Such a request shall be submitted in writing and must include a clear statement as to the relevance of the course to the practice of psychology and the following information:

(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course), particularly as it relates to the practice of psychology.

(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held and length of experience and expertise in the relevant subject matter), particularly as it relates to the practice of psychology.

(C) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience and similar courses previously offered by the provider), particularly as it relates to the practice of psychology.

(3) This subsection does not apply to licensees engaged in the direct delivery of mental health services.

(c) Psychologists requiring reasonable accommodation according to the Americans with Disabilities Act may be granted an exemption from the on-site participation requirement and may substitute all or part of their continuing education requirement with an American Psychological Association or accreditation agency approved independent learning continuing education program. A qualified individual with a disability must apply to the board to receive this exemption.

(d) Any licensee who submits a request for an exemption or exception which is denied by the board shall complete any continuing education requirements within 120 days of the notification that the request was denied.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsection (a) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

3. Amendment of subsection (e) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

4. Amendment of section heading and section filed 7-21-2003; operative 8-20-2003 (Register 2003, No. 30).

5. Amendment of subsection (a)(2) filed 12-10-2004; operative 1-9-2005 (Register 2004, No. 50).

6. Amendment of subsection (c) filed 11-16-2006; operative 12-16-2006 (Register 2006, No. 46).

7. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

8. Editorial correction of History 7 (Register 2012, No. 10).

§ 1397.62. Continuing Education Exemptions and Exceptions. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

At the time of making application for renewal of a license, a psychologist may as provided in this section request an exemption or an exception from all or part of the continuing education requirements.

(a) The Board shall grant an exemption only if the psychologist verifies in writing that, during the two year period immediately prior to the expiration date of the license, he or she:

(1) Has been engaged in active military service reasonably preventing completion of the continuing education requirements, except that a licensee granted an exemption pursuant to this section shall still be required to fulfill the laws and ethics requirement set forth in section 1397.61(b); or

(2) Has been prevented from completing the continuing education requirements for reasons of health or other good cause which includes:

(A) Total physical and/or mental disability of the psychologist for at least one year; or

(B) Total physical and/or mental disability of an immediate family member for at least one year where the psychologist has total responsibility for the care of that family member.

Verification of a physical disability under subsection (a)(2) shall be by a licensed physician and surgeon or, in the case of a mental disability, by a licensed psychologist or a board certified or board eligible psychiatrist.

(b) An exception to the requirements of Business and Professions Code section 2915(d) may be granted to licensed psychologists who are not engaged in the direct delivery of mental health services for whom there is an absence of available continuing education courses relevant to their specific area of practice.

(1) An exception granted pursuant to this subsection means that the Board will accept continuing education courses that are not acceptable pursuant to section 1397.61(c) provided that they are directly related to the licensee's specific area of practice and offered by recognized professional organizations. The Board will review the licensee's area of practice, the subject matter of the course, and the provider on a case-by-case basis. This exception does not mean the licensee is exempt from completing the continuing education required by

Business and Professions Code section 2915 and this article.

(2) Licensees seeking this exception shall provide all necessary information to enable the Board to determine the lack of available approved continuing education and the relevance of each course to the continuing competence of the licensee. Such a request shall be submitted in writing and must include a clear statement as to the relevance of the course to the practice of psychology and the following information:

(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course), particularly as it relates to the practice of psychology.

(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held and length of experience and expertise in the relevant subject matter), particularly as it relates to the practice of psychology.

(C) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience and similar courses previously offered by the provider), particularly as it relates to the practice of psychology.

(3) This subsection does not apply to licensees engaged in the direct delivery of mental health services.

(c) Psychologists requiring reasonable accommodation according to the Americans with Disabilities Act may be granted an exemption from the on-site participation requirement and may substitute all or part of their continuing education requirement with an American Psychological Association or accreditation agency approved independent learning continuing education program. A qualified individual with a disability must apply to the Board to receive this exemption.

(d) Any licensee who submits a request for an exemption or exception that is denied by the Board shall complete any continuing education requirements within 120 days of the notification that the request was denied.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.62 is inoperative (Register 2012, No. 7).

§ 1397.63. Hour Value System.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) Licensees will earn one hour continuing education credit for each hour of approved instruction. One 3-unit academic quarter is equal to 10 hours of continuing education credit and one 3-unit academic semester is equal to 15 hours of continuing education credit.

(1) Licensees who serve the Board of Psychology as selected participants in any examination development related function will receive one hour of continuing education credit for each hour served. Selected board experts will receive one hour of continuing education credit for each hour attending Board of Psychology sponsored Expert Training Seminars. Any licensee who receives

approved continuing education credit as set forth in subsection (b)(1) shall have his/her credit reported by the board to the board recognized accrediting agency.

(2) Licensees who serve as examiners for the Academies of the specialty boards of the American Board of Professional Psychology (ABPP) will receive one hour of continuing education credit for each hour served, not to exceed fours hours each two year renewal period. Any licensee who receives continuing education credit as set forth in subsection (b)(2) shall submit verification and the course attendee fee specified in section 1397.68 to the board recognized accreditation agency.

(c) An approved instructor may claim the course for his/her own credit only one time that he/she teaches the approved course during a renewal cycle, receiving the same credit hours as the participant.

(d) No course may be taken and claimed more than once during a renewal period for continuing education credit.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsection (b) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Redesignation and amendment of former subsection (b) as new subsection (b)(1) and new subsection (b)(2) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

4. Amendment of subsection (c) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

5. Amendment of subsection (b)(1) filed 4-5-2001; operative 5-5-2001 (Register 2001, No. 14).

6. Amendment of subsection (b)(1) filed 12-19-2001 as an emergency; operative 1-1-2002 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 5-1-2002 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 12-19-2001 order transmitted to OAL 1-8-2002 and filed 2-20-2002 (Register 2002, No. 8).

8. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

§ 1397.64. Accreditation Agencies.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) Upon written application to the board, continuing education accreditation agencies will be recognized if the board determines that the organization meets the criteria set forth in section 2915(f) of the code and:

(1) the organization submits a plan demonstrating that it has the capacity to evaluate each continuing education provider's course in accordance with the following criteria:

(A) Topics and subject matter shall be pertinent to the practice of psychology. Courses predominantly focused on business issues, or marketing, or that are predominantly designed to explore opportunities for personal growth are not eligible for credit. Course material must have a relevance or direct application to a consumer of psychological services.

(B) Each continuing education course shall have written educational goals

and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.

(C) Instructors shall be competent in the subject matter of the course and shall be qualified by education, training, experience, scope of practice and licensure.

(D) Each continuing education course shall have a syllabus which provides a general outline of the course.

(E) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.

(F) An evaluation mechanism shall be completed by each participant to evaluate the continuing education course.

(2) The accreditation agency agrees to perform the following:

(A) Maintain a list of the names and addresses of the persons designated as responsible for the provider's continuing education courses and records. The accreditation agency shall require that any change in the designated responsible person's identity shall be reported to the agency within 30 days of the effective date of such change.

(B) Notify the board of names, addresses and responsible party of each provider and each course on a quarterly basis. Provide without charge to any licensee who makes a request, a current list of providers and approved courses.

(C) Verify attendance of licentiates at specific courses by maintaining a record of approved continuing education courses completed by licensees. The record must include the licensees name and license number, and all agency approved continuing education courses successfully completed by each licensee. In addition, and for an activity reporting fee paid by the licensee and on forms acceptable to the agency (see form No. 07M-BOP-15(New 10/94)), incorporate into licensee's record all non-agency approved continuing education courses as defined in sections 1397.61 and 1397.63 of these regulations. The accreditation agency shall provide a copy of this combined record to the board upon request. The records must be retrievable by license number.

(D) Respond to complaints from the board concerning activities of any of its approved providers or their course(s). Respond to complaints and inquiries regarding providers, courses, and general continuing education questions presented by any licensee. The accreditation agency shall provide services to all licensees without discrimination.

(E) Audit at least 10% of the continuing education courses approved by the agency, for compliance with the agency's requirements and requirements of the board, and on request, report the findings of such audits to the board.

(F) Take such action as is necessary to assure that the continuing education course material offered by its providers meets the continuing education requirements of the board as defined in sections 1397.64(a)(1) and 1397.65 of these regulations.

(G) Establish a procedure for reconsideration of its decision that a provider or a provider's course does not meet statutory or regulatory criteria.

(b) Failure of a recognized accreditation agency to substantially comply with the provisions as set forth in this article shall constitute cause for revocation

of recognition by the board. Recognition can be revoked only by a formal board action, after notice and hearing, and for good cause.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsections (a)(2)(B) and (a)(2)(D) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Amendment of subsection (a)(1)(A) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

4. Amendment of subsection (a)(1)(A) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).

5. Change without regulatory effect amending subsection (a)(2)(F) filed 4-7-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).

6. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

§ 1397.65. Requirements for Approved Providers.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) Providers of continuing education courses in psychology shall apply to a board recognized accreditation agency for approval as a provider, and for approval of each course, prior to offering any such courses.

(b) (1) Upon satisfactory completion of the provider requirements of the accreditation agency, including payment of the appropriate fees and receipt of written approval therefrom, a continuing education provider may represent itself as a California approved provider of continuing education courses for psychologists for one year.

(2) Upon presentation of satisfactory evidence, organizations approved by the American Psychological Association (APA) as Sponsors of Continuing Education for Psychologists will be recognized as California approved providers of continuing education courses for psychologists during the duration of their APA approval, and shall be exempt from the annual continuing education provider fee described in section 1397.68. Such APA providers shall be held to all other requirements of California approved providers of continuing education for psychologists except for the individual course review requirement.

(c) The provider is responsible for assuring the educational quality of its course material. All continuing education course material shall meet the standards set forth in section 1397.64(a)(1) of these regulations and shall be:

(1) approved in advance by an accreditation agency (except for those courses offered by providers defined in section 1397.61(d), (e) and (f));

(2) specifically applicable and pertinent to the practice of psychology;

(3) accurate and timely;

(4) presented in an organized manner conducive to the learning process;

(5) complete and objective, and not reflecting predominantly any commercial views of the provider or presenter or of anyone giving financial assistance to the provider or presenter;

(6) based on stated educational goals and objectives; and

(7) accompanied by a syllabus which contains, at a minimum, the instructional objectives for each course and a summary containing the main points of each topic.

(d) All providers shall furnish a list of course participants, with the accompanying course attendee fee as required in section 1397.68, to the accreditation agency, and verification of attendance certificates to all participants within 45 days of course completion. The list and the certificate shall contain the name of the licensee and license number, name and number of the provider, title of the course, number of completed hours, date of completion, course number, if applicable, and the name of the accreditation agency.

(e) Every approved provider shall apply to the accreditation agency, on forms approved by the board (see form No. 07M-BOP-14(New 10/94)), at least 30 days in advance, for each continuing education course offered or presented, whether for the first time or repeated.

(f) The approved provider shall be required to maintain attendance records for three (3) years for each continuing education course. Acceptable documentation of participation shall include attendance rosters, sign-in and sign-out sheets, and completed course evaluation forms.

(g) The approved provider's course shall be valid for up to one year following the initial approval provided a notification and activity registration fee is submitted to the accreditation agency at least 30 days in advance for each time the course is offered or presented.

(h) The approved provider's advertisements for approved courses shall clearly indicate the provider's name, course title, course approval number, the number of credit hours, and the name of the accrediting agency.

(i) The approved provider shall have a written policy, available upon request, which provides information on:

1. refunds in case of non-attendance
2. time period for return of fees
3. notification if course is canceled.

(j) Providers may not grant partial credit for continuing education courses. However, conferences, in-service training programs and grand rounds consisting of a series of presentations may obtain approval for the entire conference, in-service training program or grand round as one course wherein credit may be granted to participants separately for each individual presentation in such courses.

(k) Provider approval is non-transferable. Approved providers shall inform the accrediting agency in writing within 30 days of any changes in organizational structure and/or person(s) responsible for continuing education program, including name and address changes.

(l) Providers are responsible for meeting all applicable local, state and federal standards which include, but are not limited to, the Americans with Disabilities Act.

(m) Providers may obtain approval for grand rounds activities for an entire year with one application provided the staff person responsible for grand rounds submits to the accreditation agency a general descriptive outline of grand rounds activities for the year. This outline shall be of sufficient detail regarding content to be covered in the weekly grand rounds activities to allow

the accreditation agency to determine whether the activities are appropriate for continuing education credit for licensed psychologists.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsections (d) and (j) and new subsection (m) filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Redesignation and amendment of former subsection (b) as new subsection (b)(1), new subsection (b)(2) and amendment of subsection (h) filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

4. Amendment of subsection (c)(8) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

5. Amendment of subsections (b)(2), (c)(1) and (c)(6)-(7) and repealer of subsection (c)(8) filed 12-18-2001; operative 1-1-2002 pursuant to Government Code section 11343.4 (Register 2001, No. 51).

6. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

§ 1397.66. Provider Audit Requirements.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

Upon written request from the accreditation agency or the board, relating to an audit of course material, each approved provider shall submit such materials as are required by the accreditation agency or the board.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

§ 1397.67. Renewal After Inactive or Delinquent Status. [Effective until January 1, 2013.]

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) To activate licenses which have been placed on inactive status pursuant to section 2988 of the code, the licensee must submit evidence of completion of the requisite 36 hours of qualifying continuing education courses for the two-year period prior to establishing the license as active.

(b) For the renewal of a delinquent psychologist license within three years of the date of expiration, the applicant for renewal shall provide documentation of completion of the required hours of continuing education.

After a license has been delinquent for three years, the license is automatically cancelled and the applicant must submit a complete licensing application, meet all current licensing requirements, and successfully pass the licensing examination just as for the initial licensing application unless the board grants a waiver of the examination pursuant to section 2946 of the code.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, 2984, 2986, and 2988, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of section and Note filed 4-9-96; operative 5-9-96 (Register 96, No. 15).

3. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

4. Editorial correction of History 3 (Register 2012, No. 10).

§ 1397.67. Renewal After Inactive or Delinquent Status. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

(a) To activate a license which has been placed on inactive status pursuant to section 2988 of the Code, the licensee must submit evidence of completion of the requisite 36 hours of qualifying continuing education courses for the two-year period prior to establishing the license as active.

(b) For the renewal of a delinquent psychologist license within three years of the date of expiration, the applicant for renewal shall provide evidence of completion of 36 hours of qualifying continuing education courses for the two-year period prior to renewing the license.

After a license has been delinquent for three years, the license is automatically cancelled and the applicant must submit a complete licensing application, meet all current licensing requirements, and successfully pass the licensing examination just as for the initial licensing application unless the board grants a waiver of the examination pursuant to section 2946 of the Code.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, 2984 and 2988, Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.67 is inoperative (Register 2012, No. 7).

§ 1397.68. Provider Fees.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) The following fees are established to be paid to an accreditation agency by the course provider:

(1) Continuing education annual provider approval fee $200

(2) Continuing education course registration fee $35

(3) Continuing education conference fee $100

(4) Continuing education course attendee fee ..... $7 per licensee

These fees are to be paid by the provider to an accreditation agency as defined in section 1397.65(b), (d), and (g).

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of subsection (a)(3) and new subsection (a)(4) filed 11-24-99; operative 12-24-99 (Register 99, No. 48).

3. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

§ 1397.69. Participant Fees. [Effective until January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

The following fees are established to be paid by the course participant:

(a) Participant report recording fee $35

This fee is to be paid to an accreditation agency to report non-accrediting agency approved courses taken by the participant as defined in section 1397.61(d), 1397.63(b) and 1397.64(a)(2)(C).

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 12-29-94; operative 12-29-94 pursuant to Government Code Section 11346.2(d) (Register 94, No. 52).

2. Amendment of Form No. 07M-BOP-14 filed 4-30-98; operative 5-30-98 (Register 98, No. 18).

3. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

4. Editorial correction of History 3 (Register 2012, No. 10).

APPENDIX Form 07M-BOP-15. Non-Accrediting Agency MCEP Credit Reporting Form.

ACCREDITING AGENCY

LOGO W/ADDRESS AND PHONE

Mandatory Continuing Education for Psychologists (MCEP)

NON-ACCREDITING AGENCY
MCEP CREDIT REPORTING FORM

This form is used to report courses that are directly authorized for MCEP credit by law or BOP regulation rather than by a recognized accrediting agency. The purpose of this report is to integrate MCEP credit from all sources into one complete record for each psychologist. If you need further assistance with this report, call the accrediting agency at the number above.

DATE: _____ Psychology License #: _____
Last Name: _____
First Name: _____ Phone #: _____
Address:
Address: _____
City: State: Zip:

Course/ Date	Provider Name	Course Title	# of Credit Hrs

Verification must be submitted for each course listed. Licensee must retain proof of attendance in the event the Board of Psychology requests verification. If more room is needed to list courses, please attach additional copies of this form. In order for this report to be processed, the regulated $35 filing fee must be enclosed.

07M-BOP-15 (New 10/94)

APPENDIX Form 07M-BOP-14. Course Application.

Accrediting Agency
TEL:
FAX:

Course Application

Failure to complete this cover sheet and application will result in the return of the course application without further review. A separate course form is required for each course. Some of the information supplied may be published. Responses must be typed in the spaces provided.

Cover Sheet

A. Provider Information:

Provider Name:	
MCEP Provider #:	Phone:
MCEP Program Administrator:	MCEP Program Developer:

B. Course Information:

Course Title:	
Standard Course Fee: Discounts available? ☐ Yes ☐ No	
Course Description (limit to 50 words):	
Course Date(s):	Course Time(s):
Course Site Address	Phone:
	City State Zip
Course Level (choose one): ☐ Introductory (useful for psychologists new to this field) ☐ Intermediate (useful for psychologists with limited experience in this field) ☐ Advanced (useful for psychologists with extensive experience in this field)	Target Audience ☐ Licensed Psychologists ☐ Other Non–Mental Health Professionals ☐ MFCC/LCSW/LED's ☐ General Public ☐ MD/RN's
Total Instructional Time:	

C. Co–Sponsorship Information:

Is this course co–sponsored? ☐ Yes ☐ No	Name of co–sponsoring organization:
Contact Name:	Phone:
Address:	
	City State Zip

D. Primary Instructor Information:

Name:	Daytime Phone:	Fax:
Address:		
	City State Zip	

07M–BOP–14 (Revised 11/97)

MCEP Course Application
California Psychological Association Accrediting Agency

Section I – Course Material

Standard: Course material will be pertinent, accurate and will clearly contribute in the area of practice, theory or methodology at a post–doctorate level.

Please enclose the following documents:

√ Course syllabus containing:
- ☐ Course Outline
- ☐ Description of Content
- ☐ Course Goals and Objectives

√ Primary Instructor vita.

Section II – Evaluation Process

Standard: Every course shall include an evaluation process that assesses both the effectiveness of the course and participant achievement in accordance to the course's goals and objectives.

Are the course evaluations part of a larger evaluation or needs assessment process? If yes, please describe their use.

Please enclose the following documents:

√ Course evaluation form

√ Describe the evaluation mechanism you will use for participants to assess their achievement in accordance with course objectives.

Section III – Administration

Standard: Course monitoring procedures (attendance list, credit assignment) and record keeping is in accordance with state regulations and policy.

A. Course Monitoring

1. Describe your procedures for monitoring course attendance.

2. How do you plan to identify psychology licensees who attend your programs?

MCEP Course Application
California Psychological Association Accrediting Agency
Please enclose the following documents.

page 2 of 2

√ Sample attendee list format √ Sample attendance certificate √ Signed After Course Agreement

B. Co-sponsorship
If this course, or the larger event this course is part of, is sponsored in full or in part by another organization, this section of the application must be completed.

Identify the organization responsible for each of the following areas:

Course content
Course presentation
Course monitoring
Course records
Advertising/Marketing
Financial Arrangements
Administrative Policies

Section IV—Authorization

I certify, on behalf of _____, *that the preceding statements and the enclosed*
provider organization
documents are true. I understand that any false statements may result in the revocation of provider approval. I understand that I am responsible for maintaining all standards outlined in the provider application and that this course may be subject to either an unannounced on–site course audit or an administrative audit.

_____ _____
Program Developer Signature Date

_____ _____
Program Administrator Signature Date

Both signatures are required to process application.

Section V—Payment

A non–refundable MCEP course application fee of $35, made payable to the California Psychological Association Accrediting Agency must accompany 3 copies of the application including all attachments.

☐ Check enclosed ☐ Please bill my credit card:
☐ Visa ☐ Mastercard ☐ Discover ☐ American Express

Account #: _____ Exp. Date: _____

Signature: _____

Important

Completion of this form does not constitute MCEP course approval status. If granted, MCEP course approval will become effective on the date set forth in the notification of approval letter.

§ 1397.69. Licensee Fees. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

For the administration of this article, in addition to any other fees due the Board and as a condition of renewal or reinstatement, a $10 fee is to be paid to the Board by a licensee renewing in an active status or after inactive or delinquent status.

NOTE: Authority cited: Sections 2915(g) and 2930, Business and Professions Code. Reference: Section 2915(j), Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.69 is inoperative (Register 2012, No. 7).

§ 1397.70. Sanctions for Noncompliance. [Effective until January 1, 2013.]

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) If documentation of the CE requirement is improper or inadequate, the license becomes invalid for renewal. The continued practice of psychology is prohibited while the license is invalid for renewal, and the renewal is forfeited. Notwithstanding section 2984, the licensee shall correct the deficiency within six months. If the deficiency is not corrected within six months, the license remains invalid for renewal. Continued practice without a valid license shall constitute grounds for appropriate disciplinary action pursuant to sections 148 and/or 2960 of the code.

(b) Misrepresentation of compliance shall constitute grounds for disciplinary action.

NOTE: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 4-9-96; operative 5-9-96 (Register 96, No. 15).
2. Amendment of subsection (a) filed 3-13-97; operative 4-12-97 (Register 97, No. 11).
3. Amendment of section heading and new first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).
4. Editorial correction of History 3 (Register 2012, No. 10).

§ 1397.70. Sanctions for Noncompliance. [Effective January 1, 2013.]

This section shall be applicable to a license that expires on or after, or is reinstated or issued on or after, January 1, 2013.

(a) If documentation of the continuing education requirement is improper or inadequate, the license is ineligible for renewal until any deficiency is corrected, and is subject to citation or discipline. Continued practice without a valid license shall constitute grounds for appropriate disciplinary action pursuant to sections 148 and/or 2960 of the Code.

(b) Misrepresentation of compliance shall constitute grounds for disciplinary action or denial.

NOTE: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference:

Section 2915, Business and Professions Code.

History

1. New section filed 2-16-2012; operative 1-1-2013, at which time the previous version of section 1397.70 is inoperative (Register 2012, No. 7).

§ 1397.71. Denial, Suspension and Revocation of CE Provider Status.

This section applies to a license that expires on or before December 31, 2012, and becomes inoperative on January 1, 2013.

(a) A board recognized accreditation agency may deny, suspend, place on probation with terms and conditions, or revoke its approval of an applicant or provider of continuing education for good cause. Good cause includes, but is not limited to, one or more of the following:

(1) Conviction of a felony or misdemeanor substantially related to the activities of an accreditation agency approved provider.

(2) Failure of an applicant or provider who is a psychologist, psychological assistant, psychological intern or registered psychologist to comply with any provisions of the Psychology License Law (Business and Professions Code Section 2900 et seq.) or the regulations adopted pursuant thereto in Division 13.1 of Title 16 (commencing with section 1380) of the California Code of Regulations.

(3) Failure of an applicant or provider, who is a licensee of another healing arts board, to comply with the statutes and regulations governing that license.

(4) Making a material misrepresentation of fact in information submitted to the board recognized accreditation agency or to the board.

(5) Failure to comply with provisions of the Psychology License Law (Business and Professions Code Section 2900 et seq.), or the regulations adopted pursuant thereto in Division 13.1 of Title 16 (commencing with section 1380) of the California Code of Regulations, applicable to continuing education providers.

(b) After a thorough case review, if the board recognized accreditation agency denies, suspends, places on probation with terms or conditions, or revokes its approval of a provider, it shall give the applicant or provider written notice setting forth its reasons for the denial, suspension, placing on probation with terms and conditions, or revocation. The applicant or provider may appeal the action in writing within fifteen (15) days after receipt of the notice, and request a hearing before a panel appointed by the recognized accreditation agency. A suspension or revocation of approval shall be stayed upon the filing of an appeal. A denial of approval shall not be stayed.

The panel shall consist of three persons who have not been involved in the determination to deny, suspend or revoke the approval of the applicant or provider. The panel shall hear the appeal within 60 days of the receipt of the appeal, and maintain a record of the proceedings. A decision in writing shall be issued within 30 days of the date of the hearing.

If the appointed panel sustains the denial, placing on probation with terms and conditions, suspension or revocation, the applicant or provider may appeal the decision of the panel to a Continuing Education Appeals Committee (CE Appeals Committee) of the board. The CE Appeals Committee shall be

appointed by the board's president and consist of two board members, one public member and one licensed psychologist member. The appeal must be filed with the board within seven (7) days after receipt of the panel's decision. Upon filing of the appeal, the CE Appeals Committee chairperson shall have discretion to extend the stay of the suspension or revocation. The hearing of the CE Appeals Committee shall take place at a date and location established by the Committee chairperson, the date not to exceed 60 days from the date of the filing of the appeal. The record of the panel's hearing shall be made available to the CE Appeals Committee. The Committee shall issue a written decision within 30 days of the date of the hearing.

The decision of the CE Appeals Committee is final. An applicant or provider who has had his or her application or provider status denied or revoked may not reapply for provider status for a period of one year from the date of the CE Appeals Committee's decision.

NOTE: Authority cited: Sections 2915 and 2930, Business and Professions Code. Reference: Section 2915, Business and Professions Code.

History

1. New section filed 7-6-2001; operative 8-5-2001 (Register 2001, No. 27).

2. New first paragraph adding sunset provisions filed 2-16-2012; operative 3-17-2012 (Register 2012, No. 7).

EXTRACTED FROM
CIVIL CODE

DIVISION 1
Persons
PART 2
Personal Rights

§ 43.8. Immunity as to communication in aid of evaluation of practitioner of healing or veterinary arts

(a) In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of that person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric, psychology, marriage and family therapy, professional clinical counselor, or veterinary school, professional licensing board or division, committee or panel of a licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when the communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts.

(b) The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege that may be afforded by Section 47.

(c) Nothing in this section is intended in any way to affect the California Supreme Court's decision in Hassan v. Mercy American River Hospital (2003) 31 Cal.4th 709, holding that subdivision (a) provides a qualified privilege.

Added Stats 1974 ch 1086 § 1. Amended Stats 1975 2d Ex Sess ch 1 § 24.4; Stats 1976 ch 532 § 2; Stats 1977 ch 934 § 2; Stats 1982 ch 234 § 3, effective June 2, 1982, ch 705 § 2; Stats 1983 ch 1081 § 2; Stats 1984 ch 515 § 4; Stats 1983 ch 1081 § 2, operative January 1, 1990; Stats 1990 ch 1597 § 30 (SB 2375); Stats 2002 ch 664 § 31 (AB 3034); Stats 2007 ch 36 § 1 (SB 822), effective January 1, 2008; Stats 2008 ch 23 § 1 (AB 164), effective January 1, 2009; Stats 2011 ch 381 § 15 (SB 146), effective January 1, 2012.

§ 43.92. Psychotherapist's duty to protect of patient's violent behavior; Immunity from liability; Legislative intent

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist who, under the limited circumstances specified in subdivision (a), discharges his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

(c) It is the intent of the Legislature that the amendments made by the act adding this subdivision only change the name of the duty referenced in this section from a duty to warn and protect to a duty to protect. Nothing in this section shall be construed to be a substantive change, and any duty of a psychotherapist shall not be modified as a result of changing the wording in this section.

(d) It is the intent of the Legislature that a court interpret this section, as amended by the act adding this subdivision, in a manner consistent with the interpretation of this section as it read prior to January 1, 2013.

Added Stats 1985 ch 737 § 1. Amended Stats 2006 ch 136 § 1 (AB 733), effective January 1, 2007; Stats 2012 ch 149 § 1 (SB 1134), effective January 1, 2013.

§ 43.93. Patient's action against psychotherapist for sexual contact

(a) For the purposes of this section the following definitions are applicable:

(1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist intern or trainee, an educational psychologist, an associate clinical social worker, a licensed clinical social worker, a professional clinical counselor, or a registered clinical counselor intern or trainee.

(3) "Sexual contact" means the touching of an intimate part of another person. "Intimate part" and "touching" have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) "Therapeutic relationship" exists during the time the patient or client is rendered professional service by the psychotherapist.

(5) "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for

therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

Added Stats 1987 ch 1474 § 1. Amended Stats 1992 ch 890 § 5 (SB 1394); Stats 1993 ch 589 § 19 (AB 2211); Stats 2002 ch 1013 § 73 (SB 2026); Stats 2011 ch 381 § 16 (SB 146), effective January 1, 2012.

PART 2.6

Confidentiality of Medical Information

CHAPTER 2

Disclosure of Medical Information by Providers

§ 56.10. Authorization for disclosure; When disclosure compelled; When disclosure allowed; Prohibitions

(a) A provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a medical examiner, forensic pathologist, or coroner, when requested in the course of an investigation by a medical examiner, forensic pathologist, or coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or upon notification of, or investigation of, imminent deaths that may involve organ or tissue donation pursuant to Section 7151.15 of the Health and Safety Code, or when otherwise authorized by the decedent's representative. Medical information requested by a medical examiner, forensic pathologist, or coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation or who is the prospective donor and shall be disclosed to a medical examiner, forensic pathologist, or coroner without delay upon request. A medical examiner, forensic pathologist, or coroner shall not disclose the information contained in the medical record obtained pursuant to this paragraph to a third party without a court order or authorization pursuant to paragraph (4) of subdivision (c) of Section 56.11.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative

services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or a health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or a health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(6) The information may be disclosed to a medical examiner, forensic pathologist, or county coroner in the course of an investigation by a medical examiner, forensic pathologist, or coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b). A medical examiner, forensic pathologist, or coroner shall not disclose the information contained in the medical record obtained pursuant to this paragraph to a third party without a court order or authorization pursuant to paragraph (4) of subdivision (c) of Section 56.11.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or a health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code by a person making a report pursuant to Sections 11165.9 and 11166 of the Penal Code, provided that those disclosures concern a report made by that person.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information

so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. This paragraph does not require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(21)(A) The information may be disclosed to an employee welfare benefit plan, as defined under Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)), which is formed under Section 302(c)(5) of the Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare benefit plan provides medical care, and may also be disclosed to an entity contracting with the employee welfare benefit plan for billing, claims management, medical data processing, or other administrative services related to the provision of medical care to persons enrolled in the employee welfare benefit plan for health care coverage, if all of the following conditions are met:

(i) The disclosure is for the purpose of determining eligibility, coordinating benefits, or allowing the employee welfare benefit plan or the contracting entity to advocate on the behalf of a patient or enrollee with a provider, a health care service plan, or a state or federal regulatory agency.

(ii) The request for the information is accompanied by a written authorization for the release of the information submitted in a manner consistent with subdivision (a) and Section 56.11.

(iii) The disclosure is authorized by and made in a manner consistent with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(iv) Any information disclosed is not further used or disclosed by the recipient in any way that would directly or indirectly violate this part or the restrictions imposed by Part 164 of Title 45 of the Code of Federal Regulations, including the manipulation of the information in any way that might reveal individually identifiable medical information.

(B) For purposes of this paragraph, Section 1374.8 of the Health and Safety Code shall not apply.

(22) Information may be disclosed pursuant to subdivision (a) of Section 15633.5 of the Welfare and Institutions Code by a person required to make a report pursuant to Section 15630 of the Welfare and Institutions Code, provided that the disclosure under subdivision (a) of Section 15633.5 concerns a report made by that person. Covered entities, as they are defined in Section 160.103 of Title 45 of the Code of Federal Regulations, shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) privacy rule pursuant to subsection (c) of Section 164.512 of Title 45 of the Code of Federal Regulations if the disclosure is not for the purpose of public health surveillance, investigation, intervention, or reporting an injury or death.

(d) Except to the extent expressly authorized by a patient, enrollee, or subscriber, or as provided by subdivisions (b) and (c), a provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing, or otherwise use medical information for a purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a contractor or corporation and its subsidiaries and affiliates shall not further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to a person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

(f) For purposes of this section, a reference to a "medical examiner, forensic pathologist, or coroner" means a coroner or deputy coroner as described in subdivision (c) of Section 830.35 of the Penal Code, or a licensed physician who currently performs official autopsies on behalf of a county coroner's office or a medical examiner's office, whether as a government employee or under contract to that office.

Added Stats 2000 ch 1068 § 1.16 (AB 1836), operative January 1, 2003. Amended Stats 2002 ch 123 § 1 (AB 1958); Stats 2003 ch 562 § 2 (AB 715); Stats 2006 ch 874 § 2 (SB 1430), effective January 1, 2007; Stats 2007 ch 506 § 1 (AB 1178) (ch 553 prevails), effective January 1, 2008; Stats 2007 ch 552 § 2 (AB 1687) (ch 553 prevails), effective January 1, 2008; Stats 2007 ch 553 § 1.9 (AB 1727), effective January 1, 2008; Stats 2008 ch 179 § 27 (SB 1498), effective January 1, 2009; Stats 2009 ch 493 § 1 (AB 952), effective January 1, 2010; Stats 2010 ch 540 § 1 (AB 2028), effective January 1,

2011; Stats 2013 ch 341 § 1 (AB 1297), effective January 1, 2014; Stats 2016 ch 690 § 1 (AB 2119), effective January 1, 2017.

§ 56.103. Disclosure of minor's medical information or minor's mental health condition for purpose of coordinating health care services and medical treatment

(a) A provider of health care may disclose medical information to a county social worker, a probation officer, a foster care public health nurse acting pursuant to Section 16501.3 of the Welfare and Institutions Code, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor, including, but not limited to, the sharing of information related to screenings, assessments, and laboratory tests necessary to monitor the administration of psychotropic medications.

(b) For purposes of this section, health care services and medical treatment includes one or more providers of health care providing, coordinating, or managing health care and related services, including, but not limited to, a provider of health care coordinating health care with a third party, consultation between providers of health care and medical treatment relating to a minor, or a provider of health care referring a minor for health care services to another provider of health care.

(c) For purposes of this section, a county social worker, a probation officer, foster care public health nurse, or any other person who is legally authorized to have custody or care of a minor shall be considered a third party who may receive any of the following:

(1) Medical information described in Sections 56.05 and 56.10.

(2) Protected health information described in Section 160.103 of Title 45 of the Code of Federal Regulations.

(d) Medical information disclosed to a county social worker, probation officer, foster care public health nurse, or any other person who is legally authorized to have custody or care of a minor shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment of the minor and the disclosure is authorized by law. Medical information disclosed pursuant to this section may not be admitted into evidence in any criminal or delinquency proceeding against the minor. Nothing in this subdivision shall prohibit identical evidence from being admissible in a criminal proceeding if that evidence is derived solely from lawful means other than this section and is permitted by law.

(e)(1) Notwithstanding Section 56.104, if a provider of health care determines that the disclosure of medical information concerning the diagnosis and treatment of a mental health condition of a minor is reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor, that information may be disclosed to a county social worker, probation officer, foster care public health nurse, or any other person who is legally authorized to have custody or care of the minor. The information shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law.

(2) As used in this subdivision, "medical information" does not include psychotherapy notes as defined in Section 164.501 of Title 45 of the Code of Federal Regulations.

(f) The disclosure of information pursuant to this section is not intended to limit the disclosure of information when that disclosure is otherwise required by law.

(g) For purposes of this section, "minor" means a minor taken into temporary custody or as to whom a petition has been filed with the court, or who has been adjudged to be a dependent child or ward of the juvenile court pursuant to Section 300 or 601 of the Welfare and Institutions Code.

(h)(1) Except as described in paragraph (1) of subdivision (e), nothing in this section shall be construed to limit or otherwise affect existing privacy protections provided for in state or federal law.

(2) Nothing in this section shall be construed to expand the authority of a social worker, probation officer, foster care public health nurse, or custodial caregiver beyond the authority provided under existing law to a parent or a patient representative regarding access to medical information.

Added Stats 2007 ch 552 § 3 (AB 1687), effective January 1, 2008. Amended Stats 2008 ch 699 § 1 (SB 1241), ch 700 § 1 (AB 2352) (ch 700 prevails), effective January 1, 2009; Stats 2015 ch 535 § 1 (SB 319), effective January 1, 2016.

§ 56.106. Disclosure or release of information on minor removed from physical custody of parent or guardian; Restrictions; Applicability

(a) Notwithstanding Section 3025 of the Family Code, paragraph (2) of subdivision (c) of Section 56.11, or any other provision of law, a psychotherapist who knows that a minor has been removed from the custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall not release the mental health records of the minor patient and shall not disclose mental health information about that minor patient based upon an authorization to release those records signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or the information about the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) When the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient under the circumstances described in subdivision (a), the parent or guardian seeking the release of the minor's records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding

the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient. Liability for a psychotherapist's decision not to release the mental health records of the minor patient or not to disclose information about the minor patient pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code when a parent or guardian presents the minor's psychotherapist with an authorization to release information or the mental health records regarding the minor patient.

Added Stats 2012 ch 657 § 1 (SB 1407), effective January 1, 2013.

§ 56.11. Form and contents of authorization

Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, except as provided in paragraph (21) of subdivision (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

Added Stats 1981 ch 782 § 2. Amended Stats 1999 ch 526 § 4 (SB 19); Stats 2000 ch 1066 § 3 (SB 1903); Stats 2002 ch 853 § 4 (AB 2191); Stats 2003 ch 562 § 3 (AB 715); Stats 2009 ch 493 § 2 (AB 952), effective January 1, 2010.

CHAPTER 3

Use and Disclosure of Medical Information by Employers

§ 56.20. Confidentiality; Necessity of authorization

(a) Each employer who receives medical information shall establish appropriate procedures to ensure the confidentiality and protection from unauthorized use and disclosure of that information. These procedures may include, but are not limited to, instruction regarding confidentiality of employees and agents handling files containing medical information, and security systems restricting access to files containing medical information.

(b) No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization under this part. However, nothing in this section shall prohibit an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization under this part.

(c) No employer shall use, disclose, or knowingly permit its employees or agents to use or disclose medical information which the employer possesses pertaining to its employees without the patient having first signed an authorization under Section 56.11 or Section 56.21 permitting such use or disclosure, except as follows:

(1) The information may be disclosed if the disclosure is compelled by judicial or administrative process or by any other specific provision of law.

(2) That part of the information which is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment may be used or disclosed in connection with that proceeding.

(3) The information may be used only for the purpose of administering and maintaining employee benefit plans, including health care plans and plans providing short–term and long–term disability income, workers' compensation and for determining eligibility for paid and unpaid leave from work for medical reasons.

(4) The information may be disclosed to a provider of health care or other health care professional or facility to aid the diagnosis or treatment of the patient, where the patient or other person specified in subdivision (c) of Section 56.21 is unable to authorize the disclosure.

(d) If an employer agrees in writing with one or more of its employees or maintains a written policy which provides that particular types of medical information shall not be used or disclosed by the employer in particular ways, the employer shall obtain an authorization for such uses or disclosures even if an authorization would not otherwise be required by subdivision (c).

Added Stats 1981 ch 782 § 2.

§ 56.21. Form and contents of authorization

An authorization for an employer to disclose medical information shall be valid if it complies with all of the following:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature that serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information that pertains to a competent minor and that was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(3) The beneficiary or personal representative of a deceased patient.

(d) States the limitations, if any, on the types of medical information to be disclosed.

(e) States the name or functions of the employer or person authorized to disclose the medical information.

(f) States the names or functions of the persons or entities authorized to receive the medical information.

(g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the employer is no longer authorized to disclose the medical information.

(i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

Added Stats 1981 ch 782 § 2. Amended Stats 2003 ch 562 § 5 (AB 715); Stats 2006 ch 538 § 39 (SB 1852), effective January 1, 2007.

EXTRACTED FROM
CORPORATIONS CODE

TITLE 1
Corporations
DIVISION 3
Corporations for Specific Purposes
PART 4
Professional Corporations

§ 13400. Citation of part

This part shall be known and may be cited as the "Moscone-Knox Professional Corporation Act."

Added Stats 1968 ch 1375 § 9.

§ 13401. Definitions

As used in this part:

(a) "Professional services" means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the Dental Hygiene Committee of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is, or intends to become, an officer, director, shareholder, or employee.

(e) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

Added Stats 1968 ch 1375 § 9. Amended Stats 1970 ch 1110 § 3, operative July 1, 1971; Stats 1977 ch 1126 § 3; Stats 1979 ch 472 § 2; Stats 1980 ch 1314 § 16; Stats 1981 ch 383 § 2; Stats 1985 ch 220 § 2, ch 1578 § 2; Stats 1987 ch 571 § 7; Stats 1988 ch 1448 § 28.5; Stats 1989 ch 886 § 82; Stats 1991 ch 566 § 20 (AB 766); Stats 1992 ch 1289 § 50 (AB 2743); Stats 1993 ch 910 § 2 (SB 687), ch 955 § 5.3 (SB 312); Stats 1994 ch 26 § 225 (AB 1807), effective March 30, 1994 (ch 26 prevails), ch 1010 § 66.1 (SB 2053); Stats 1995 ch 60 § 43 (SB 42), effective July 6, 1995; Stats 1997 ch 168 § 8 (AB 348); Stats 1999 ch 657 § 34 (AB 1677); Stats 2000 ch 197 § 4 (SB 1636), ch 836 § 51 (SB 1554); Stats 2004 ch 695 § 51 (SB 1913); Stats 2006 ch 564 § 17 (AB 2256), effective January 1, 2007; Stats 2015 ch 516 § 3 (AB 502), effective January 1, 2016.

§ 13401.3. "Professional services"

As used in this part, "professional services" also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).

Added Stats 2000 ch 508 § 1 (SB 1967). Amended Stats 2001 ch 597 § 1 (AB 1706).

§ 13401.5. Licensees as shareholders, officers, directors, or employees

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation. This section does not limit employment by a professional corporation designated in this section to only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section.

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(12) Licensed physical therapists.
(13) Licensed pharmacists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(10) Licensed professional clinical counselors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(g) Marriage and family therapist corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.

(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(10) Licensed professional clinical counselors.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.

(11) Licensed professional clinical counselors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage and family therapists.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(12) Licensed professional clinical counselors.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.
(o) Professional clinical counselor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Licensed marriage and family therapists.
(5) Registered nurses.
(6) Licensed chiropractors.
(7) Licensed acupuncturists.
(8) Naturopathic doctors.
(p) Physical therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(5) Licensed occupational therapists.
(6) Licensed speech-language therapists.
(7) Licensed audiologists.
(8) Registered nurses.
(9) Licensed psychologists.
(10) Licensed physician assistants.
(q) Registered dental hygienist in alternative practice corporation.
(1) Registered dental assistants.
(2) Licensed dentists.
(3) Registered dental hygienists.
(4) Registered dental hygienists in extended functions.

Added Stats 1980 ch 1314 § 17.1. Amended Stats 1981 ch 621 § 5; Stats 1982 ch 1304 § 3, ch 1315 § 1; Stats 1983 ch 1026 § 23, ch 1084 § 1; Stats 1988 ch 507 § 1; Stats 1990 ch 1691 § 1 (AB 3324);

Stats 1994 ch 26 § 226 (AB 1807), effective March 30, 1994, ch 815 § 2 (SB 1279); Stats 1997 ch 758 § 84 (SB 1346); Stats 1998 ch 175 § 1 (AB 2120); Stats 2002 ch 1013 § 75 (SB 2026); Stats 2003 ch 485 § 6 (SB 907), ch 549 § 4 (AB 123); Stats 2004 ch 183 § 50 (AB 3082); Stats 2011 ch 381 § 18 (SB 146), effective January 1, 2012; Stats 2013 ch 620 § 6 (AB 1000), effective January 1, 2014; Stats 2015 ch 516 § 4 (AB 502), effective January 1, 2016; Stats 2016 ch 484 § 53 (SB 1193), effective January 1, 2017.

§ 13402. Corporation rendering services other than pursuant to this part; Conduct of business by corporation not professional corporation

(a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1985 ch 1578 § 3; Stats 1988 ch 919 § 13.

§ 13403. General Corporation Law; Applicability

The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

Added Stats 1968 ch 1375 § 9. Amended Stats 1979 ch 711 § 12; Stats 1980 ch 36 § 1.

§ 13404. Formation; Certificate of registration

A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for the purposes of qualifying as

a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1970 ch 1110 § 4, operative July 1, 1971; Stats 1980 ch 1314 § 18; Stats 1993 ch 955 § 6 (SB 312).

§ 13404.5. Certificate of registration to transact intrastate business; Liability of shareholders

(a) A foreign professional corporation may qualify as a foreign corporation to transact intrastate business in this state in accordance with Chapter 21 (commencing with Section 2100) of Division 1. A foreign professional corporation shall be subject to the provisions of the General Corporation Law applicable to foreign corporations, except where those provisions are in conflict with or inconsistent with the provisions of this part. The statement and designation filed by the foreign professional corporation pursuant to Section 2105 shall contain a specific statement that the corporation is a foreign professional corporation within the meaning of this part.

(b) No foreign professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which that corporation proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code expressly authorizing those professional services to be rendered by a foreign professional corporation.

(c) If the California board, commission, or other agency that prescribes the rules or regulations governing a particular profession either now or hereafter requires that the shareholders of the professional corporation bear any degree of personal liability for the acts of the corporation, either by personal guarantee or in some other form that the governing agency prescribes, the shareholders of a foreign corporation that has been qualified to do business in this state in the same profession shall, as a condition of doing business in this state, be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, as is prescribed by the governing agency for shareholders of a California professional corporation rendering services in the same profession.

(d) Each application by a foreign professional corporation to qualify to do business in this state shall contain the following statement:

"The shareholders of the undersigned foreign professional corporation shall be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, in California as is from time to time prescribed by the agency governing the profession in this state for sharehold-

ers in a California professional corporation rendering services in the same profession. This application accordingly constitutes a submission to the jurisdiction of the courts of California to the same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business in this state."

Added Stats 1993 ch 910 § 3 (SB 687).

§ 13405. License requirement for persons rendering professional services; Employment of nonlicensed personnel

(a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 4 (SB 687).

§ 13406. Professional corporations; Stock; Financial statements; Voting; Nonprofit law corporations

(a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or

jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 5 (SB 687), ch 955 § 7.5 (SB 312).

§ 13407. Transfer of shares; Restriction; Purchase by corporation; Suspension or revocation of certificate

Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 6 (SB 687); Stats 2007 ch 433 § 4 (SB 387), effective January 1, 2008.

§ 13408. Specification of grounds for suspension or revocation of certificate

The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 7 (SB 687).

§ 13408.5. Fee splitting, kickbacks, or similar practices

No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Health Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

Added Stats 1977 ch 1126 § 4. Amended Stats 1999 ch 525 § 9 (AB 78), operative July 1, 2000; Stats 2000 ch 857 § 7 (AB 2903).

§ 13409. Name of corporation; Provisions governing

(a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the

name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

Added Stats 1968 ch 1375 § 9. Amended Stats 1976 ch 641 § 42, effective January 1, 1977; Stats 1993 ch 910 § 8 (SB 687).

§ 13410. Disciplinary rules and regulations

(a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

(1) Being a shareholder, director, officer, or employee of the corporation.

(2) Rendering services in any profession in which he or she is a disqualified person.

(3) Participating in the management of the corporation.

(4) Sharing in the income of the corporation.

Added Stats 1968 ch 1375 § 9. Amended Stats 1993 ch 910 § 10 (SB 687).

EXTRACTED FROM
EDUCATION CODE

TITLE 3
Postsecondary Education

DIVISION 10
Private Postsecondary and Higher Education Institutions

PART 59
Private Postsecondary and Higher Education Institutions

CHAPTER 7
Private Postsecondary and Vocational Institutions [Repealed]

ARTICLE 2
Definitions [Repealed]

Misc.

§ 94718. [Section repealed 2008.]

Added Stats 1997 ch 78 § 4 (AB 71). Repealed January 1, 2008, by the terms of former Ed C § 94999. The repealed section related to "Approval" or "approval to operate".

CHAPTER 8
Private Postsecondary Institutions [Repealed January 1, 2021]

ARTICLE 3
Definitions

§ 94823.5. (Repealed January 1, 2021) "Change of location"

"Change of location" means a move or relocation more than 10 miles from the site at which the institution offers instruction.

Added Stats 2009 ch 310 § 6 (AB 48), effective January 1, 2010, repealed January 1, 2015. Amended Stats 2014 ch 840 § 41 (SB 1247), effective January 1, 2015, repealed January 1, 2017; Stats 2016 ch 593 § 28 (SB 1192), effective January 1, 2017, repealed January 1, 2021 (repealer amended).

ARTICLE 4
Exemptions

§ 94874. (Repealed January 1, 2021) Exempted institutions

Except as provided in Sections 94874.2 and 94874.7, the following are exempt from this chapter:

(a) An institution that offers solely avocational or recreational educational programs.

(b)(1) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(2)(A) Except as provided in subparagraph (B), a bona fide organization, association, or council that offers preapprenticeship training programs, on behalf of one or more Division of Apprenticeship Standards-approved labor-management apprenticeship programs that satisfies one of the following conditions:

(i) It is not on the Eligible Training Provider List established and maintained by the California Workforce Investment Board but has met the requirements for placement on the list.

(ii) It is on the Eligible Training Provider List established and maintained by the California Workforce Investment Board and meets the requirements for continued listing.

(B) If an organization, association, or council has been removed from the Eligible Training Provider List established and maintained by the California Workforce Investment Board for failure to meet performance standards, it is not exempt until it meets all applicable performance standards.

(c) A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.

(d) An institution offering either of the following:

(1) Test preparation for examinations required for admission to a postsecondary educational institution.

(2) Continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, occupation, trade, or career field.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field.

(C) A bona fide trade, business, or professional organization.

(e)(1) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, that meets all of the following requirements:

(A) The instruction is limited to the principles of that religious organization, or to courses offered pursuant to Section 2789 of Business and Professions Code.

(B) The diploma or degree is limited to evidence of completion of that education.

(2) An institution operating under this subdivision shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization.

(3) An institution operating under this subdivision shall not award degrees in any area of physical science.

(4) Any degree or diploma granted under this subdivision shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area.

(5) A degree awarded under this subdivision shall reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

(f) An institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars ($2,500) or less when no part of the total charges is paid from state or federal student financial aid programs. The bureau may adjust this cost threshold based upon the California Consumer Price Index and post notification of the adjusted cost threshold on its Internet Web site, as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of this chapter.

(g) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners, pursuant to Sections 6046.7 and 6060.7 of the Business and Professions Code.

(h) A nonprofit public benefit corporation that satisfies all of the following criteria:

(1) Is qualified under Section 501(c)(3) of the United States Internal Revenue Code.

(2) Is organized specifically to provide workforce development or rehabilitation services.

(3) Is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.

(i) An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(j) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration regulations and meet both of the following criteria:

(1) The flight instruction provider or program does not require students to enter into written or oral contracts of indebtedness.

(2) The flight instruction provider or program does not require or accept prepayment of instruction-related costs in excess of two thousand five hundred dollars ($2,500).

Added Stats 2009 ch 310 § 6 (AB 48), effective January 1, 2010, repealed January 1, 2015. Amended Stats 2011 ch 309 § 1 (SB 619), effective September 21, 2011; Stats 2014 ch 840 §§ 9, 41 (SB 1247), effective January 1, 2015, repealed January 1, 2017; Stats 2015 ch 558 § 1 (AB 509), effective January 1, 2016; Stats 2016 ch 593 §§ 5, 28 (SB 1192), effective January 1, 2017, repealed January 1, 2021 (repealer amended).

ARTICLE 6
Approval to Operate

§ 94886. (Repealed January 1, 2021) Approval to operate required

Except as exempted in Article 4 (commencing with Section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802), a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.

Added Stats 2009 ch 310 § 6 (AB 48), effective January 1, 2010, repealed January 1, 2015. Amended Stats 2014 ch 840 § 41 (SB 1247), effective January 1, 2015, repealed January 1, 2017; Stats 2016 ch 593 § 28 (SB 1192), effective January 1, 2017, repealed January 1, 2021 (repealer amended).

EXTRACTED FROM
EVIDENCE CODE

DIVISION 8
Privileges

CHAPTER 1
Definitions

§ 901. "Proceeding"

"Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

CHAPTER 4
Particular Privileges

ARTICLE 7
Psychotherapist–Patient Privilege

Misc.

§ 1010. "Psychotherapist"

As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon

certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under supervision as specified in Section 4996.23 of the Business and Professions Code.

(h) A person registered with the Board of Psychology as a registered psychologist who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 of, or subdivision (c) of Section 4980.37 of, the Business and Professions Code and is supervised by a licensed psychologist, a board certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(*l*) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

(n) A person licensed as a professional clinical counselor under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(o) A person registered as a clinical counselor intern who is under the supervision of a licensed professional clinical counselor, a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry, as specified in Sections 4999.42 to 4999.46, inclusive, of the Business and Professions Code.

(p) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by paragraph (3) of subdivision (c) of Section 4999.32 of, or paragraph (3) of subdivision (c) of Section 4999.33 of, the Business and Professions Code, and is supervised by a licensed psychologist, a board-certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1967 ch 1677 § 3; Stats 1970 ch 1396 § 1.5, ch 1397 § 1.5; Stats 1972 ch 888 § 1; 1974 ch 546 § 6; Stats 1983 ch 928 § 8; Stats 1987 ch 724 § 1; Stats 1988 ch 488 § 1; Stats 1989 ch 1104 § 37; Stats 1990 ch 662 § 1 (AB 3613); Stats 1992 ch 308 § 2 (AB 3035); Stats 1994 ch 1270 § 1 (AB 2659); Stats 2001 ch 142 § 1 (SB 716), ch 420 § 1 (AB 1253), effective October 2, 2001, inoperative January 1, 2002, ch 420 § 1.5 (AB 1253), effective October 2, 2001, operative January 1, 2002; Stats 2009 ch 26 § 21 (SB 33), effective

January 1, 2010; Stats 2011 ch 381 § 21 (SB 146), effective January 1, 2012; Stats 2015 ch 529 § 4 (AB 1374), effective January 1, 2016; Stats 2016 ch 86 § 126 (SB 1171), effective January 1, 2017.

§ 1010.5. Communication between patient and educational psychologist

A communication between a patient and an educational psychologist, licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, shall be privileged to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist described in subdivisions (c), (d), and (e) of Section 1010.

Added Stats 1985 ch 545 § 1.

§ 1011. "Patient"

As used in this article, "patient" means a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition or who submits to an examination of his mental or emotional condition for the purpose of scientific research on mental or emotional problems.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1012. "Confidential communication between patient and psychotherapist"

As used in this article, "confidential communication between patient and psychotherapist" means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1967 ch 650 § 5; Stats 1970 ch 1396 § 2, ch 1397 § 2.

§ 1013. "Holder of the privilege"

As used in this article, "holder of the privilege" means:

(a) The patient when he has no guardian or conservator.

(b) A guardian or conservator of the patient when the patient has a guardian or conservator.

(c) The personal representative of the patient if the patient is dead.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1014. Psychotherapist–patient privilege

Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapist corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, or a professional clinical counselor corporation as defined in Article 7 (commencing with Section 4999.123) of Chapter 16 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations, and other groups and entities.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1969 ch 871 § 1; Stats 1972 ch 1286 § 6; Stats 1989 ch 1104 § 38; Stats 1990 ch 605 § 1 (SB 2245); Stats 1994 ch 1010 § 106 (SB 2053); Stats 2002 ch 1013 § 78 (SB 2026); Stats 2011 ch 381 § 22 (SB 146), effective January 1, 2012.

§ 1015. When psychotherapist required to claim privilege

The psychotherapist who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1016. Patient–litigant exception

There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

(d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1017. Exception where psychotherapist is appointed by court or Board of Prison Terms

(a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to

provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.

(b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1967 ch 650 § 6; Stats 1987 ch 687 § 1.

§ 1018. Crime or tort

There is no privilege under this article if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1019. Parties claiming through deceased patient

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1020. Breach of duty arising out of psychotherapist–patient relationship

There is no privilege under this article as to a communication relevant to an issue of breach, by the psychotherapist or by the patient, of a duty arising out of the psychotherapist–patient relationship.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1023. Proceeding to determine sanity of criminal defendant

There is no privilege under this article in a proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code initiated at the request of the defendant in a criminal action to determine his sanity.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1024. Patient dangerous to self or others

There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1025. Proceeding to establish competence

There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1026. Required report

There is no privilege under this article as to information that the psychotherapist or the patient is required to report to a public employee or as to

information required to be recorded in a public office, if such report or record is open to public inspection.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 1027. Exception; Patient under 16 who is victim of crime

There is no privilege under this article if all of the following circumstances exist:

(a) The patient is a child under the age of 16.

(b) The psychotherapist has reasonable cause to believe that the patient has been the victim of a crime and that disclosure of the communication is in the best interest of the child.

Added Stats 1970 ch 1397 § 3.

ARTICLE 9

Official Information and Identity of Informer

§ 1040. Privilege for official information

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(c) Notwithstanding any other law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with subdivision (i) of Section 1095 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1984 ch 1127 § 2; Stats 2015 ch 20 § 1 (SB 79), effective June 24, 2015.

EXTRACTED FROM
FAMILY CODE

DIVISION 8
Custody of Children
PART 2
Right to Custody of Minor Child
CHAPTER 1
General Provisions

§ 3025.5. Confidentiality of psychological evaluations of child involved in custody or visitation rights proceedings

(a) In a proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section 3110) of this partand a recommendation made to the court pursuant to Section 3183, that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to the following persons:

(1) A party to the proceeding and his or her attorney.

(2) A federal or state law enforcement officer, the licensing entity of a child custody evaluator, a judicial officer, court employee, or family court facilitator of the superior court of the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.

(3) Counsel appointed for the child pursuant to Section 3150.

(4) Any other person upon order of the court for good cause.

(b) Confidential information contained in a report prepared pursuant to Section 3111 that is disclosed to the licensing entity of a child custody evaluator pursuant to subdivision (a) shall remain confidential and shall only be used for purposes of investigating allegations of unprofessional conduct by the child custody evaluator, or in a criminal, civil, or administrative proceeding involving the child custody evaluator. All confidential information, including, but not limited to, the identity of any minors, shall retain their confidential nature in any criminal, civil, or administrative proceeding resulting from the investigation of unprofessional conduct and shall be sealed at the conclusion of the proceeding and shall not subsequently be released. Names that are confidential shall be listed in attachments separate from the general pleadings. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the licensing entity decides that no further action will be taken in the matter of suspected licensing violations.

Added Stats 2004 ch 102 § 1 (SB 1284). Amended Stats 2012 ch 470 § 17 (AB 1529), effective January 1, 2013; Stats 2014 ch 283 § 2 (AB 1843), effective January 1, 2015.

CHAPTER 6
Custody Investigation and Report

§ 3111. Appointment of child custody evaluator; Evaluation and report; Availability; Use in evidence; Unwarranted disclosure; Adoption of form

(a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. A child custody evaluation, investigation, or assessment, and any resulting report, may be considered by the court only if it is conducted in accordance with the requirements set forth in the standards adopted by the Judicial Council pursuant to Section 3117; however, this does not preclude the consideration of a child custody evaluation report that contains nonsubstantive or inconsequential errors or both.

(b) The report shall not be made available other than as provided in subdivision (a) or Section 3025.5, or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

Added Stats 1993 ch 219 § 116.81 (AB 1500). Amended Stats 1996 ch 761 § 1 (SB 1995); Stats 1999 ch 932 § 2 (SB 433); Stats 2002 ch 1008 § 16 (AB 3028); Stats 2004 ch 574 § 1 (AB 2228); Stats 2005 ch 22 § 62 (SB 1108), effective January 1, 2006; Stats 2008 ch 215 § 1 (AB 1877), effective January 1, 2009; Stats 2014 ch 283 § 3 (AB 1843), effective January 1, 2015; Stats 2015 ch 130 § 1 (SB 594), effective January 1, 2016.

DIVISION 11
Minors

PART 4
Medical Treatment

CHAPTER 3
Consent by Minor

§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or guardian

Subject to the limitations provided in this chapter, notwithstanding any other provision of law, a minor may consent to the matters provided in this chapter, and the consent of the minor's parent or guardian is not necessary.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994.

§ 6921. Minor's consent not subject to disaffirmance

A consent given by a minor under this chapter is not subject to disaffirmance because of minority.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994.

§ 6922. Consent by minor 15 or older living separately

(a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994.

§ 6924. Consent by minor to mental health treatment or counseling or residential shelter services

(a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A person registered as a marriage and family therapist intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (g) of Section 4980.03 of the Business and Professions Code.

(H) A licensed professional clinical counselor, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(I) A person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code.

(3) "Residential shelter services" means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994. Amended Stats 1993 ch 219 § 155 (AB 1500); Stats 2000 ch 519 § 1 (AB 2161); Stats 2009 ch 26 § 22 (SB 33), effective January 1, 2010; Stats 2011 ch 381 § 25 (SB 146), effective January 1, 2012.

§ 6925. Consent by minor to pregnancy treatment

(a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994. Amended Stats 1996 ch 1023 § 46 (SB 1497), effective September 29, 1996.

§ 6926. Consent by minor to treatment for communicable disease or prevention of sexually transmitted disease

(a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted

pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Public Health Officer.

(b) A minor who is 12 years of age or older may consent to medical care related to the prevention of a sexually transmitted disease.

(c) The minor's parents or guardian are not liable for payment for medical care provided pursuant to this section.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994. Amended Stats 2011 ch 652 § 1 (AB 499), effective January 1, 2012.

§ 6927. Consent by rape victim to treatment

A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994.

§ 6928. Consent by assault victim to treatment

(a) "Sexually assaulted" as used in this section includes, but is not limited to, conduct coming within Section 261, 286, or 288a of the Penal Code.

(b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.

(c) The professional person providing medical treatment shall attempt to contact the minor's parent or guardian and shall note in the minor's treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful. This subdivision does not apply if the professional person reasonably believes that the minor's parent or guardian committed the sexual assault on the minor.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994.

§ 6929. Consent by minor to drug or alcohol treatment; Involvement, liability and rights of parent or guardian

(a) As used in this section:

(1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) "LAAM" means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, professional clinical counselor, marriage and family therapist, registered marriage and family therapist intern when

appropriately employed and supervised pursuant to Section 4980.43 of the Business and Professions Code, psychological assistant when appropriately employed and supervised pursuant to Section 2913 of the Business and Professions Code, associate clinical social worker when appropriately employed and supervised pursuant to Section 4996.18 of the Business and Professions Code, or registered clinical counselor intern when appropriately employed and supervised pursuant to Section 4999.42 of the Business and Professions Code.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician and surgeon shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

Enacted Stats 1992 ch 162 § 10 (AB 2650), operative January 1, 1994. Amended Stats 1995 ch 455 § 1 (AB 1113), effective September 5, 1995; Stats 1996 ch 656 § 1 (AB 2883); Stats 2002 ch 1013 § 79 (SB 2026); Stats 2004 ch 59 § 1 (AB 2182); Stats 2009 ch 26 § 23 (SB 33), effective January 1, 2010; Stats 2011 ch 381 § 26 (SB 146), effective January 1, 2012.

Misc.

EXTRACTED FROM
GOVERNMENT CODE

TITLE 1
GENERAL

DIVISION 4
Public Officers and Employees

CHAPTER 1
General

ARTICLE 2
Disqualifications for Office or Employment

Misc.

§ 1031. Minimum standards for peace officers

Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or university. The high school shall be either a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, an accrediting association holding full membership in the National Council for Private School Accreditation (NCPSA), an organization holding full membership in AdvancED, an organization holding full membership in the Council for American Private Education (CAPE), or an accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations (NFNSSAA).

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

(1) Physical condition shall be evaluated by a licensed physician and surgeon.

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate.

The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

(g) This section shall not be construed to preclude the adoption of additional or higher standards, including age.

Added Stats 2003 ch 777 § 4 (AB 1669), operative January 1, 2005. Amended Stats 2008 ch 699 § 5 (SB 1241), effective January 1, 2009; Stats 2015 ch 499 § 1 (SB 795), effective January 1, 2016.

DIVISION 7
Miscellaneous

CHAPTER 3.5
Inspection of Public Records

ARTICLE 1
General Provisions

§ 6254. Records exempt from disclosure requirements

Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Records contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the

arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2)(A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(B) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This paragraph shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic

examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these

chapters. This subdivision shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q)(1) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

(2) Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

(3) Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u)(1) Information contained in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by

the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v)(1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee.

The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y)(1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after their effective dates.

(B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5)(A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6)(A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7)(A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) This paragraph is not intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

This section does not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

Added Stats 1981 ch 684 § 1.5, effective September 23, 1981, operative January 1, 1982. Amended Stats 1982 ch 83 § 1, effective March 1, 1982, ch 1492 § 2, ch 1594 § 2, effective September 30, 1982; Stats 1983 ch 200 § 1, effective July 12, 1983, ch 621 § 1, ch 955 § 1, ch 1315 § 1; Stats 1984 ch 1516 § 1, effective September 28, 1984; Stats 1985 ch 103 § 1; ch 1218 § 1; Stats 1986 ch 185 § 2; Stats 1987 ch 634 § 1, effective September 14, 1987, ch 635 § 1; Stats 1988 ch 870 § 1, ch 1371 § 2; Stats 1989 ch 191 § 1; Stats 1990 ch 1106 § 2 (SB 2106); Stats 1991 ch 278 § 1.2 (AB 99), effective July 30, 1991, ch 607 § 4 (SB 98); Stats 1992 ch 3 § 1 (AB 1681), effective February 10, 1992, ch 72 § 2 (AB 1525), effective May 28, 1992, ch 1128 § 2 (AB 1672), operative July 1, 1993; Stats 1993 ch 606 § 1 (AB 166), effective October 1, 1993 (ch 1265 prevails); Stats 1993 ch 610 § 1 (AB 6), effective October 1, 1993; Stats 1993 ch 611 § 1 (SB 60), effective October 1, 1993; Stats 1993 ch 1265 § 14 (SB 798); S tats 1994 ch 82 § 1 (AB 2547), ch 1263 § 1.5 (AB 1328); Stats 1995 ch 438 § 1 (AB 985), ch 777 § 2 (AB 958), ch 778 § 1.5 (SB 1059); Stats 1996 ch 1075 § 11 (SB 1444); Stats 1997 ch 623 § 1 (AB 1126); Stats 1998 ch 13 § 1 (AB 487), ch 110 § 1 (AB 1795) (ch 110 prevails), ch 485 § 83 (AB 2803); Stats 2000 ch 184 § 1 (AB 1349); Stats 2001 ch 159 § 105 (SB 662); Stats 2002 ch 175 § 1 (SB 1643); Stats 2003 ch 230 § 1 (AB 1762), effective August 11, 2003, ch 673 § 12 (SB 2); Stats 2004 ch 8 § 1 (AB 1209), effective January 22, 2004, ch 183 § 134 (AB 3082), ch 228 § 2 (SB 1103), effective August 16, 2004, ch 882 § 1 (AB 2445), ch 937 § 2.5 (AB 1933); Stats 2005 ch 22 § 71 (SB 1108), ch 476 § 1 (AB 1495), effective October 4, 2005, ch 670 § 1.5 (SB 922), effective October 7, 2005; Stats 2006 ch 538 § 232 (SB 1852); Stats 2007 ch 577 § 1 (AB 1750), effective October 13, 2007, ch 578 § 1.5 (SB 449); Stats 2008 ch 344 § 1 (SB 1145), effective September 26, 2008, ch 358 § 2 (AB 2810), ch 372 § 1.3 (AB 38), effective January 1, 2009; Stats 2010 ch 32 § 1 (AB 1887) (ch 32 prevails), effective June 29, 2010, ch 178 § 33 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 285 § 7 (AB 1402), effective January 1, 2012. See this section as modified in Governor's Reorganization Plan No. 2 § 85 of 2012. Amended Stats 2012 ch 697 § 1 (AB 2221), effective January 1, 2013; Stats 2013 ch 23 § 2 (AB 82), effective June 27, 2013, ch 352 § 106 (AB 1317), effective September 26, 2013, operative July 1, 2013; Stats 2014 ch 31 § 2 (SB 857), effective June 20, 2014; Stats 2015 ch 303 § 183 (AB 731), effective January 1, 2016; Stats 2016 ch 644 § 1 (AB 2498), effective January 1, 2017.

TITLE 2
Government of the State of California
DIVISION 3
Executive Department
PART 1
State Departments and Agencies
CHAPTER 1
State Agencies
ARTICLE 9
Meetings

§ 11123. Open meeting requirement for state bodies; Meetings by teleconference; Public reporting requirement for actions at meeting

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 7.5; Stats 1994 ch 1153 § 1 (AB 3467); Stats 1997 ch 52 § 1 (AB 1097); Stats 2001 ch 243 § 7 (AB 192); Stats 2014 ch 510 § 1 (AB 2720), effective January 1, 2015.

§ 11124. Prohibited conditions to attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Added Stats 1967 ch 1656 § 122. Amended Stats 1981 ch 968 § 8.

CHAPTER 2

State Departments

ARTICLE 2

Investigations and Hearings

§ 11181. Acts authorized in connection with investigations and actions

In connection with any investigation or action authorized by this article, the department head may do any of the following:

(a) Inspect and copy books, records, and other items described in subdivision (e).

(b) Hear complaints.

(c) Administer oaths.

(d) Certify to all official acts.

(e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

(f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.

(g) Divulge information or evidence related to the investigation of unlawful activity discovered from interrogatory answers, papers, books, accounts, docu-

ments, and any other item described in subdivision (e), or testimony, to the Attorney General or to any prosecuting attorney of this state, any other state, or the United States who has a responsibility for investigating the unlawful activity investigated or discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity investigated or discovered, if the Attorney General, prosecuting attorney, or agency to which the information or evidence is divulged agrees to maintain the confidentiality of the information received to the extent required by this article.

(h) Present information or evidence obtained or developed from the investigation of unlawful activity to a court or at an administrative hearing in connection with any action or proceeding.

Added Stats 1945 ch 111 § 3. Amended Stats 1981 ch 778 § 1; Stats 1987 ch 1453 § 8; Stats 2001 ch 74 § 2 (AB 260); Stats 2003 ch 876 § 6 (SB 434).

CHAPTER 3.5

Administrative Regulations and Rulemaking

ARTICLE 5

Public Participation: Procedure for Adoption of Regulations

Misc.

§ 11346.2. Availability to public of copy of proposed regulation; Initial statement of reasons for proposed action

Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety,

worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2)(A) For a regulation that is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3.

(B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4)(A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

(5)(A) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(B)(i) If a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

(6) A department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations

contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall be inoperative from January 1, 2012, until January 1, 2014.

Added Stats 1994 ch 1039 § 23 (AB 2531). Amended Stats 1995 ch 938 § 15.3 (SB 523), operative January 1, 1996; Stats 2000 ch 1059 § 9 (AB 505), ch 1060 § 22.5 (AB 1822); Stats 2002 ch 389 § 4 (AB 1857); Stats 2010 ch 398 § 1 (AB 2738), effective September 27, 2010, inoperative January 1, 2012 until January 1, 2014; Stats 2011 ch 496 § 3 (SB 617), effective January 1, 2012; Stats 2012 ch 471 § 2 (AB 1612), effective January 1, 2013, inoperative January 1, 2012, until January 1, 2014; Stats 2013 ch 212 § 2 (SB 401), effective January 1, 2014, inoperative January 1, 2014; Stats 2014 ch 779 § 1 (AB 1711), effective January 1, 2015.

§ 11346.3. Assessment of potential for adverse economic impact on businesses and individuals

(a) A state agency proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

(3) An economic impact assessment prepared pursuant to this subdivision for a proposed regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall be prepared in accordance with subdivision (b), and shall be included in the initial statement of reasons as required by Section 11346.2. An economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after

November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2.

(b)(1) A state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

(C) The expansion of businesses currently doing business within the state.

(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from a state agency for the purpose of completing the assessment may come from existing state publications.

(4)(A) For purposes of conducting the economic impact assessment pursuant to this subdivision, a state agency may use the consolidated definition of small business in subparagraph (B) in order to determine the number of small businesses within the economy, a specific industry sector, or geographic region. The state agency shall clearly identify the use of the consolidated small business definition in its rulemaking package.

(B) For the exclusive purpose of undertaking the economic impact assessment, a "small business" means a business that is all of the following:

(i) Independently owned and operated.

(ii) Not dominant in its field of operation.

(iii) Has fewer than 100 employees.

(C) Subparagraph (A) shall not apply to a regulation adopted by the Department of Insurance that applies to an insurance company.

(c)(1) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, shall prepare a standardized regulatory impact analysis in the manner prescribed by the Department of Finance pursuant to Section 11346.36. The standardized regulatory impact analysis shall address all of the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

(C) The competitive advantages or disadvantages for businesses currently doing business within the state.

(D) The increase or decrease of investment in the state.

(E) The incentives for innovation in products, materials, or processes.

(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

(2) This subdivision shall not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the analysis may be derived from existing state, federal, or academic publications.

(d) Any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

(e) Analyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact analysis pursuant to subdivision (c), shall submit that analysis to the Department of Finance upon completion. The department shall comment, within 30 days of receiving that analysis, on the extent to which the analysis adheres to the regulations adopted pursuant to Section 11346.36. Upon receiving the comments from the department, the agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.

Added Stats 1994 ch 1039 § 24 (AB 2531). Amended Stats 2000 ch 1059 § 10 (AB 505), ch 1060 § 23 (AB 1822); Stats 2011 ch 496 § 4 (SB 617), effective January 1, 2012; Stats 2012 ch 766 § 2 (SB 1520), effective September 29, 2012; Stats 2014 ch 779 § 2 (AB 1711), effective January 1, 2015; Stats 2016 ch 346 § 1 (AB 1033), effective January 1, 2017.

ARTICLE 9
Special Procedures

§ 11357. Instructions for determining impact of proposed action on local or state agencies or on school districts

(a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency subject to this chapter shall use in making the determinations and the estimates of fiscal or economic impact required by Sections 11346.2, 11346.3, and 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation and its estimate of the economic impact that will result from the regulation.

(b) An action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, or instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation, including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review an estimate prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

Added Stats 1994 ch 1039 § 51 (AB 2531). Amended Stats 2014 ch 779 § 3 (AB 1711), effective January 1, 2015.

CHAPTER 4.5

Administrative Adjudication: General Provisions

ARTICLE 1

Preliminary Provisions

§ 11400. Administrative Procedure Act; References to superseded provisions

(a) This chapter and Chapter 5 (commencing with Section 11500) constitute the administrative adjudication provisions of the Administrative Procedure Act.

(b) A reference in any other statute or in a rule of court, executive order, or regulation, to a provision formerly found in Chapter 5 (commencing with Section 11500) that is superseded by a provision of this chapter, means the applicable provision of this chapter.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

ARTICLE 6

Administrative Adjudication Bill of Rights

§ 11425.50. Decision to be in writing; Statement of factual and legal basis

(a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

(b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

ARTICLE 14
Declaratory Decision

§ 11465.10. Conduct of proceeding under declaratory decision procedure

Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.20. Application; Issuance of decision

(a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

(b) The agency in its discretion may issue a declaratory decision in response to the application. The agency shall not issue a declaratory decision if any of the following applies:

(1) Issuance of the decision would be contrary to a regulation adopted under this article.

(2) The decision would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory decision proceeding.

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

(c) An application for a declaratory decision is not required for exhaustion of the applicant's administrative remedies for purposes of judicial review.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.30. Notice of application for decision

Within 30 days after receipt of an application for a declaratory decision, an agency shall give notice of the application to all persons to which notice of an adjudicative proceeding is otherwise required, and may give notice to any other person.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.40. Applicable hearing procedure

The provisions of a formal, informal, or other applicable hearing procedure do not apply to an agency proceeding for a declaratory decision except to the extent provided in this article or to the extent the agency so provides by regulation or order.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.50. Actions of agency after receipt of application

(a) Within 60 days after receipt of an application for a declaratory decision, an agency shall do one of the following, in writing:

(1) Issue a decision declaring the applicability of the statute, regulation, or decision in question to the specified circumstances.

(2) Set the matter for specified proceedings.

(3) Agree to issue a declaratory decision by a specified time.

(4) Decline to issue a declaratory decision, stating in writing the reasons for its action. Agency action under this paragraph is not subject to judicial review.

(b) A copy of the agency's action under subdivision (a) shall be served promptly on the applicant and any other party.

(c) If an agency has not taken action under subdivision (a) within 60 days after receipt of an application for a declaratory decision, the agency is considered to have declined to issue a declaratory decision on the matter.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.60. Contents of decision; Status and binding effect of decision

(a) A declaratory decision shall contain the names of all parties to the proceeding, the particular facts on which it is based, and the reasons for its conclusion.

(b) A declaratory decision has the same status and binding effect as any other decision issued by the agency in an adjudicative proceeding.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

§ 11465.70. Model regulations

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations under this article that are consistent with the public interest and with the general policy of this article to facilitate and encourage agency issuance of reliable advice. The model regulations shall provide for all of the following:

(1) A description of the classes of circumstances in which an agency will not issue a declaratory decision.

(2) The form, contents, and filing of an application for a declaratory decision.

(3) The procedural rights of a person in relation to an application.

(4) The disposition of an application.

(b) The regulations adopted by the Office of Administrative Hearings under this article apply in an adjudicative proceeding unless an agency adopts its own regulations to govern declaratory decisions of the agency.

(c) This article does not apply in an adjudicative proceeding to the extent an agency by regulation provides inconsistent rules or provides that this article is not applicable in a proceeding of the agency.

Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

CHAPTER 5

Administrative Adjudication: Formal Hearing

§ 11521. Reconsideration

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

Added Stats 1945 ch 867 § 1. Amended Stats 1953 ch 964 § 1; Stats 1985 ch 324 § 22; Stats 1987 ch 305 § 1; Stats 2004 ch 865 § 34 (SB 1914).

§ 11522. Reinstatement of license or reduction of penalty

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

Added Stats 1945 ch 867 § 1. Amended Stats 1985 ch 587 § 4.

PART 2.8
Department of Fair Employment and Housing

CHAPTER 6
Discrimination Prohibited

ARTICLE 1
Unlawful Practices, Generally

§ 12944. Discrimination by licensing board

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the Business, Consumer Services, and Housing Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

Added Stats 1980 ch 992 § 4. Amended Stats 1992 ch 912 § 6 (AB 1286), ch 913 § 24 (AB 1077); Stats 1999 ch 592 § 8 (AB 1001); Stats 2011 ch 261 § 15 (SB 559), effective January 1, 2012, ch 719 § 19.5 (AB 887), effective January 1, 2012; Stats 2012 ch 46 § 37 (SB 1038), effective June 27, 2012, operative January 1, 2013. See this section as modified in Governor's Reorganization Plan No. 2 § 210 of 2012. Amended Stats 2012 ch 147 § 17 (SB 1039), effective January 1, 2013, operative July 1, 2013 (ch 147 prevails).

EXTRACTED FROM
HEALTH AND SAFETY CODE

DIVISION 2
Licensing Provisions

CHAPTER 1
Clinics

ARTICLE 1
Definitions and General Provisions

§ 1204.1. Eligibility of psychology clinic for licensure

In addition to the primary care clinics and specialty clinics specified in Section 1204, clinics eligible for licensure pursuant to this chapter include psychology clinics. A "psychology clinic" is a clinic which provides psychological advice, services, or treatment to patients, under the direction of a clinical psychologist as defined in Section 1316.5, and is operated by a tax-exempt nonprofit corporation which is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds, or contributions which may be in the form of money, goods, or services. In a psychology clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal taxation under paragraph (3), subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, shall operate a psychology clinic.

Each psychology clinic licensed pursuant to this section shall comply with the provisions of Part 2 (commencing with Section 13100) of Division 12.

Only a psychology clinic may be licensed under this chapter to exclusively provide psychological advice, services, or treatment. However, nothing in this subdivision precludes clinics specified in Section 1204 from providing psychological advice, services, or treatment as included within, or adjunctive to, medical advice, services, or treatment provided by such clinics. Failure to comply with the requirements of this section may be grounds for denial, revocation, or suspension of the license.

Added Stats 1980 ch 1315 § 3. Amended Stats 1982 ch 1172 § 2; Stats 1987 ch 456 § 1.

§ 1206. Clinics and facilities exempt from licensure requirements

This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 that is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations that utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c)(1) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1603 of Title 25 of the United States Code, that is located on land recognized as tribal land by the federal government.

(2) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1603 of Title 25 of the United States Code, under a contract with the United States pursuant to the Indian Self-Determination and Education Assistance Act (Public Law 93-638), regardless of the location of the clinic, except that if the clinic chooses to apply to the State Department of Public Health for a state facility license, then the State Department of Public Health will retain authority to regulate that clinic as a primary care clinic as defined by subdivision (a) of Section 1204.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning that teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic that is operated by a primary care community or free clinic and that is operated on separate premises from the licensed clinic and is only open for limited services of no more than 30 hours a week. An intermittent clinic as described in this subdivision shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340).

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exemption to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for

purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(*l*) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, that conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center, as defined in Section 5667 of the Welfare and Institutions Code.

(p)(1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfied all of the following requirements on or before January 1, 2005:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars ($5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y(a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340), or a disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an

additional period of up to three years following the approvals, but only to the extent necessary to maintain clinical expertise in the procedure or application for purposes of actively providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "affiliated" only if it directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "associated" only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). Any activity by a clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) By January 1, 2007, and every five years thereafter, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings. The cost of preparing the reports shall be borne by the clinics that are required to submit them to the Legislature pursuant to this paragraph.

Added Stats 1978 ch 1147 § 4, effective September 26, 1978. Amended Stats 1979 ch 478 § 2, effective September 5, 1979; Stats 1980 ch 133 § 3, ch 454 § 1.5, ch 1316 § 2.5; Stats 1982 ch 1306 § 3, effective September 23, 1982; Stats 1984 ch 1716 § 1; Stats 1985 ch 700 § 4; Stats 1989 ch 977 § 1; Stats 1997 ch 673 § 3 (SB 1094); Stats 1998 ch 485 § 105 (AB 2803); Stats 1999 ch 83 § 92 (SB 966); Stats 2002 ch 540 § 1 (SB 492); Stats 2005 ch 135 § 1 (SB 47), effective January 1, 2006; Stats 2015 ch 412 § 1 (AB 1130), effective January 1, 2016, ch 502 § 1.5 (AB 941), effective January 1, 2016.

CHAPTER 2
Health Facilities
ARTICLE 3
Regulations

§ 1277. Licensing requirements; Waiver

(a) No license shall be issued by the state department unless it finds that the premises, the management, the bylaws, rules and regulations, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the health facility is operated in the manner required by this chapter and by the rules and regulations adopted hereunder.

(b)(1) Notwithstanding any provision of Part 2 (commencing with Section 5600) of Division 5 of, or Division 7 (commencing with Section 7100) of, the Welfare and Institutions Code or any other law to the contrary, except Sections 2072 and 2073 of the Business and Professions Code, the licensure requirements for professional personnel, including, but not limited to, physicians and surgeons, dentists, podiatrists, psychologists, marriage and family therapists, pharmacists, registered nurses, clinical social workers, and professional clinical counselors in the state and other governmental health facilities licensed by the state department shall not be less than for those professional personnel in health facilities under private ownership.

(2) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same state or other governmental health facility licensed by the state department, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of paragraph (1).

(3) The requirements of paragraph (1) may be waived by the state department solely for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling who are gaining qualifying experience for licensure in such profession in this state. A waiver granted pursuant to this paragraph shall not exceed three years from the date the employment commences in this state in the case of psychologists, or four years from commencement of the employment in this state in the case of marriage and family therapists, clinical social workers, and professional clinical counselors, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure for marriage and family therapists, clinical social workers, and professional clinical counselors may be granted for one additional year, based on extenuating circumstances determined by the state department pursuant to subdivision (e). For persons employed as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers, marriage and

family therapists, or professional clinical counselors, or five years in the case of psychologists.

(4) The durational limitation upon waivers pursuant to paragraph (3) shall not apply to any of the following:

(A) Active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training.

(B) Active candidates for a doctoral degree in marriage and family therapy who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4980.36 of, or subdivision (b) of Section 4980.37 of, the Business and Professions Code, but the limitations shall apply following completion of the training.

(C) Active candidates for a doctoral degree in professional clinical counseling who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4999.32 of, or subdivision (b) of Section 4999.33 of, the Business and Professions Code, but the limitations shall apply following the completion of the training.

(5) A waiver pursuant to paragraph (3) shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure examination at the earliest possible date after the date of his or her employment, and if the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the next possible examination, subject to the one-year limit for marriage and family therapists, clinical social workers, and professional clinical counselors, and subject to a two-year limit for psychologists.

(c) A special permit shall be issued by the state department when it finds that the staff, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the special services unit is operated in the manner required in this chapter and by the rules and regulations adopted hereunder.

(d) The state department shall apply the same standards to state and other governmental health facilities that it licenses as it applies to health facilities in private ownership, including standards specifying the level of training and supervision of all unlicensed practitioners. Except for psychologists, the department may grant an extension of a waiver of licensure for personnel recruited from outside this state for one additional year, based upon extenuating circumstances as determined by the department pursuant to subdivision (e).

(e) The department shall grant a request for an extension of a waiver based on extenuating circumstances, pursuant to subdivision (b) or (d), if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event which may impair the person's ability to qualify for and pass the license examination. Those events may include, but are not limited to,

significant hardship caused by a natural disaster, serious and prolonged illness of the person, serious and prolonged illness or death of a child, spouse, or parent, or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist which substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship which the department, in its discretion, determines to warrant the extension.

Added Stats 1981 ch 412 § 4, effective September 11, 1981, operative January 1, 1984. Amended Stats 1986 ch 348 § 2, ch 1111 § 4; Stats 1989 ch 561 § 1; Stats 1990 ch 962 § 1 (AB 3229); Stats 1991 ch 612 § 1 (SB 1112); Stats 2000 ch 356 § 1 (AB 1975), effective September 8, 2000; Stats 2009 ch 26 § 24 (SB 33), effective January 1, 2010; Stats 2011 ch 381 § 27 (SB 146), effective January 1, 2012.

CHAPTER 2.2
Health Care Service Plans
ARTICLE 5
Standards

§ 1374.13. Telehealth; Restrictions; Construction

(a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

(c) No health care service plan shall require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

(d) No health care service plan shall limit the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

(e) The requirements of this section shall also apply to health care service plan and Medi-Cal managed care plan contracts with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(f) Notwithstanding any other provision, this section shall not be interpreted to authorize a health care service plan to require the use of telehealth when the health care provider has determined that it is not appropriate.

Added Stats 2011 ch 547 § 6 (AB 415), effective January 1, 2012. Amended Stats 2012 ch 782 § 6 (AB 1733), effective January 1, 2013.

DIVISION 10
Uniform Controlled Substances Act
CHAPTER 1
General Provisions and Definitions

§ 11000. Citation of division

This division shall be known as the "California Uniform Controlled Substances Act."

Added Stats 1972 ch 1407 § 3.

§ 11001. Governing definitions

Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

Added Stats 1972 ch 1407 § 3.

§ 11002. "Administer"

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient for his immediate needs or to the body of a research subject by any of the following:

(a) A practitioner or, in his presence, by his authorized agent.

(b) The patient or research subject at the direction and in the presence of the practitioner.

Added Stats 1972 ch 1407 § 3.

§ 11003. "Agent"

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

Added Stats 1972 ch 1407 § 3.

§ 11004. "Attorney General"

"Attorney General" means the Attorney General of the State of California.

Added Stats 1972 ch 1407 § 3.

§ 11005. "Board of Pharmacy"

"Board of Pharmacy" means the California State Board of Pharmacy.

Added Stats 1972 ch 1407 § 3.

§ 11006.5. "Concentrated cannabis"

"Concentrated cannabis" means the separated resin, whether crude or purified, obtained from marijuana.

Added Stats 1975 ch 248 § 1.

§ 11007. "Controlled substance"

"Controlled substance," unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058.

Added Stats 1987 ch 1174 § 1, effective September 26, 1987.

§ 11008. "Customs broker"

"Customs broker" means a person in this state who is authorized to act as a broker for any of the following:

(a) A person in this state who is licensed to sell, distribute, or otherwise possess any controlled substance.

(b) A person in any other state who ships any controlled substance into this state.

(c) A person in this state or any other state who ships or transfers any controlled substance through this state.

Added Stats 1972 ch 1407 § 3.

§ 11009. "Deliver" or "delivery"

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Added Stats 1972 ch 1407 § 3.

§ 11010. "Dispense"

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

Added Stats 1972 ch 1407 § 3.

§ 11011. "Dispenser"

"Dispenser" means a practitioner who dispenses.

Added Stats 1972 ch 1407 § 3.

§ 11012. "Distribute"

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

Added Stats 1972 ch 1407 § 3.

§ 11013. "Distributor"

"Distributor" means a person who distributes. The term distributor also includes warehousemen handling or storing controlled substances and customs brokers.

Added Stats 1972 ch 1407 § 3.

§ 11014. "Drug"

"Drug" means (a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (d) substances intended for use as a component of any article specified in subdivision (a), (b), or (c) of this section. It does not include devices or their components, parts, or accessories.

Added Stats 1972 ch 1407 § 3.

§ 11014.5. "Drug paraphernalia"

(a) "Drug paraphernalia" means all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

(1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.

(5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.

(6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.

(7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.

(8) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

(D) Miniature cocaine spoons, and cocaine vials.

(E) Chamber pipes.

(F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

(J) Bongs.

(K) Ice pipes or chillers.

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

(3) Descriptive materials accompanying the object which explain or depict its use.

(4) National and local advertising concerning its use.

(5) The manner in which the object is displayed for sale.

(6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(7) Expert testimony concerning its use.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

Added Stats 1982 ch 1278 § 1.

§ 11015. "Federal bureau"

"Federal bureau" means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.

Added Stats 1972 ch 1407 § 3. Amended Stats 1992 ch 978 § 2 (SB 1822).

§ 11016. "Furnish"

"Furnish" has the same meaning as provided in Section 4048.5 of the Business and Professions Code.

Added Stats 1972 ch 1407 § 3.

§ 11017. "Manufacturer"

"Manufacturer" has the same meaning as provided in Section 4034 of the Business and Professions Code.

Added Stats 1972 ch 1407 § 3.

§ 11018. (First of two; Operative term contingent) Marijuana

"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

(a) Industrial hemp, as defined in Section 11018.5; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Added Stats 1972 ch 1407 § 3. Amendment approved by voters, Prop. 64 § 4.1, effective November 9, 2016.

§ 11018. (Second of two; Operative date contingent) "Marijuana"

"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds of that plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include industrial hemp, as defined in Section 11018.5, except where the plant is cultivated or processed for

purposes not expressly allowed for by Division 24 (commencing with Section 81000) of the Food and Agricultural Code.

Added Stats 1972 ch 1407 § 3. Amended Stats 2013 ch 398 § 5 (SB 566), effective January 1, 2014.

Note—Stats 2013 ch 398 provides:

SEC. 8. (a) This act shall not become operative unless authorized under federal law.

(b) If this act becomes operative, the Attorney General shall issue an opinion on the extent of that authorization under federal law and California law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with the provisions of this act. The Attorney General should complete the opinion as soon as possible or within four months of authorization under federal law.

(c) The Attorney General shall post the opinion described in subdivision (b) on the office of the Attorney General's Internet Web site.

§ 11018.1. Marijuana products

"Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

Adopted by voters, Prop. 64 § 4.2, effective November 9, 2016.

§ 11018.2. Marijuana accessories

"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

Adopted by voters, Prop. 64 § 4.3, effective November 9, 2016.

§ 11018.5. (Operative date contingent) Industrial hemp

(a) "Industrial hemp" means a fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of plant, its seeds or resin produced therefrom.

(b) The possession, use, purchase, sale, cultivation, processing, manufacture, packaging, labeling, transporting, storage, distribution, use and transfer of industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive.

Added Stats 2013 ch 398 § 6 (SB 566), effective January 1, 2014. Amendment approved by voters, Prop. 64 § 9.1, effective November 9, 2016.

Note—Stats 2013 ch 398 provides:

SEC. 8. (a) This act shall not become operative unless authorized under federal law.

(b) If this act becomes operative, the Attorney General shall issue an opinion on the extent of that authorization under federal law and California law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with the provisions of this act. The Attorney General should complete the

opinion as soon as possible or within four months of authorization under federal law.

(c) The Attorney General shall post the opinion described in subdivision (b) on the office of the Attorney General's Internet Web site.

§ 11019. "Narcotic drug"

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(b) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in subdivision (a), but not including the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(e) Cocaine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(f) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(g) Acetylfentanyl, the thiophene analog thereof, derivatives of either, and any salt, compound, isomer, or preparation of acetylfentanyl or the thiophene analog thereof.

Added Stats 1972 ch 1407 § 3. Amended Stats 1985 ch 21 § 1, effective April 2, 1985, ch 1098 § 1, effective September 27, 1985.

§ 11020. "Opiate"

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Chapter 2 (commencing with Section 11053) of this division, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

Added Stats 1972 ch 1407 § 3.

§ 11021. "Opium poppy"

"Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

Added Stats 1972 ch 1407 § 3.

§ 11022. "Person"

"Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, or any other legal entity.

Added Stats 1972 ch 1407 § 3. Amended Stats 1994 ch 1010 § 159 (SB 2053).

§ 11023. "Pharmacy"

"Pharmacy" has the same meaning as provided in Section 4035 of the Business and Professions Code.

Added Stats 1972 ch 1407 § 3.

§ 11024. "Physician," "dentist," "podiatrist," "pharmacist," "veterinarian," and "optometrist"

"Physician," "dentist," "podiatrist," "pharmacist," "veterinarian," and "optometrist" means persons who are licensed to practice their respective professions in this state.

Added Stats 1972 ch 1407 § 3. Amended Stats 2000 ch 676 § 6 (SB 929).

§ 11025. "Poppy straw"

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

Added Stats 1972 ch 1407 § 3.

§ 11026. "Practitioner"

"Practitioner" means any of the following:

(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, or a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer, a controlled substance in the course of professional practice or research in this state.

(c) A scientific investigator, or other person licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 1; Stats 1977 ch 843 § 16; Stats 1986 ch 1042 § 1, effective September 23, 1986; Stats 1996 ch 1023 § 196 (SB 1497), effective September 29, 1996; Stats 1999 ch 749 § 7 (SB 816); Stats 2000 ch 676 § 7 (SB 929); Stats 2001 ch 289 § 10 (SB 298).

§ 11027. "Prescription"; Definitions relating to electronic transmission

(a) "Prescription" means an oral order or electronic transmission prescription for a controlled substance given individually for the person(s) for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber.

(b) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" is any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" is any prescription order, other than an electronic image transmission prescription, which is electronically transmitted from a licensed prescriber to a pharmacy.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 2; Stats 1979 ch 634 § 3; Stats 1994 ch 26 § 241 (AB 1807), effective March 30, 1994.

§ 11029. "Production"

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

Added Stats 1972 ch 1407 § 3.

§ 11029.5. "Security printer"

"Security printer" means a person approved to produce controlled substance prescription forms pursuant to Section 11161.5.

Added Stats 2003 ch 406 § 2 (SB 151).

§ 11030. "Ultimate user"

"Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Added Stats 1972 ch 1407 § 3.

§ 11031. "Wholesaler"

"Wholesaler" has the same meaning as provided in Section 4038 of the Business and Professions Code.

Added Stats 1972 ch 1407 § 3.

§ 11032. Respective schedules to which term "narcotics" refers; "Restricted dangerous drugs"; "Marijuana"

Whenever reference is made to the term "narcotics" in any provision of law outside of this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in Schedules I and II, as defined in this division. Whenever reference is made to "restricted dangerous drugs" outside of this division, unless otherwise expressly provided, it shall be construed to mean controlled substances classified in Schedules III and IV. Whenever reference is made to the term "marijuana" in any provision of law outside of this division, unless otherwise expressly provided, it shall be construed to mean marijuana as defined in this division.

Added Stats 1972 ch 1407 § 3.

§ 11033. "Isomer"

As used in this division, except as otherwise defined, the term "isomer" includes optical and geometrical (diastereomeric) isomers.

Added Stats 1985 ch 21 § 2, effective April 2, 1985.

CHAPTER 2
Standards and Schedules

§ 11053. Nomenclature of substances listed

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

Added Stats 1972 ch 1407 § 3.

§ 11054. Schedule I list of controlled substances

(a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Diampromide.
(14) Diethylthiambutene.
(15) Difenoxin.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.

(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Propiram.
(42) Racemoramide.
(43) Tilidine.
(44) Trimeperidine.
(45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.
(46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.
(47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
(48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin.
(12) Hydromorphinol.
(13) Methyldesorphine.
(14) Methyldihydromorphine.
(15) Morphine methylbromide.
(16) Morphine methylsulfonate.
(17) Morphine-N-Oxide.
(18) Myrophine.
(19) Nicocodeine.
(20) Nicomorphine.
(21) Normorphine.
(22) Pholcodine.
(23) Thebacon.
(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which

contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP."

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine—Some trade or other names: DMT.

(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

(13) Marijuana.

(14) Mescaline.

(15) Peyote—Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

Added Stats 1984 ch 1635 § 44.5. Amended Stats 1985 ch 290 § 1, ch 1098 § 1.2, effective September 27, 1985; Stats 1986 ch 1044 § 1; Stats 1987 ch 1174 § 1.5, effective September 26, 1987; Stats 1995 ch 455 § 3 (AB 1113); Stats 2001 ch 841 § 1 (AB 258); Stats 2002 ch 664 § 130 (AB 3034).

§ 11055. Schedule II list of controlled substances

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.

(B) Opium extracts.

(C) Opium fluid extracts.

(D) Powdered opium.

(E) Granulated opium.

(F) Tincture of opium.

(G) Codeine.

(H) Ethylmorphine.

(I) Hydrocodone.

(J) Hydromorphone.
(K) Metopon.
(L) Morphine.
(M) Oxycodone.
(N) Oxymorphone.
(O) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanyl.
(2) Alphaprodine.
(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (nondosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.
(8) Fentanyl.
(9) Isomethadone.

(10) Levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This substance is authorized for the treatment of narcotic addicts under federal law (see Part 291 (commencing with Section 291.501) and Part 1308 (commencing with Section 1308.01) of Title 21 of the Code of Federal Regulations).

(11) Levomethorphan.
(12) Levorphanol.
(13) Metazocine.
(14) Methadone.

(15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

(17) Pethidine (meperidine).
(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(21) Phenazocine.
(22) Piminodine.
(23) Racemethorphan.
(24) Racemorphan.
(25) Sufentanyl.
(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.
(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.
(5) Phenmetrazine and its salts.
(6) Methylphenidate.
(7) Khat, which includes all parts of the plant classified botanically as Catha Edulis, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts.
(8) Cathinone (also known as alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone).
(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Amobarbital.
(2) Pentobarbital.
(3) Phencyclidines, including the following:
(A) 1-(1-phenylcyclohexyl) piperidine (PCP).
(B) 1-(1-phenylcyclohexyl) morpholine (PCM).
(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.
The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45

calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone. Some trade or other names: phenyl-2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

Added Stats 1984 ch 1635 § 45.5. Amended Stats 1985 ch 3 § 1, effective January 29, 1985, ch 21 § 3, effective April 2, 1985, ch 1098 § 1.4, effective September 27, 1985; Stats 1986 ch 384 § 2, effective July 17, 1986, ch 1042 § 3, effective September 23, 1986, ch 1044 § 2.5; Stats 1987 ch 1174 § 2, effective September 26, 1987; Stats 1988 ch 712 § 1, effective August 29, 1988; Stats 1995 ch 455 § 4 (AB 1113); Stats 1997 ch 560 § 1 (AB 6), effective September 29, 1997, ch 714 § 1 (SB 3), effective October 6, 1997; Stats 1999 ch 975 § 1 (AB 924); Stats 2000 ch 8 § 1 (SB 550), effective March 29, 2000; Stats 2001 ch 841 § 2 (AB 258); Stats 2008 ch 292 § 1 (AB 1141), effective January 1, 2009; Stats 2010 ch 76 § 1 (AB 1414), effective January 1, 2011.

§ 11056. Schedule III list of controlled substances

(a) The controlled substances listed in this section are included in Schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Chlorphentermine.

(4) Clortermine.

(5) Mazindol.

(6) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing any of the following:

(A) Amobarbital

(B) Secobarbital

(C) Pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing any of the following:

(A) Amobarbital

(B) Secobarbital

(C) Pentobarbital or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(11) Gamma hydroxybutyric acid, and its salts, isomers and salts of isomers, contained in a drug product for which an application has been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 millilitersor not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and chorionic gonadotropin. Any material, compound, mixture, or preparation containing chorionic gonadotropin or an anabolic steroid (excluding anabolic steroid products listed in the "Table of Exempt Anabolic Steroid Products" (Section 1308.34 of Title 21 of the Code of Federal Regulations), as exempt from the federal Controlled Substances Act (Section 801 and following of Title 21 of the United States Code)), including, but not limited to, the following:

(1) Androisoxazole.
(2) Androstenediol.
(3) Bolandiol.
(4) Bolasterone.
(5) Boldenone.
(6) Chlormethandienone.
(7) Clostebol.
(8) Dihydromesterone.
(9) Ethylestrenol.
(10) Fluoxymesterone.
(11) Formyldienolone.
(12) 4-Hydroxy-19-nortestosterone.
(13) Mesterolone.
(14) Methandriol.
(15) Methandrostenolone.
(16) Methenolone.
(17) 17-Methyltestosterone.
(18) Methyltrienolone.
(19) Nandrolone.
(20) Norbolethone.
(21) Norethandrolone.
(22) Normethandrolone.
(23) Oxandrolone.
(24) Oxymestrone.
(25) Oxymetholone.
(26) Quinbolone.
(27) Stanolone.
(28) Stanozolol.
(29) Stenbolone.
(30) Testosterone.
(31) Trenbolone.
(32) Chorionic Gonadotropin (HGC).

(g) Ketamine. Any material, compound, mixture, or preparation containing ketamine.

(h) Hallucinogenic substances. Any of the following hallucinogenic substances: dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration.

Added Stats 1984 ch 1635 § 46.5. Amended Stats 1986 ch 384 § 3, effective July 17, 1986, ch 534 § 1, effective August 20, 1986, ch 1033 § 1; Stats 1989 ch 567 § 1; Stats 1991 ch 294 § 1 (AB 444); Stats

1995 ch 59 § 1 (SB 491); Stats 2000 ch 8 § 2 (SB 550), effective March 29, 2000; Stats 2001 ch 841 § 3 (AB 258).

§ 11057. Schedule IV list of controlled substances

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(3) Butorphanol.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.
(2) Barbital.
(3) Chloral betaine.
(4) Chloral hydrate.
(5) Chlordiazepoxide.
(6) Clobazam.
(7) Clonazepam.
(8) Clorazepate.
(9) Diazepam.
(10) Estazolam.
(11) Ethchlorvynol.
(12) Ethinamate.
(13) Flunitrazepam.
(14) Flurazepam.
(15) Halazepam.
(16) Lorazepam.
(17) Mebutamate.
(18) Meprobamate.
(19) Methohexital.
(20) Methylphenobarbital (Mephobarbital).
(21) Midazolam.
(22) Nitrazepam.
(23) Oxazepam.
(24) Paraldehyde.
(25) Petrichoral.
(26) Phenobarbital.
(27) Prazepam.

(28) Quazepam.
(29) Temazepam.
(30) Triazolam.
(31) Zaleplon.
(32) Zolpidem.

(e) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers, whenever the existence of those salts, isomers, and salts of isomers is possible:

(1) Fenfluramine.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers is possible within the specific chemical designation:

(1) Diethylpropion.
(2) Mazindol.
(3) Modafinil.
(4) Phentermine.
(5) Pemoline (including organometallic complexes and chelates thereof).
(6) Pipradrol.
(7) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
(8) Cathine ((+)-norpseudoephedrine).

(g) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of pentazocine, including its salts.

Added Stats 1984 ch 1635 § 47.5. Amended Stats 1985 ch 290 § 2; Stats 1992 ch 616 § 1 (SB 2013); Stats 1996 ch 109 § 1 (SB 1426), effective July 1, 1996, ch 846 § 2 (SB 2164); Stats 2002 ch 1013 § 86 (SB 2026); Stats 2008 ch 292 § 2 (AB 1141), effective January 1, 2009.

§ 11058. Schedule V list of controlled substances

(a) The controlled substances listed in this section are included in Schedule V.

(b) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Buprenorphine.

Added Stats 1984 ch 1635 § 48.5. Amended Stats 1985 ch 1098 § 1.2, effective September 27, 1985; Stats 1986 ch 63 § 1, effective April 23, 1986.

CHAPTER 3
Regulation and Control

ARTICLE 1
Reporting

§ 11100. Reports of specified transactions required; Authorization, identification and notification; Sale, transfer and reporting offenses; Punishment for violations

(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionyl chloride.
(25) Benzyl cyanide.

(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.

(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2 (3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).

(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).

(36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.

(37) Iodine or tincture of iodine.

(38) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c)(1)(A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require

(i) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and

(ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, "proper identification" for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number; license issued by the State Department of Public

Health; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Department of Justice; driver's license; or other identification issued by a state.

(2)(A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d)(1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) A state-licensed health care facility that administers or furnishes a substance to its patients.

(6)(A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f)(1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g)(1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction

limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4)(A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-

the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

Added Stats 1986 ch 1028 § 3, operative October 1, 1987. Amended Stats 1987 ch 5 § 2, effective March 17, 1987; Stats 1988 ch 73 § 1, ch 712 § 2, effective August 29, 1988; Stats 1989 ch 1133 § 1; Stats 1992 ch 978 § 3 (SB 1822); Stats 1993 ch 589 § 88 (AB 2211); Stats 1997 ch 397 § 1 (AB 1173); Stats 1999 ch 975 § 2 (AB 924), ch 978 § 1.5 (AB 162); Stats 2001 ch 841 § 4 (AB 258); Stats 2003 ch 369 § 1 (SB 276), effective September 12, 2003; Stats 2004 ch 405 § 4 (SB 1796); Stats 2005 ch 468 § 1 (AB 465), effective January 1, 2006; Stats 2011 ch 15 § 145 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2012 ch 867 § 3 (SB 1144), effective January 1, 2013.

§ 11100.05. Drug cleanup fines; Deposit in Clandestine Drug Lab Clean-up Account

(a) In addition to any fine or imprisonment imposed under subdivision (f) of Section 11100 or subdivision (j) of Section 11106 of the Health and Safety Code, the following drug cleanup fine shall be imposed:

(1) Ten thousand dollars ($10,000) for violations described in paragraph (1) of subdivision (f) of Section 11100.

(2) One hundred thousand dollars ($100,000) for violations described in paragraph (2) of subdivision (f) of Section 11100.

(3) Ten thousand dollars ($10,000) for violations described in subdivision (j) of Section 11106.

(b) At least once a month, all fines collected under this section shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

Added Stats 1987 ch 1295 § 1. Amended Stats 2005 ch 468 § 2 (AB 465), effective January 1, 2006.

§ 11100.1. Substances received from outside state; Punishment for violations

(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164; any manufacturer or wholesaler who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice; or any state-licensed health care facility.

(b)(1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

Added Stats 1980 ch 950 § 1. Amended Stats 1982 ch 1279 § 2; Stats 1989 ch 1133 § 2; Stats 1992 ch 978 § 4 (SB 1822); Stats 1997 ch 397 § 2 (AB 1173); Stats 2003 ch 369 § 2 (SB 276), effective September 12, 2003; Stats 2005 ch 468 § 3 (AB 465), effective January 1, 2006; Stats 2011 ch 15 § 146 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11101. Common reporting form for substances specified in § 11100

The State Department of Justice shall provide a common reporting form for the substances in Section 11100 which contains at least the following information:

(a) Name of the substance.

(b) Quantity of the substance sold, transferred, or furnished.

(c) The date the substance was sold, transferred, or furnished.

(d) The name and address of the person buying or receiving such substance.

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing such substance.

Added Stats 1972 ch 1407 § 3. Amended Stats 1974 ch 1072 § 2.

§ 11102. Regulations

The Department of Justice may adopt all regulations necessary to carry out the provisions of this part.

Added Stats 1974 ch 1072 § 3.

§ 11103. Report of theft or loss of substance; Report of difference between quantity received and that shipped

The theft or loss of any substance regulated pursuant to Section 11100 discovered by any permittee or any person regulated by the provisions of this chapter shall be reported in writing to the Department of Justice within three days after the discovery.

Any difference between the quantity of any substance regulated pursuant to Section 11100 received and the quantity shipped shall be reported in writing to the Department of Justice within three days of the receipt of actual knowledge of the discrepancy.

Any report made pursuant to this section shall also include the name of the common carrier or person who transports the substance and date of shipment of the substance.

Added Stats 1972 ch 1407 § 3, as H & S C § 11105. Amended and renumbered by Stats 1974 ch 1072 § 6. Amended Stats 1997 ch 397 § 3 (AB 1173).

§ 11104. Penalty for selling, furnishing, or distributing specified substances, apparatus, and chemical reagents

(a) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any of the substances listed in subdivision (a) of Section 11100 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture a controlled substance is guilty of a felony.

(b) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in Section 11107.1, with knowledge that the recipient will use the goods or chemical substance to unlawfully manufacture a controlled substance, is guilty of a misdemeanor.

(c) Any person who receives or distributes any substance listed in subdivision (a) of Section 11100, or any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in Section 11107.1, with the intent of causing the evasion of the recordkeeping or reporting requirements of this article, is guilty of a misdemeanor.

Added Stats 1978 ch 699 § 2.3. Amended Stats 1984 ch 1547 § 1; Stats 1992 ch 580 § 1 (SB 1820), effective August 30, 1992; Stats 2003 ch 369 § 3 (SB 276), effective September 12, 2003; Stats 2005 ch 468 § 4 (AB 465), effective January 1, 2006.

§ 11104.5. Knowing or intentional possession of specified apparatus, reagent or solvent, or chemical substance

Any person who knowingly or intentionally possesses any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in paragraph (36) or (37) of subdivision (a) of Section 11100, Section 11107, or Section 11107.1, with the intent to manufacture a controlled substance, is guilty of a misdemeanor.

Added Stats 1992 ch 580 § 2 (SB 1820), effective August 30, 1992. Amended Stats 2005 ch 468 § 5 (AB 465), effective January 1, 2006.

§ 11105. False statement; Punishment

(a) It is unlawful for any person to knowingly make a false statement in connection with any report or record required under this article.

(b)(1) Any person who violates this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person who has been previously convicted of violating this section and who subsequently violates this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

Added Stats 1978 ch 699 § 2.5. Amended Stats 1979 ch 784 § 2; Stats 1982 ch 1279 § 3; Stats 2011 ch 15 § 147 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11106. Permits to sell, transfer, or furnish specified substances; Application procedure; Investigation; Renewal; Punishment for violation; Fingerprints

(a)(1)(A) Any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in

subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.

(B) An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1.

(C) This paragraph shall not apply to any manufacturer, wholesaler, or wholesale distributor who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian; any state-licensed health care facility, physician, dentist, podiatrist, veterinarian, or veterinary food-animal drug retailer licensed by the California State Board of Pharmacy that administers or furnishes a substance to a patient; or any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(D) This paragraph shall not apply to the sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person or entity for the sale, transfer, furnishing, or obtaining of any product which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid or liquid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, unless (A) the transaction involves the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article over the counter and without a prescription, or (B) the transaction is made by a person or business entity exempted from the permitting requirements of this subdivision under paragraph (1).

(b)(1) The department shall provide application forms, which are to be completed under penalty of perjury, in order to obtain information relating to the identity of any applicant applying for a permit, including, but not limited to, the business name of the applicant or the individual name, and if a corporate entity, the names of its board of directors, the business in which the applicant is engaged, the business address of the applicant, a full description of any substance to be sold, transferred, or otherwise furnished or to be obtained, the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100, the training, experience, or education relating to this use, and any additional information requested by the

department relating to possible grounds for denial as set forth in this section, or by applicable regulations adopted by the department.

(2) The requirement for the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100 does not require applicants or permittees to reveal their chemical processes that are typically considered trade secrets and proprietary business information.

(c) Applicants and permittees shall authorize the department, or any of its duly authorized representatives, as a condition of being permitted, to make any examination of the books and records of any applicant, permittee, or other person, or visit and inspect the business premises of any applicant or permittee during normal business hours, as deemed necessary to enforce this chapter.

(d) An application may be denied, or a permit may be revoked or suspended, for reasons which include, but are not limited to, the following:

(1) Materially falsifying an application for a permit or an application for the renewal of a permit.

(2) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, is or has been convicted of a misdemeanor or felony relating to any of the substances listed under subdivision (a) of Section 11100, any misdemeanor drug-related offense, or any felony under the laws of this state or the United States.

(3) Failure to maintain effective controls against the diversion of precursors to unauthorized persons or entities.

(4) Failure to comply with this article or any regulations of the department adopted thereunder.

(5) Failure to provide the department, or any duly authorized federal or state official, with access to any place for which a permit has been issued, or for which an application for a permit has been submitted, in the course of conducting a site investigation, inspection, or audit; or failure to promptly produce for the official conducting the site investigation, inspection, or audit any book, record, or document requested by the official.

(6) Failure to provide adequate documentation of a legitimate business purpose involving the applicant's or permittee's use of any substance listed in subdivision (a) of Section 11100.

(7) Commission of any act which would demonstrate actual or potential unfitness to hold a permit in light of the public safety and welfare, which act is substantially related to the qualifications, functions, or duties of a permitholder.

(8) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, willfully violates or has been convicted of violating, any federal, state, or local criminal statute, rule, or ordinance regulating the manufacture, maintenance, disposal, sale, transfer, or furnishing of any of those substances.

(e) Notwithstanding any other provision of law, an investigation of an individual applicant's qualifications, or the qualifications of an applicant's owner, manager, agent, representative, or employee who has direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for a permit may include review of his or her summary criminal history

information pursuant to Sections 11105 and 13300 of the Penal Code, including, but not limited to, records of convictions, regardless of whether those convictions have been expunged pursuant to Section 1203.4 of the Penal Code, and any arrests pending adjudication.

(f) The department may retain jurisdiction of a canceled or expired permit in order to proceed with any investigation or disciplinary action relating to a permittee.

(g) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance and which shall not be transferable. Applications and permits shall be uniform throughout the state, on forms prescribed by the department.

(h) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(i) A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, following the timely filing of a complete renewal application with all supporting documents, the payment of a permit renewal fee not to exceed the application processing costs of the department, and a review of the application by the department.

(j) Selling, transferring, or otherwise furnishing or obtaining any substance specified in subdivision (a) of Section 11100 without a permit is a misdemeanor or a felony.

(k)(1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(*l*)(1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application one set of 10-print fingerprints for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit one set of 10-print fingerprints for each individual not previously fingerprinted under this section.

Added Stats 1986 ch 1028 § 2. Amended Stats 1987 ch 5 § 3, effective March 17, 1987, operative April 1, 1987; Stats 1988 ch 73 § 2; Stats 1989 ch 1133 § 3; Stats 1992 ch 579 § 1 (SB 1821), effective August 30, 1992; Stats 1997 ch 397 § 4 (AB 1173); Stats 1999 ch 978 § 2 (AB 162); Stats 2002 ch 13 § 1 (AB 154), effective March 21, 2002; Stats 2003 ch 369 § 4 (SB 276), effective September 12, 2003; Stats 2005 ch 468 § 6 (AB 465), effective January 1, 2006.

§ 11106.5. Interim order suspending permittee or imposing restrictions

(a) The Department of Justice, or an administrative law judge sitting alone as provided in subdivision (h), may upon petition issue an interim order suspending any permittee or imposing permit restrictions. The petition shall include affidavits that demonstrate, to the satisfaction of the department, both of the following:

(1) The permittee has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the permitted activity.

(2) Permitting the permittee to operate, or to continue to operate without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the permittee, unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the permittee shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the department in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the permittee shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The permittee shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the department to provide a hearing within 20 days following issuance of the interim order without notice, unless the permittee waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the permittee may do the following:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the permittee upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The department, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the department shall determine whether the order shall remain in effect, be dissolved, or be modified.

(f) The department shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the permittee files a notice of defense, the hearing shall be held within 30 days of the agency's receipt of the notice of defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the County of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of

whether the department abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent department has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The department may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the department hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the department on matters of law. The department shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the department relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the department. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i)(1) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any permittee, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the permittee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the department.

(2) If the interim order issued by the department provides for anything less than a complete suspension of the permittee and the permittee violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the department may, upon notice to the permittee and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. The department may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

Added Stats 1997 ch 397 § 5 (AB 1173). Amended Stats 2012 ch 867 § 4 (SB 1144), effective January 1, 2013.

§ 11106.7. Issuance to permittee of citation for abatement or administrative fine; Provisions of citation system; Hearing; Informal conference; Disciplinary action on failure to comply; Citation and criminal action mutually exclusive

(a) The Department of Justice may establish, by regulation, a system for the issuance to a permittee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Department of Justice, if the permittee is in violation of any provision of this chapter or any regulation adopted by the Department of Justice pursuant to this chapter.

(b) The system shall contain the following provisions:

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

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

(3) In no event shall the administrative fine assessed by the department exceed two thousand five hundred dollars ($2,500) for each violation. In assessing a fine, due consideration shall be given to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the permittee, and the history of previous violations.

(4) An order of abatement or a fine assessment issued pursuant to a citation shall inform the permittee that if the permittee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the department within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) In addition to requesting a hearing, the permittee may, within 10 days after service of the citation, request in writing an opportunity for an informal conference with the department regarding the citation. At the conclusion of the informal conference, the department may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. The decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement. However, the permittee does not waive its right to request a hearing to contest a citation by requesting an informal conference. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested within 30 days of service of that subsequent citation.

(6) Failure of a permittee to pay a fine within 30 days of the date of assessment or comply with an order of abatement within the fixed time, unless the citation is being appealed, may result in disciplinary action being taken by the department. If a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal of the permit. A permit shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

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

(2) Assessment of administrative fines may be limited to only particular violations of the law or department regulations.

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

(e) Administrative fines collected pursuant to this section shall be deposited in the General Fund.

(f) The sanctions authorized under this section shall be separate from, and in addition to, any other administrative, civil, or criminal remedies; however, a criminal action may not be initiated for a specific offense if a citation has been issued pursuant to this section for that offense, and a citation may not be issued pursuant to this section for a specific offense if a criminal action for that offense has been filed.

(g) Nothing in this section shall be deemed to prevent the department from serving and prosecuting an accusation to suspend or revoke a permit if grounds for that suspension or revocation exist.

Added Stats 2003 ch 142 § 1 (AB 709).

§ 11107. Sale of laboratory apparatus or chemical reagent or solvent

(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state, any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, where the value of the goods sold in the transaction exceeds one hundred dollars ($100) shall do the following:

(1) Notwithstanding any other law, in any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of product, method of payment, specific items and quantities purchased, and the proper purchaser identification information, all of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(A) For the purposes of this section, "proper purchaser identification" includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, and the signature of the purchaser.

(B) The seller shall retain the original bill of sale containing the purchaser identification information for five years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(2)(A) Notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product

description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information.

(B) For the purposes of this paragraph, "valid identifying information" includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Public Health; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Department of Justice; motor vehicle operator's license; or other identification issued by a state.

(C) The seller shall, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner.

(D) If a common carrier is used, the seller shall maintain a manifest regarding the delivery in a readily presentable manner and for a period of five years.

(b) This section shall not apply to any wholesaler who is licensed by the California State Board of Pharmacy and registered with the federal Drug Enforcement Administration of the United States Department of Justice and who sells laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(c) A violation of this section is a misdemeanor.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Laboratory glassware" includes, but is not limited to, condensers, flasks, separatory funnels, and beakers.

(2) "Apparatus" includes, but is not limited to, heating mantles, ring stands, and rheostats.

(3) "Chemical reagent" means a chemical that reacts chemically with one or more precursors, but does not become part of the finished product.

(4) "Chemical solvent" means a chemical that does not react chemically with a precursor or reagent and does not become part of the finished product. A "chemical solvent" helps other chemicals mix, cools chemical reactions, and cleans the finished product.

Added Stats 1989 ch 1133 § 4. Amended Stats 1992 ch 578 § 1 (SB 1057), ch 580 § 3 (SB 1820), effective August 30, 1992; Stats 1997 ch 397 § 6 (AB 1173); Stats 2003 ch 369 § 5 (SB 276), effective September 12, 2003; Stats 2012 ch 867 § 5 (SB 1144), effective January 1, 2013.

§ 11107.1. Sale of specified substances; Bill of sale; Purchaser identification; Records; Punishment for violations

(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, palladium black, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride shall do the following:

(1)(A) Notwithstanding any other provision of law, in any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of sale, method of payment, the specific items and quantities

purchased and the proper purchaser identification information, all of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(B) For the purposes of this paragraph, "proper purchaser identification" includes a valid driver's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or resale tax identification number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser.

(C) The seller shall retain the original bill of sale containing the purchaser identification information for five years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(2)(A) Notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information.

(B) For the purposes of this paragraph, "valid identifying information" includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Public Health; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Department of Justice; driver's license; or other identification issued by a state.

(C) The seller shall, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner.

(D) If a common carrier is used, the seller shall maintain a manifest regarding the delivery in a readily presentable manner for a period of five years.

(b) Any manufacturer, wholesaler, retailer, or other person or entity in this state that purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

(1) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased.

(2) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General.

(c)(1) A first violation of this section is a misdemeanor.

(2) Any person who has previously been convicted of a violation of this section shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or both the fine and imprisonment.

Added Stats 1989 ch 1133 § 5. Amended Stats 1990 ch 352 § 1 (SB 2329); Stats 1992 ch 580 § 4 (SB 1820), effective August 30, 1992; Stats 1997 ch 397 § 7 (AB 1173); Stats 1998 ch 305 § 1 (SB 1539); Stats 2003 ch 369 § 6 (SB 276), effective September 12, 2003; Stats 2005 ch 468 § 7 (AB 465), effective January 1, 2006; Stats 2012 ch 867 § 6 (SB 1144), effective January 1, 2013.

§ 11110. Punishment for willfully and knowingly supply, deliver, or give possession of nonprescription drug containing dextromethorphan to person under 18 years of age in over-the-counter sale without prescription; Prima facie evidence of violation; Proof

(a) It shall be an infraction, punishable by a fine not exceeding two hundred fifty dollars ($250), for any person, corporation, or retail distributor to willfully and knowingly supply, deliver, or give possession of a drug, material, compound, mixture, preparation, or substance containing any quantity of dextromethorphan (the dextrorotatory isomer of 3-methoxy-N-methylmorphinan, including its salts, but not including its racemic or levorotatory forms) to a person under 18 years of age in an over-the-counter sale without a prescription.

(b) It shall be prima facie evidence of a violation of this section if the person, corporation, or retail distributor making the sale does not require and obtain bona fide evidence of majority and identity from the purchaser, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

(c) Proof that a person, corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this section. As used in this section, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the Armed Forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(d)(1) Notwithstanding any other provision of this section, a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction pursuant to subdivision (a) or subject to any civil penalties.

(2) This subdivision shall not apply to a retail clerk who is a willful participant in an ongoing criminal conspiracy to violate this section.

Added Stats 2011 ch 199 § 1 (SB 514), effective January 1, 2012.

§ 11111. Sale of products containing dextromethorphan without prescription; Use of cash register equipped with age-verification feature to monitor age-restricted items

A person, corporation, or retail distributor that sells or makes available products containing dextromethorphan, as defined in subdivision (a) of Section 11110, in an over-the-counter sale without a prescription shall, if feasible, use a cash register that is equipped with an age-verification feature to monitor

age-restricted items. The cash register shall be programmed to direct the retail clerk making the sale to request bona fide evidence of majority and identity, as described in subdivision (c) of Section 11110, before a product containing dextromethorphan may be purchased.

Added Stats 2011 ch 199 § 2 (SB 514), effective January 1, 2012.

CHAPTER 4
Prescriptions
ARTICLE 1
Requirements of Prescriptions

§ 11150. Persons permitted to write prescription

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 18; Stats 1981 ch 113 § 9; Stats 1996 ch 1023 § 198 (SB 1497), effective September 29, 1996; Stats 1997 ch 549 § 142 (SB 1349); Stats 1999 ch 749 § 8 (SB 816); Stats 2000 ch 676 § 8 (SB 929); Stats 2001 ch 289 § 11 (SB 298); Stats 2004 ch 191 § 6 (AB 2660); Stats 2005 ch 506 § 26 (AB 302), effective October 4, 2005; Stats 2009 ch 308 § 93 (SB 819), effective January 1, 2010; Stats 2014 ch 319 § 5 (SB 1039), effective January 1, 2015.

§ 11150.6. Classification of Methaqualone in Schedule I

Notwithstanding Section 11150.5 or subdivision (a) of Section 11054, methaqualone, its salts, isomers, and salts of its isomers shall be deemed to be classified in Schedule I for the purposes of this chapter.

Added Stats 1984 ch 22 § 1, effective March 1, 1984.

§ 11151. Filling prescription written by unlicensed person lawfully practicing medicine

A prescription written by an unlicensed person lawfully practicing medicine pursuant to Section 2065 of the Business and Professions Code, shall be filled only at a pharmacy maintained in the hospital which employs such unlicensed person.

Added Stats 1972 ch 1407 § 3. Amended Stats 1986 ch 248 § 144.

§ 11152. Prohibited noncompliance

No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division.

Added Stats 1972 ch 1407 § 3.

§ 11153. Responsibility and liability for prescribing controlled substances; Unlawful prescriptions

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

(b) Any person who knowingly violates this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both that fine and imprisonment.

(c) No provision of the amendments to this section enacted during the second year of the 1981-82 Regular Session shall be construed as expanding the scope of practice of a pharmacist.

Added Stats 1982 ch 1284 § 3, effective September 22, 1982. Amended Stats 1995 ch 455 § 5 (AB 1113); Stats 2011 ch 15 § 148 (AB 109), effective April 4, 2011, operative October 1, 2011.
Amended Stats 2011 ch 15 § 148 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11153.5. Furnishing controlled substances for other than medical purposes; Penalty for violation

(a) No wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, shall furnish controlled substances for other than legitimate medical purposes.

(b) Anyone who violates this section knowing, or having a conscious disregard for the fact, that the controlled substances are for other than a legitimate medical purpose shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both that fine and imprisonment.

(c) Factors to be considered in determining whether a wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, furnished controlled substances knowing or having a conscious disregard for the fact that the controlled substances are for other than legitimate medical purposes shall include, but not be limited to, whether the use of controlled substances was for purposes of increasing athletic ability or performance, the amount of controlled substances furnished, the previous ordering pattern of the customer (including

size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes the product.

Added Stats 1986 ch 384 § 4, effective July 17, 1986. Amended Stats 1987 ch 181 § 22; Stats 1988 ch 918 § 5; Stats 2011 ch 15 § 149 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11154. Prescribing or furnishing substance to person not under practitioner's care; Soliciting practitioner to unlawfully prescribe or furnish substance

(a) Except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

(b) No person shall knowingly solicit, direct, induce, aid, or encourage a practitioner authorized to write a prescription to unlawfully prescribe, administer, dispense, or furnish a controlled substance.

Added Stats 1972 ch 1407 § 3. Amended Stats 1982 ch 1403 § 1.

§ 11155. Prohibited possession, administration dispensation, or prescription by physician surrendering privileges

Any physician, who by court order or order of any state or governmental agency, or who voluntarily surrenders his controlled substance privileges, shall not possess, administer, dispense, or prescribe a controlled substance unless and until such privileges have been restored, and he has obtained current registration from the appropriate federal agency as provided by law.

Added Stats 1972 ch 1407 § 3.

§ 11156. Prohibited prescription, or dispensation to, addict or other user; Exception

(a) Except as provided in Section 2241 of the Business and Professions Code, no person shall prescribe for, or administer, or dispense a controlled substance to, an addict, or to any person representing himself or herself as such, except as permitted by this division.

(b)(1) For purposes of this section, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

(A) Impaired control over drug use.

(B) Compulsive use.

(C) Continued use despite harm.

(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section.

Added Stats 1972 ch 1407 § 3. Amended Stats 2006 ch 350 § 8 (AB 2198), effective January 1, 2007.

§ 11157. Prohibited issuance of false prescription

No person shall issue a prescription that is false or fictitious in any respect.

Added Stats 1972 ch 1407 § 3.

§ 11158. Prohibited dispensation of controlled substances without prescription; Exceptions

(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a

prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

(b) A practitioner specified in Section 11150 may dispense directly to an ultimate user a controlled substance classified in Schedule II in an amount not to exceed a 72-hour supply for the patient in accordance with directions for use given by the dispensing practitioner only where the patient is not expected to require any additional amount of the controlled substance beyond the 72 hours. Practitioners dispensing drugs pursuant to this subdivision shall meet the requirements of subdivision (f) of Section 11164.

(c) Except as otherwise prohibited or limited by law, a practitioner specified in Section 11150, may administer controlled substances in the regular practice of his or her profession.

Added Stats 1976 ch 896 § 6. Amended Stats 1980 ch 1223 § 2.

§ 11159. Requirements of order for substances to be used by hospital patient; Hospital record

An order for controlled substances for use by a patient in a county or licensed hospital shall be exempt from all requirements of this article, but shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name and quantity of the controlled substance ordered and the quantity actually administered. The record of such orders shall be maintained as a hospital record for a minimum of seven years.

Added Stats 1972 ch 1407 § 3.

§ 11159.1. Exemption of nonprofit community clinic or free clinic from prescription requirements

An order for controlled substances furnished to a patient in a clinic which has a permit issued pursuant to Article 13 (commencing with Section 4180) of Chapter 9 of Division 2 of the Business and Professions Code, except an order for a Schedule II controlled substance, shall be exempt from the prescription requirements of this article and shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name and quantity of the controlled substance ordered and the quantity actually furnished. The record of the order shall be maintained as a clinic record for a minimum of seven years. This section shall apply only to a clinic that has obtained a permit under the provisions of Article 13 (commencing with Section 4180) of Chapter 9 of Division 2 of the Business and Professions Code.

Clinics that furnish controlled substances shall be required to keep a separate record of the furnishing of those drugs which shall be available for review and inspection by all properly authorized personnel.

Added Stats 1984 ch 757 § 3. Amended Stats 2004 ch 695 § 52 (SB 1913).

§ 11159.2. Prescriptions for controlled substances for terminally ill patients

(a) Notwithstanding any other provision of law, a prescription for a controlled substance for use by a patient who has a terminal illness may be written on a prescription form that does not meet the requirements of Section 11162.1 if the prescription meets the following requirements:

(1) Contain the information specified in subdivision (a) of Section 11164.

(2) Indicate that the prescriber has certified that the patient is terminally ill by the words "11159.2 exemption."

(b) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (2) of subdivision (a), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

(c) For purposes of this section, "terminally ill" means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient's illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient's treatment by the physician prescribing a controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than for cure of the illness.

(d) This section shall become operative on July 1, 2004.

Added Stats 2003 ch 406 § 3.5 (SB 151), operative July 1, 2004. Amended Stats 2005 ch 487 § 1 (SB 734), effective January 1, 2006.

§ 11161. Issuance and nontransferability of prescription blanks; Order of surrender when practitioner is charged with certain felony violations; Hearing and evidence; Challenge to order; When vacated

(a) When a practitioner is named in a warrant of arrest or is charged in an accusatory pleading with a felony violation of Section 11153, 11154, 11156, 11157, 11170, 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378, 11378.5, 11379, 11379.5, or 11379.6, the court in which the accusatory pleading is filed or the magistrate who issued the warrant of arrest shall, upon the motion of a law enforcement agency which is supported by reasonable cause, issue an order which requires the practitioner to surrender to the clerk of the court all controlled substance prescription forms in the practitioner's possession at a time set in the order and which prohibits the practitioner from obtaining, ordering, or using any additional prescription forms. The law enforcement agency obtaining the order shall notify the Department of Justice of this order. Except as provided in subdivisions (b) and (e) of this section, the order shall remain in effect until further order of the court. Any practitioner possessing prescription forms in violation of the order is guilty of a misdemeanor.

(b) The order provided by subdivision (a) shall be vacated if the court or magistrate finds that the underlying violation or violations are not supported by reasonable cause at a hearing held within two court days after the practitioner files and personally serves upon the prosecuting attorney and the law enforcement agency that obtained the order, a notice of motion to vacate the order with any affidavits on which the practitioner relies. At the hearing, the burden of proof, by a preponderance of the evidence, is on the prosecution. Evidence presented at the hearing shall be limited to the warrant of arrest with supporting affidavits, the motion to require the defendant to surrender

controlled substance prescription forms and to prohibit the defendant from obtaining, ordering, or using controlled substance prescription forms, with supporting affidavits, the sworn complaint together with any documents or reports incorporated by reference thereto which, if based on information and belief, state the basis for the information, or any other documents of similar reliability as well as affidavits and counter affidavits submitted by the prosecution and defense. Granting of the motion to vacate the order is no bar to prosecution of the alleged violation or violations.

(c) The defendant may elect to challenge the order issued under subdivision (a) at the preliminary examination. At that hearing, the evidence shall be limited to that set forth in subdivision (b) and any other evidence otherwise admissible at the preliminary examination.

(d) If the practitioner has not moved to vacate the order issued under subdivision (a) by the time of the preliminary examination and he or she is held to answer on the underlying violation or violations, the practitioner shall be precluded from afterwards moving to vacate the order. If the defendant is not held to answer on the underlying charge or charges at the conclusion of the preliminary examination, the order issued under subdivision (a) shall be vacated.

(e) Notwithstanding subdivision (d), any practitioner who is diverted pursuant to Chapter 2.5 (commencing with Section 1000) of Title 7 of Part 2 of the Penal Code may file a motion to vacate the order issued under subdivision (a).

(f) This section shall become operative on November 1, 2004.

Added Stats 2003 ch 406 § 5 (SB 151), operative July 1, 2004. Amended Stats 2004 ch 573 § 2 (AB 30), effective September 18, 2004, operative November 1, 2004; Stats 2005 ch 487 § 2 (SB 734), effective January 1, 2006.

§ 11161.5. Security printers for controlled substance prescription forms; Application and approval; Security check; Grounds for denial; List of approved security printers; Duties of security printer; Records; Revocation of approval

(a) Prescription forms for controlled substance prescriptions shall be obtained from security printers approved by the Department of Justice.

(b) The department may approve security printer applications after the applicant has provided the following information:

(1) Name, address, and telephone number of the applicant.

(2) Policies and procedures of the applicant for verifying the identity of the prescriber ordering controlled substance prescription forms.

(3) Policies and procedures of the applicant for verifying delivery of controlled substance prescription forms to prescribers.

(4)(A) The location, names, and titles of the applicant's agent for service of process in this state; all principal corporate officers, if any; all managing general partners, if any; and any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms.

(B) A report containing this information shall be made on an annual basis and within 30 days after any change of office, principal corporate officers, managing general partner, or of any person described in subparagraph (A).

(5)(A) A signed statement indicating whether the applicant, any principal corporate officer, any managing general partner, or any individual owner,

partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms, has ever been convicted of, or pled no contest to, a violation of any law of a foreign country, the United States, or any state, or of any local ordinance.

(B) The department shall provide the applicant and any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms, with the means and direction to provide fingerprints and related information, in a manner specified by the department, for the purpose of completing state, federal, or foreign criminal background checks.

(C) Any applicant described in subdivision (b) shall submit his or her fingerprint images and related information to the department, for the purpose of the department obtaining information as to the existence and nature of a record of state, federal, or foreign level convictions and state, federal, or foreign level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial, as described in subdivision (*l*) of Section 11105 of the Penal Code. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(D) The department shall assess against each security printer applicant a fee determined by the department to be sufficient to cover all processing, maintenance, and investigative costs generated from or associated with completing state, federal, or foreign background checks and inspections of security printers pursuant to this section with respect to that applicant; the fee shall be paid by the applicant at the time he or she submits the security printer application, fingerprints, and related information to the department.

(E) The department shall retain fingerprint impressions and related information for subsequent arrest notification pursuant to Section 11105.2 of the Penal Code for all applicants.

(c) The department may, within 60 calendar days of receipt of the application from the applicant, deny the security printer application.

(d) The department may deny a security printer application on any of the following grounds:

(1) The applicant, any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor for the applicant, who has direct access, management, or control of controlled substance prescription forms, has been convicted of a crime. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) The applicant committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, herself, or another, or substantially injure another.

(3) The applicant committed any act that would constitute a violation of this division.

(4) The applicant knowingly made a false statement of fact required to be revealed in the application to produce controlled substance prescription forms.

(5) The department determines that the applicant failed to demonstrate adequate security procedures relating to the production and distribution of controlled substance prescription forms.

(6) The department determines that the applicant has submitted an incomplete application.

(7) As a condition for its approval as a security printer, an applicant shall authorize the Department of Justice to make any examination of the books and records of the applicant, or to visit and inspect the applicant during business hours, to the extent deemed necessary by the board or department to properly enforce this section.

(e) An approved applicant shall submit an exemplar of a controlled substance prescription form, with all security features, to the Department of Justice within 30 days of initial production.

(f) The department shall maintain a list of approved security printers and the department shall make this information available to prescribers and other appropriate government agencies, including the Board of Pharmacy.

(g) Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges which permits the prescribing of controlled substances with the federal Drug Enforcement Administration (DEA).

(h) Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature signifying receipt of the package and provision of that signature to the security printer. Controlled substance prescription forms provided in person shall be restricted to established customers. Security printers shall obtain a photo identification from the customer and maintain a log of this information. Controlled substance prescription forms shall be shipped only to the prescriber's address on file and verified with the federal Drug Enforcement Administration or the Medical Board of California.

(i) Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.

(j) Security printers shall produce ordering and delivery records upon request by an authorized officer of the law as defined in Section 4017 of the Business and Professions Code.

(k) Security printers shall report any theft or loss of controlled substance prescription forms to the Department of Justice via fax or e-mail within 24 hours of the theft or loss.

(*l*)(1) The department shall impose restrictions, sanctions, or penalties, subject to subdivisions (m) and (n), against security printers who are not in compliance with this division pursuant to regulations implemented pursuant to this division and shall revoke its approval of a security printer for a violation of this division or action that would permit a denial pursuant to subdivision (d) of this section.

(2) When the department revokes its approval, it shall notify the appropriate licensing boards and remove the security printer from the list of approved security printers.

(m) The following violations by security printers shall be punishable pursuant to subdivision (n):

(1) Failure to comply with the Security Printer Guidelines established by the Security Printer Program as a condition of approval.

(2) Failure to take reasonable precautions to prevent any dishonest act or illegal activity related to the access and control of security prescription forms.

(3) Theft or fraudulent use of a prescriber's identity in order to obtain security prescription forms.

(n) A security printer approved pursuant to subdivision (b) shall be subject to the following penalties for actions leading to the denial of a security printer application specified in subdivision (d) or for a violation specified in subdivision (m):

(1) For a first violation, a fine not to exceed one thousand dollars ($1,000).

(2) For a second or subsequent violation, a fine not to exceed two thousand five hundred dollars ($2,500) for each violation.

(3) For a third or subsequent violation, a filing of an administrative disciplinary action seeking to suspend or revoke security printer approval.

Added Stats 2003 ch 406 § 6 (SB 151). Amended Stats 2005 ch 487 § 3 (SB 734), effective January 1, 2006; Stats 2011 ch 418 § 1 (SB 360), effective January 1, 2012.

§ 11161.7. Information on restrictions of prescriber's authority to be provided to pharmacies, security printers, Department of Justice, and Board of Pharmacy

(a) When a prescriber's authority to prescribe controlled substances is restricted by civil, criminal, or administrative action, or by an order of the court issued pursuant to Section 11161, the law enforcement agency or licensing board that sought the restrictions shall provide the name, category of licensure, license number, and the nature of the restrictions imposed on the prescriber to security printers, the Department of Justice, and the Board of Pharmacy.

(b) The Board of Pharmacy shall make available the information required by subdivision (a) to pharmacies and security printers to prevent the dispensing of controlled substance prescriptions issued by the prescriber and the ordering of additional controlled substance prescription forms by the restricted prescriber.

Added Stats 2003 ch 406 § 7 (SB 151).

§ 11162.1. Features of printed prescription forms; Requirements for batches and when ordering forms

(a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7)(A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the following quantities shall appear:

1-24
25-49
50-74
75-100
101-150
151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

(14)(A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c)(1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility the clinic specified in Section 1200, or the clinic specified in Section 1206 that has 25 or more physicians or surgeons preprinted on the form. Licensed health care facilities or clinics exempt under Section 1206 are not required to preprint the category of licensure and license number of their facility or clinic.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

(4)(A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and quantity of controlled substance prescription forms issued to each prescriber. The record shall be maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

(d) This section shall become operative on January 1, 2012. Prescription forms not in compliance with this division shall not be valid or accepted after July 1, 2012.

Added Stats 2003 ch 406 § 9 (SB 151), operative July 1, 2004. Amended Stats 2004 ch 573 § 3 (AB 30), effective September 18, 2004, operative July 1, 2004; Stats 2005 ch 487 § 4 (SB 734), effective January 1, 2006; Stats 2006 ch 286 § 1 (AB 2986), effective January 1, 2007 (ch 286 prevails), ch 538 § 368 (SB 1852), effective January 1, 2007; Stats 2007 ch 130 § 161 (AB 299), effective January 1, 2008; Stats 2011 ch 418 § 2 (SB 360), effective January 1, 2012.

§ 11162.5. Counterfeiting or possession of counterfeited prescription blanks

(a) Every person who counterfeits a prescription blank purporting to be an official prescription blank prepared and issued pursuant to Section 11161.5, or knowingly possesses more than three counterfeited prescription blanks, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or by imprisonment in a county jail for not more than one year.

(b) Every person who knowingly possesses three or fewer counterfeited prescription blanks purporting to be official prescription blanks prepared and issued pursuant to Section 11161.5, shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

Added Stats 1984 ch 1434 § 1, effective September 26, 1984. Amended Stats 2006 ch 901 § 1.6 (SB 1422), effective January 1, 2007; Stats 2011 ch 15 § 150 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11162.6. Controlled substance prescription forms; Penalty for counterfeiting, obtaining under false pretenses, fraudulent production, etc.

(a) Every person who counterfeits a controlled substance prescription form shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Every person who knowingly possesses a counterfeited controlled substance prescription form shall be guilty of a misdemeanor punishable by

imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Every person who attempts to obtain or obtains a controlled substance prescription form under false pretenses shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who fraudulently produces controlled substance prescription forms shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) This section shall become operative on July 1, 2004.

Added Stats 2003 ch 406 § 10 (SB 151), operative July 1, 2004.

§ 11164. Requirements for prescriptions; Oral or electronic prescription; Written records

Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 406 § 13 (SB 151), operative January 1, 2005. Amended Stats 2005 ch 487 § 5 (SB 734), effective January 1, 2006; Stats 2006 ch 286 § 2 (AB 2986), effective January 1, 2007.

§ 11164.1. When prescription for controlled substance issued by prescriber in another state for delivery to patient in another state may be dispensed by California pharmacy; Report to Department of Justice; Prescriptions for Schedule III, IV or V controlled substances from out-of-state prescribers

(a)(1) Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

(2) All prescriptions for Schedule II, Schedule III, and Schedule IV controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision (d) of Section 11165.

(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.

Added Stats 2003 ch 406 § 15 (SB 151), operative January 1, 2005. Amended Stats 2013 ch 400 § 5 (SB 809), effective January 1, 2014.

§ 11164.5. Electronic prescriptions

(a) Notwithstanding Section 11164, if only recorded and stored electronically, on magnetic media, or in any other computerized form, the pharmacy's or hospital's computer system shall not permit the received information or the controlled substance dispensing information required by this section to be changed, obliterated, destroyed, or disposed of, for the record maintenance period required by law, once the information has been received by the pharmacy or the hospital and once the controlled substance has been dispensed, respectively. Once the controlled substance has been dispensed, if the previously created record is determined to be incorrect, a correcting addition may be made only by or with the approval of a pharmacist. After a pharmacist enters the change or enters his or her approval of the change into the computer, the resulting record shall include the correcting addition and the date it was made to the record, the identity of the person or pharmacist making the correction, and the identity of the pharmacist approving the correction.

(b) Nothing in this section shall be construed to exempt any pharmacy or hospital dispensing Schedule II controlled substances pursuant to electronic transmission prescriptions from existing reporting requirements.

Added Stats 2000 ch 293 § 4 (AB 2240). Amended Stats 2016 ch 484 § 55 (SB 1193), effective January 1, 2017.

§ 11165. CURES project for electronic monitoring of prescription drugs; Funding as contingency; Confidentiality provisions; Information to be provided to Department of Justice

(a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c)(1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2)(A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data is

provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

Added Stats 2003 ch 748 § 4 (AB 1196), operative January 1, 2005. Amended Stats 2005 ch 506 § 27 (AB 302), effective October 4, 2005; Stats 2006 ch 286 § 3 (AB 2986), effective January 1, 2007; Stats

2009 ch 308 § 94 (SB 819), effective January 1, 2010; Stats 2011 ch 418 § 3 (SB 360), effective January 1, 2012; Stats 2013 ch 400 § 6 (SB 809), effective January 1, 2014; Stats 2016 ch 708 § 1 (SB 482), effective January 1, 2017.

§ 11165.1. Request for, or release of, controlled substance history; Guidelines; Initiation by Department of Justice; Confidentiality; Civil or administrative liability

(a)(1)(A)(i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before July 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before July 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES PDMP.

(B) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal DEA registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Any subscriber accessing information for any other reason than caring for his or her patients.

(C) Any authorized subscriber shall notify the Department of Justice within 30 days of any changes to the subscriber account.

(2) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(c) In order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of

Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the Department of Justice pursuant to this section is medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a prescriber or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.

(f) A health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist, when acting with reasonable care and in good faith, is not subject to civil or administrative liability arising from any false, incomplete, inaccurate, or misattributed information submitted to, reported by, or relied upon in the CURES database or for any resulting failure of the CURES database to accurately or timely report that information.

Added Stats 2002 ch 345 § 2 (AB 2655). Amended Stats 2003 ch 406 § 18 (SB 151); Stats 2006 ch 286 § 4 (AB 2986), effective January 1, 2007; Stats 2011 ch 418 § 4 (SB 360), effective January 1, 2012; Stats 2013 ch 400 § 7 (SB 809), effective January 1, 2014; Stats 2015 ch 778 § 1 (AB 679), effective October 11, 2015; Stats 2016 ch 708 § 2 (SB 482), effective January 1, 2017.

§ 11165.2. Department of Justice audits of CURES Prescription Drug Monitoring Program system and users; Citations for subscriber violations; Required provisions; Payment of fine as satisfactory resolution; Deposit of administrative fines; Sanctions separate

(a) The Department of Justice may conduct audits of the CURES Prescription Drug Monitoring Program system and its users.

(b) The Department of Justice may establish, by regulation, a system for the issuance to a CURES Prescription Drug Monitoring Program subscriber of a citation which may contain an order of abatement, or an order to pay an administrative fine assessed by the Department of Justice if the subscriber is in violation of any provision of this chapter or any regulation adopted by the Department of Justice pursuant to this chapter.

(c) The system shall contain the following provisions:

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

(2) Whenever appropriate, the citation shall contain an order of abatement establishing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the department exceed two thousand five hundred dollars ($2,500) for each violation. In assessing a fine, due consideration shall be given to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the subscribers, and the history of previous violations.

(4) An order of abatement or a fine assessment issued pursuant to a citation shall inform the subscriber that if the subscriber desires a hearing to contest

the finding of a violation, a hearing shall be requested by written notice to the CURES Prescription Drug Monitoring Program within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) In addition to requesting a hearing, the subscriber may, within 10 days after service of the citation, request in writing an opportunity for an informal conference with the department regarding the citation. At the conclusion of the informal conference, the department may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. The decision shall be deemed to be a final order with regard to the citation issued, including the fine levied or the order of abatement which could include permanent suspension to the system, a monetary fine, or both, depending on the gravity of the violation. However, the subscriber does not waive its right to request a hearing to contest a citation by requesting an informal conference. If the citation is affirmed, a formal hearing may be requested within 30 days of the date the citation was affirmed. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested within 30 days of service of that subsequent citation.

(6) Failure of a subscriber to pay a fine within 30 days of the date of assessment or comply with an order of abatement within the fixed time, unless the citation is being appealed, may result in disciplinary action taken by the department. If a citation is not contested and a fine is not paid, the subscriber account will be terminated:

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

(B) Assessment of administrative fines may be limited to only particular violations of law or department regulations.

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

(e) Administrative fines collected pursuant to this section shall be deposited in the CURES Program Special Fund, available upon appropriation by the Legislature. These special funds shall provide support for costs associated with informal and formal hearings, maintenance, and updates to the CURES Prescription Drug Monitoring Program.

(f) The sanctions authorized under this section shall be separate from, and in addition to, any other administrative, civil, or criminal remedies; however, a criminal action may not be initiated for a specific offense if a citation has been issued pursuant to this section for that offense, and a citation may not be issued pursuant to this section for a specific offense if a criminal action for that offense has been filed.

(g) Nothing in this section shall be deemed to prevent the department from serving and prosecuting an accusation to suspend or revoke a subscriber if grounds for that suspension or revocation exist.

Added Stats 2011 ch 418 § 5 (SB 360), effective January 1, 2012.

§ 11165.3. Report of theft or loss of prescription forms

The theft or loss of prescription forms shall be reported immediately by the security printer or affected prescriber to the CURES Prescription Drug Monitoring Program, but no later than three days after the discovery of the theft or loss. This notification may be done in writing utilizing the approved Department of Justice form or may be reported by the authorized subscriber through the CURES Prescription Drug Monitoring Program.

Added Stats 2011 ch 418 § 6 (SB 360), effective January 1, 2012. Amended Stats 2012 ch 867 § 7 (SB 1144), effective January 1, 2013.

§ 11165.4. Duty to consult CURES database; Liability for failure to consult

(a)(1)(A)(i) A health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance shall consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every four months thereafter if the substance remains part of the treatment of the patient.

(ii) If a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance is not required, pursuant to an exemption described in subdivision (c), to consult the CURES database the first time he or she prescribes, orders, administers, or furnishes a controlled substance to a patient, he or she shall consult the CURES database to review the patient's controlled substance history before subsequently prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient and at least once every four months thereafter if the substance remains part of the treatment of the patient.

(B) For purposes of this paragraph, "first time" means the initial occurrence in which a health care practitioner, in his or her role as a health care practitioner, intends to prescribe, order, administer, or furnish a Schedule II, Schedule III, or Schedule IV controlled substance to a patient and has not previously prescribed a controlled substance to the patient.

(2) A health care practitioner shall obtain a patient's controlled substance history from the CURES database no earlier than 24 hours, or the previous business day, before he or she prescribes, orders, administers, or furnishes a Schedule II, Schedule III, or Schedule IV controlled substance to the patient.

(b) The duty to consult the CURES database, as described in subdivision (a), does not apply to veterinarians or pharmacists.

(c) The duty to consult the CURES database, as described in subdivision (a), does not apply to a health care practitioner in any of the following circumstances:

(1) If a health care practitioner prescribes, orders, or furnishes a controlled substance to be administered to a patient while the patient is admitted to any of the following facilities or during an emergency transfer between any of the following facilities for use while on facility premises:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(2) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance in the emergency department of a general acute care hospital and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use.

(3) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient as part of the patient's treatment for a surgical procedure and the quantity of the controlled substance does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use, in any of the following facilities:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(E) A place of practice, as defined in Section 1658 of the Business and Professions Code.

(4) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient currently receiving hospice care, as defined in Section 1339.40.

(5)(A) If all of the following circumstances are satisfied:

(i) It is not reasonably possible for a health care practitioner to access the information in the CURES database in a timely manner.

(ii) Another health care practitioner or designee authorized to access the CURES database is not reasonably available.

(iii) The quantity of controlled substance prescribed, ordered, administered, or furnished does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use and no refill of the controlled substance is allowed.

(B) A health care practitioner who does not consult the CURES database under subparagraph (A) shall document the reason he or she did not consult the database in the patient's medical record.

(6) If the CURES database is not operational, as determined by the department, or when it cannot be accessed by a health care practitioner because of a temporary technological or electrical failure. A health care practitioner shall, without undue delay, seek to correct any cause of the temporary technological or electrical failure that is reasonably within his or her control.

(7) If the CURES database cannot be accessed because of technological limitations that are not reasonably within the control of a health care practitioner.

(8) If consultation of the CURES database would, as determined by the health care practitioner, result in a patient's inability to obtain a prescription

in a timely manner and thereby adversely impact the patient's medical condition, provided that the quantity of the controlled substance does not exceed a nonrefillable five-day supply if the controlled substance were used in accordance with the directions for use.

(d)(1) A health care practitioner who fails to consult the CURES database, as described in subdivision (a), shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board.

(2) This section does not create a private cause of action against a health care practitioner. This section does not limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient.

(e) This section is not operative until six months after the Department of Justice certifies that the CURES database is ready for statewide use and that the department has adequate staff, which, at a minimum, shall be consistent with the appropriation authorized in Schedule (6) of Item 0820-001-0001 of the Budget Act of 2016 (Chapter 23 of the Statutes of 2016), user support, and education. The department shall notify the Secretary of State and the office of the Legislative Counsel of the date of that certification.

(f) All applicable state and federal privacy laws govern the duties required by this section.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Added Stats 2016 ch 708 § 3 (SB 482), effective January 1, 2017.

§ 11165.5. Donations to CURES Fund

(a) The Department of Justice may seek voluntarily contributed private funds from insurers, health care service plans, qualified manufacturers, and other donors for the purpose of supporting CURES. Insurers, health care service plans, qualified manufacturers, and other donors may contribute by submitting their payment to the Controller for deposit into the CURES Fund established pursuant to subdivision (c) of Section 208 of the Business and Professions Code. The department shall make information about the amount and the source of all private funds it receives for support of CURES available to the public. Contributions to the CURES Fund pursuant to this subdivision shall be nondeductible for state tax purposes.

(b) For purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug, substance, or immediate precursor listed in any schedule in Section 11055, 11056, or 11057 of the Health and Safety Code.

(2) "Health care service plan" means an entity licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(3) "Insurer" means an admitted insurer writing health insurance, as defined in Section 106 of the Insurance Code, and an admitted insurer writing worker's compensation insurance, as defined in Section 109 of the Insurance Code.

(4) "Qualified manufacturer" means a manufacturer of a controlled substance, but does not mean a wholesaler or nonresident wholesaler of dangerous

drugs, regulated pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code, a veterinary food-animal drug retailer, regulated pursuant to Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, or an individual regulated by the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, or the California Board of Podiatric Medicine.

Added Stats 2013 ch 400 § 8 (SB 809), effective January 1, 2014.

§ 11166. When filling prescription for controlled substance is prohibited

No person shall fill a prescription for a controlled substance after six months has elapsed from the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

Added Stats 1976 ch 896 § 13. Amended Stats 1985 ch 630 § 1; Stats 1998 ch 878 § 58 (SB 2239); Stats 2003 ch 406 § 19 (SB 151).

§ 11167. Emergency order for controlled substance; Requirements

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a controlled substance may be dispensed on an oral order, an electronic data transmission order, or a written order not made on a controlled substance form as specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Department of Justice in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Department of Justice.

(e) This section shall become operative on January 1, 2005.

Added Stats 2003 ch 406 § 22 (SB 151), operative January 1, 2005. Amended Stats 2012 ch 867 § 8 (SB 1144), effective January 1, 2013.

§ 11167.5. Issuance of oral or electronically transmitted prescription for patient of certain licensed facilities or agencies or hospice; Requirements

(a) An order for a controlled substance classified in Schedule II for a patient of a licensed skilled nursing facility, a licensed intermediate care facility, a licensed home health agency, or a licensed hospice may be dispensed upon an oral or electronically transmitted prescription. If the prescription is transmitted orally, the pharmacist shall, prior to filling the prescription, reduce the prescription to writing in ink in the handwriting of the pharmacist on a form developed by the pharmacy for this purpose. If the prescription is transmitted electronically, the pharmacist shall, prior to filling the prescription, produce, sign, and date a hard copy prescription. The prescriptions shall contain the date the prescription was orally or electronically transmitted by the prescriber, the name of the person for whom the prescription was authorized, the name and address of the licensed skilled nursing facility, licensed intermediate care facility, licensed home health agency, or licensed hospice in which that person is a patient, the name and quantity of the controlled substance prescribed, the directions for use, and the name, address, category of professional licensure, license number, and federal controlled substance registration number of the prescriber. The original shall be properly endorsed by the pharmacist with the pharmacy's state license number, the name and address of the pharmacy, and the signature of the person who received the controlled substances for the licensed skilled nursing facility, licensed intermediate care facility, licensed home health agency, or licensed hospice. A licensed skilled nursing facility, a licensed intermediate care facility, a licensed home health agency, or a licensed hospice shall forward to the dispensing pharmacist a copy of any signed telephone orders, chart orders, or related documentation substantiating each oral or electronically transmitted prescription transaction under this section.

(b) This section shall become operative on July 1, 2004.

Added Stats 2003 ch 406 § 24 (SB 151), operative July 1, 2004.

§ 11170. Prescription of controlled substances for self use

No person shall prescribe, administer, or furnish a controlled substance for himself.

Added Stats 1972 ch 1407 § 3.

§ 11171. Prohibited prescription or administration in absence of compliance

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

Added Stats 1972 ch 1407 § 3.

§ 11172. Prohibited antedating or postdating prescription

No person shall antedate or postdate a prescription.

Added Stats 1972 ch 1407 § 3.

§ 11173. Prohibited fraudulent acts

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 19.

§ 11174. Prohibited false name or address

No person shall, in connection with the prescribing, furnishing, administering, or dispensing of a controlled substance, give a false name or false address.

Added Stats 1972 ch 1407 § 3.

§ 11175. Prohibited obtaining or possessing noncomplying prescription

No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 17.

§ 11179. Period of time prescription kept on file

A person who fills a prescription shall keep it on file for at least three years from the date of filling it.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 21.

§ 11180. Prohibited obtaining or possessing substance by noncomplying prescription

No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.

Added Stats 1972 ch 1407 § 3.

ARTICLE 2

Prescriber's Record

§ 11190. Contents of record of practitioner, other than pharmacist, issuing prescription, or dispensing or administering controlled substance

(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(1) The name and address of the patient.

(2) The date.

(3) The character, including the name and strength, and quantity of controlled substances involved.

(b) The prescriber's record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

(c)(1) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

(A) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the patient.

(B) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(C) NDC (National Drug Code) number of the controlled substance dispensed.

(D) Quantity of the controlled substance dispensed.

(E) ICD-9 (diagnosis code), if available.

(F) Number of refills ordered.

(G) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(H) Date of origin of the prescription.

(2)(A) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a weekly basis in a format set by the Department of Justice pursuant to regulation.

(B) The reporting requirement in this section shall not apply to the direct administration of a controlled substance to the body of an ultimate user.

(d) This section shall become operative on January 1, 2005.

(e) The reporting requirement in this section for Schedule IV controlled substances shall not apply to any of the following:

(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

(f) Notwithstanding paragraph (2) of subdivision (c), the reporting requirement of the information required by this section for a Schedule II or Schedule III controlled substance, in a format set by the Department of Justice pursuant to regulation, shall be on a monthly basis for all of the following:

(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

Added Stats 2003 ch 406 § 29 (SB 151), operative January 1, 2005. Amended Stats 2004 ch 573 § 5 (AB 30), effective September 18, 2004, operative January 1, Stats 2005, ch 487 § 7 (SB 734), effective January 1, 2006; Stats 2006 ch 286 § 5 (AB 2986), effective January 1, 2007.

§ 11191. Preservation of record; Violations

The record shall be preserved for three years.

Every person who violates any provision of this section is guilty of a misdemeanor.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 23.

§ 11192. Prima facie evidence of violation of Schedule II record keeping provision

In a prosecution for a violation of Section 11190, proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law or that the amount of controlled substances possessed by a defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of a violation of the section.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 637 § 1.

ARTICLE 3

Copies of Prescriptions

§ 11195. Receipt from officer, inspector, or investigator removing pharmacist's copy of prescription

Whenever the pharmacist's copy of a controlled substance prescription is removed by a peace officer, agent of the Attorney General, or inspector of the Board of Pharmacy, or investigator of the Division of Investigation of the Department of Consumer Affairs for the purpose of investigation or as evidence, the officer or inspector or investigator shall give to the pharmacist a receipt in lieu thereof.

Added Stats 1972 ch 1407 § 3.

ARTICLE 4

Refilling Prescriptions

§ 11200. Restrictions on refills

(a) No person shall dispense or refill a controlled substance prescription more than six months after the date thereof.

(b) No prescription for a Schedule III or IV substance may be refilled more than five times and in an amount, for all refills of that prescription taken together, exceeding a 120-day supply.

(c) No prescription for a Schedule II substance may be refilled.

Added Stats 1972 ch 1407 § 3. Amended Stats 1979 ch 634 § 6; Stats 1991 ch 592 § 2 (AB 1188); Stats 1992 ch 616 § 2 (SB 2013).

§ 11201. Authorization to refill without prescriber's authorization; Conditions required

A prescription for a controlled substance, except those appearing in schedule II, may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might present an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall refill only a reasonable amount sufficient to maintain the patient until the prescriber can be contacted. The pharmacist shall note on the

reverse side of the prescription the date and quantity of the refill and that the prescriber was not available and the basis for his judgment to refill the prescription without the prescriber's authorization. The pharmacist shall inform the patient that the prescription was refilled without the prescriber's authorization, indicating that the prescriber was not available and that, in the pharmacist's professional judgment, failure to provide the drug might result in an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall inform the prescriber within a reasonable period of time. Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber.

The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

Added Stats 1977 ch 1211 § 2.

ARTICLE 5

Pharmacists' Records

§ 11205. Filing prescription by seller of substances obtained on federal order forms

The owner of a pharmacy or any person who purchases a controlled substance upon federal order forms as required pursuant to the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970," (P.L. 91-513, 84 Stat. 1236), relating to the importation, exportation, manufacture, production, compounding, distribution, dispensing, and control of controlled substances, and who sells controlled substances obtained upon such federal order forms in response to prescriptions in a separate file apart from noncontrolled substances prescriptions. Such files shall be preserved for a period of three years.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 24.

§ 11206. Transaction record; Contents

Filed prescriptions shall constitute a transaction record that, together with information that is readily retrievable in the pharmacy pursuant to Section 11164 shall show or include the following:

(a) The name(s) and address of the patient(s).

(b) The date.

(c) The character, including the name and strength, quantity, and directions for use of the controlled substance involved.

(d) The name, address, telephone number, category of professional licensure, and the federal controlled substance registration number of the prescriber.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 25; Stats 1979 ch 634 § 7; Stats 1988 ch 398 § 5.

§ 11207. Prohibited filling, etc., by one not a registered pharmacist or intern pharmacist

(a) No person other than a pharmacist as defined in Section 4036 of the Business and Professions Code or an intern pharmacist, as defined in Section 4030 of the Business and Professions Code, who is under the personal

supervision of a pharmacist, shall compound, prepare, fill or dispense a prescription for a controlled substance.

(b) Notwithstanding subdivision (a), a pharmacy technician may perform those tasks permitted by Section 4115 of the Business and Professions Code when assisting a pharmacist dispensing a prescription for a controlled substance.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 26; Stats 2004 ch 695 § 53 (SB 1913).

§ 11208. Prima facie evidence of guilt in criminal prosecution

In a prosecution under this division, proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law or that the amount of controlled substances possessed by the defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of guilt.

Added Stats 1972 ch 1407 § 3.

§ 11209. Delivery of controlled substances to pharmacy; Receipt and record of discrepancies; Misdemeanor

(a) No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substances received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy.

(b) The delivery receipt and any record of discrepancy shall be maintained by the wholesaler or manufacturer for a period of three years.

(c) A violation of this section is a misdemeanor.

(d) Nothing in this section shall require a common carrier to label a package containing controlled substances in a manner contrary to federal law or regulation.

Added Stats 1986 ch 384 § 5, effective July 17, 1986. Amended Stats 1988 ch 918 § 6.

CHAPTER 5

Use of Controlled Substances

ARTICLE 1

Lawful Medical Use Other Than Treatment of Addicts

§ 11210. Permitted prescribing, furnishing, or administering controlled substances by practitioners

A physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and

Professions Code, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

The physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment.

The physician, surgeon, dentist, veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only in the quantity and for the length of time as are reasonably necessary.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 20; Stats 1996 ch 1023 § 199 (SB 1497), effective September 29, 1996; Stats 2000 ch 676 § 9 (SB 929); Stats 2005 ch 506 § 28 (AB 302), effective October 4, 2005; Stats 2014 ch 319 § 6 (SB 1039), effective January 1, 2015.

§ 11211. Hospital's purchases on federal order forms, for emergency cases

In order to provide a supply of controlled substances as may be necessary to handle emergency cases, any hospital which does not employ a resident pharmacist and which is under the supervision of a licensed physician, may purchase controlled substances on federal order forms for such institution,

under the name of such hospital, such supply to be made available to a registered nurse for administration to patients in emergency cases, upon direction of a licensed physician.

Added Stats 1972 ch 1407 § 3.

§ 11212. Use of specified controlled substances for research, instruction, or analysis

Persons who, under applicable federal laws or regulations, are lawfully entitled to use controlled substances for the purpose of research, instruction, or analysis, may lawfully obtain and use for such purposes those substances classified in paragraphs (45) and (46) of subdivision (b) of Section 11054 of the Health and Safety Code, upon registration with and approval by the California Department of Justice for use of those substances in bona fide research, instruction, or analysis.

That research, instruction, or analysis shall be carried on only under the auspices of the individual identified by the registrant as responsible for the research. Complete records of receipts, stocks at hand, and use of these controlled substances shall be kept.

The Department of Justice may withdraw approval of the use of such substances at any time. The department may obtain and inspect at any time the records required to be maintained by this section.

Added Stats 1985 ch 1098 § 1.5, effective September 27, 1985.

§ 11213. Lawful obtaining and using substances for research, instruction, or analysis

Persons who, under applicable federal laws or regulations, are lawfully entitled to use controlled substances for the purpose of research, instruction, or analysis, may lawfully obtain and use for such purposes such substances as are defined as controlled substances in this division, upon approval for use of such controlled substances in bona fide research, instruction, or analysis by the Research Advisory Panel established pursuant to Sections 11480 and 11481.

Such research, instruction, or analysis shall be carried on only under the auspices of the head of a research project which has been approved by the Research Advisory Panel pursuant to Section 11480 or Section 11481. Complete records of receipts, stocks at hand, and use of these controlled substances shall be kept.

Added Stats 1972 ch 1407 § 3.

ARTICLE 2

Treatment of Addicts for Addiction

§ 11215. Persons authorized to administer substances

(a) Except as provided in subdivision (b), any narcotic controlled substance employed in treating an addict for addiction shall be administered by:

(1) A physician and surgeon.

(2) A registered nurse acting under the instruction of a physician and surgeon.

(3) A physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code acting

under the patient-specific authority of his or her physician and surgeon supervisor approved pursuant to Section 3515 of the Business and Professions Code.

(b) When acting under the direction of a physician and surgeon, the following persons may administer a narcotic controlled substance orally in the treatment of an addict for addiction to a controlled substance:

(1) A psychiatric technician licensed pursuant to Chapter 10 (commencing with Section 4500) of Division 2 of the Business and Professions Code.

(2) A vocational nurse licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code.

(3) A pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(c) Except as permitted in this section, no person shall order, permit, or direct any other person to administer a narcotic controlled substance to a person being treated for addiction to a controlled substance.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 516 § 1; Stats 1976 ch 896 § 27; Stats 1991 ch 176 § 1 (AB 535); Stats 1994 ch 26 § 245 (AB 1807), effective March 30, 1994; Stats 1995 ch 455 § 6 (AB 1113).

§ 11217. Authorized facilities; Use of narcotic controlled substance

Except as provided in Section 11223, no person shall treat an addict for addiction to a narcotic drug except in one of the following:

(a) An institution approved by the State Department of Health Care Services, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A facility designated by a county and approved by the State Department of Health Care Services pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

(e) A state hospital.

(f) A county hospital.

(g) A facility licensed by the State Department of Health Care Services pursuant to Division 10.5 (commencing with Section 11750).

(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.

A narcotic controlled substance in the continuing treatment of addiction to a controlled substance shall be used only in those programs licensed by the State Department of Health Care Services pursuant to Article 1 (commencing with Section 11839) of Chapter 10 of Part 2 of Division 10.5 on either an inpatient or outpatient basis, or both.

This section does not apply during emergency treatment, or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age.

Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking to recover from addiction to a controlled substance reside and endeavor to aid one another and receive aid from others in recovering from that addiction, nor does this section or this division prohibit that aid, provided that no person is treated for addiction in a place by means of administering, furnishing, or prescribing of controlled substances. The preceding sentence is declaratory of preexisting law.

Neither this section or any other provision of this division shall be construed to prohibit short-term narcotic detoxification treatment in a controlled setting approved by the director and pursuant to rules and regulations of the director. Facilities and treatment approved by the director under this paragraph shall not be subject to approval or inspection by the Medical Board of California, nor shall persons in those facilities be required to register with, or report the termination of residence with, the police department or sheriff's office.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 142 § 39.4, effective June 30, 1973, operative July 1, 1973; Stats 1974 ch 1044 § 32, effective September 23, 1974; Stats 1982 ch 932 § 1; Stats 1987 ch 287 § 1, ch 880 § 2; Stats 1989 ch 886 § 98; Stats 1995 ch 455 § 7 (AB 1113); Stats 2012 ch 34 § 25 (SB 1009), effective June 27, 2012; Stats 2013 ch 22 § 17 (AB 75), effective June 27, 2013, operative July 1, 2013.

§ 11217.5. Authorized treatment by licensed physician and surgeon

Notwithstanding the provisions of Section 11217, a licensed physician and surgeon may treat an addict for addiction in any office or medical facility which, in the professional judgment of such physician and surgeon, is medically proper for the rehabilitation and treatment of such addict. Such licensed physician and surgeon may administer to an addict, under his direct care, those medications and therapeutic agents which, in the judgment of such physician and surgeon, are medically necessary, provided that nothing in this section shall authorize the administration of any narcotic drug.

Added Stats 1972 ch 1407 § 3.

§ 11218. Limited amounts of substances physician may prescribe or furnish during first 15 days of treatment

A physician treating an addict for addiction may not prescribe for or furnish to the addict more than any one of the following amounts of controlled substances during each of the first 15 days of that treatment:

(a) Eight grains of opium.
(b) Four grains of morphine.
(c) Six grains of Pantopon.
(d) One grain of Dilaudid.
(e) Four hundred milligrams of isonipecaine (Demerol).

Added Stats 1972 ch 1407 § 3. Amended Stats 1995 ch 455 § 8 (AB 1113); Stats 2002 ch 543 § 1 (SB 1447).

§ 11219. Limited amounts of substances physician may prescribe or furnish after first 15 days of treatment

After 15 days of treatment, the physician may not prescribe for or furnish to the addict more than any one of the following amounts of controlled substances during each day of the treatment:

(a) Four grains of opium.
(b) Two grains of morphine.
(c) Three grains of Pantopon.
(d) One-half grain of Dilaudid.
(e) Two hundred milligrams of isonipecaine (Demerol).

Added Stats 1972 ch 1407 § 3. Amended Stats 1995 ch 455 § 9 (AB 1113); Stats 2002 ch 543 § 2 (SB 1447).

§ 11220. Discontinuance of prescribing or furnishing after 30 days

At the end of 30 days from the first treatment, the prescribing or furnishing of controlled substances, except methadone or LAAM, shall be discontinued.

Added Stats 1972 ch 1407 § 3. Amended Stats 1995 ch 455 § 10 (AB 1113).

§ 11222. Duty to ease withdrawal symptoms of addict confined in jail or other place

In any case in which a person is taken into custody by arrest or other process of law and is lodged in a jail or other place of confinement, and there is reasonable cause to believe that the person is addicted to a controlled substance, it is the duty of the person in charge of the place of confinement to provide the person so confined with medical aid as necessary to ease any symptoms of withdrawal from the use of controlled substances.

In any case in which a person, who is participating in a narcotic treatment program, is incarcerated in a jail or other place of confinement, he or she shall, in the discretion of the director of the program, be entitled to continue in the program until conviction.

Added Stats 1972 ch 1407 § 3. Amended Stats 1995 ch 455 § 11 (AB 1113).

§ 11223. Authority of physician or surgeon registered with federal Attorney General to provide treatment for addiction

Notwithstanding any other provision of law, a physician and surgeon who is registered with the federal Attorney General pursuant to Section 823(g) of Title 21 of the United States Code may provide treatment for addiction pursuant to this federal law.

Added Stats 2010 ch 93 § 1 (AB 2268), effective January 1, 2011.

ARTICLE 3

Veterinarians

§ 11240. Prohibited prescribing or administering for human being

No veterinarian shall prescribe, administer, or furnish a controlled substance for himself or any other human being.

Added Stats 1972 ch 1407 § 3.

§ 11241. Information in prescription

A prescription written by a veterinarian shall state the kind of animal for which ordered and the name and address of the owner or person having custody of the animal.

Added Stats 1972 ch 1407 § 3.

ARTICLE 4

Sale Without Prescription

§ 11250. Persons to whom retail sales permitted without prescription; Execution of order required by federal law

(a) No prescription is required in case of the sale of controlled substances at retail in pharmacies by pharmacists to any of the following:

(1) Physicians.

(2) Dentists.
(3) Podiatrists.
(4) Veterinarians.
(5) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.
(6) Optometrist.
(b) In any sale mentioned in this article, there shall be executed any written order that may otherwise be required by federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

Added Stats 1972 ch 1407 § 3. Amended Stats 1977 ch 843 § 21; Stats 1996 ch 1023 § 200 (SB 1497), effective September 29, 1996; Stats 2003 ch 426 § 4 (AB 186).

§ 11251. Persons to whom wholesale sales permitted without prescription

No prescription is required in case of sales at wholesale by pharmacies, jobbers, wholesalers, and manufacturers to any of the following:
(a) Pharmacies as defined in the Business and Professions Code.
(b) Physicians.
(c) Dentists.
(d) Podiatrists.
(e) Veterinarians.
(f) Other jobbers, wholesalers or manufacturers.
(g) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.
(h) Optometrists.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 28; Stats 1977 ch 843 § 22; Stats 1996 ch 1023 § 201 (SB 1497), effective September 29, 1996; Stats 2003 ch 426 § 5 (AB 186).

§ 11252. Keeping of orders or forms required by federal law

All wholesale jobbers, wholesalers, and manufacturers, mentioned in this division shall keep, in a manner readily accessible, the written orders or blank forms required to be preserved pursuant to federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

Added Stats 1972 ch 1407 § 3.

§ 11253. Preservation of orders or forms

The written orders or blank forms shall be preserved for at least three years after the date of the last entry made.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 896 § 29.

§ 11255. Taking order or making contract as "sale"

The taking of any order, or making of any contract or agreement, by any traveling representative or employee of any person for future delivery in this state, of any controlled substance constitutes a sale within the meaning of this division.

Added Stats 1972 ch 1407 § 3.

§ 11256. Forwarding order or contract for substances from out-of-state wholesaler or manufacturer

Within 24 hours after any purchaser in this state gives any order for a controlled substance classified in Schedule II to, or makes any contract or agreement for purchases from or sales by, an out-of-state wholesaler or manufacturer of any controlled substances for delivery in this state, the purchaser shall forward to the Attorney General by registered mail a true and correct copy of the order, contract, or agreement.

Added Stats 1972 ch 1407 § 3.

CHAPTER 6

Offenses and Penalties

ARTICLE 1

Offenses Involving Controlled Substances Formerly Classified as Narcotics

§ 11350. (First of two) Unlawful possession

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a) or (b), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision

(d) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony

conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

(e) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(f) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 2, effective October 1, 1973; Stats 1975 ch 1087 § 1; Stats 1976 ch 1139 § 65, operative July 1, 1977; Stats 1983 ch 790 § 3; Stats 1984 ch 1635 § 50; Stats 1986 ch 1044 § 3; Stats 1987 ch 970 § 1; Stats 1989 ch 534 § 1; Stats 1991 ch 257 § 1 (AB 1706); Stats 2000 ch 8 § 3 (SB 550), effective March 29, 2000; Stats 2011 ch 15 § 151 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2014 ch 540 § 1 (AB 2603), effective January 1, 2015.

§ 11350. (Second of two) Unlawful possession

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a), the judge may, in addition to any punishment provided for pursuant to subdivision (a), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 2, effective October 1, 1973; Stats 1975 ch 1087 § 1; Stats 1976 ch 1139 § 65, operative July 1, 1977; Stats 1983 ch 790 § 3; Stats 1984 ch 1635 § 50; Stats 1986 ch 1044 § 3; Stats 1987 ch 970 § 1; Stats 1989 ch 534 § 1; Stats 1991 ch 257 § 1 (AB 1706); Stats 2000 ch 8 § 3 (SB 550), effective March 29, 2000; Stats 2011 ch 15 § 151 (AB 109), effective April 4, 2011, operative October 1, 2011. Amendment approved by voters, Prop. 47 § 11, effective November 5, 2014.

§ 11350.5. Possession of specified controlled substance with intent to commit sexual assault; Punishment

(a) Except as otherwise provided in this division, every person who possesses a controlled substance specified in paragraph (3) of subdivision (e) of Section 11054 of this code with the intent to commit sexual assault shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) For purposes of this section, "sexual assault" means conduct in violation of Section 243.4, 261, 262, 286, 288a, or 289 of the Penal Code.

Added Stats 2016 ch 893 § 2 (SB 1182), effective January 1, 2017.

§ 11351. Unlawful possession for sale

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 3, effective October 1, 1973; Stats 1975 ch 1087 § 2; Stats 1976 ch 1139 § 66, operative July 1, 1977; Stats 1983 ch 790 § 4; Stats 1984 ch 1635 § 51; Stats 1985 ch 1398 § 1.5; Stats 1987 ch 970 § 2; Stats 2000 ch 8 § 4 (SB 550), effective March 29, 2000; Stats 2011 ch 15 § 152 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11351.5. Possession of cocaine base for sale

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale cocaine base, which is specified in paragraph (1) of subdivision (f) of Section 11054, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

Added Stats 1986 ch 1044 § 4. Amended Stats 1987 ch 1174 § 3, effective September 26, 1987; Stats 2011 ch 15 § 153 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2014 ch 749 § 3 (SB 1010), effective January 1, 2015.

§ 11352. Unlawful transport, import, sale, administration, or gift of controlled substance

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transports" means to transport for sale.

(d) This section does not preclude or limit the prosecution of an individual for aiding and abetting the commission of, or conspiring to commit, or acting as an accessory to, any act prohibited by this section.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 4, effective October 1, 1973; Stats 1975 ch 1087 § 3; Stats 1976 ch 1139 § 67, operative July 1, 1977; Stats 1983 ch 790 § 5; Stats 1984 ch 1635 § 52; Stats 1986 ch 1044 § 5; Stats 1987 ch 970 § 3; Stats 1989 ch 1102 § 1; Stats 2000 ch 8 § 5 (SB 550), effective March 29, 2000; Stats 2011 ch 15 § 154 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2013 ch 504 § 1 (AB 721), effective January 1, 2014; Stats 2014 ch 54 § 7 (SB 1461), effective January 1, 2015.

§ 11352.1. Dispensing dangerous drugs

(a) The Legislature hereby declares that the dispensing and furnishing of prescription drugs, controlled substances, and dangerous drugs or dangerous devices without a license poses a significant threat to the health, safety, and welfare of all persons residing in the state. It is the intent of the Legislature in enacting this provision to enhance the penalties attached to this illicit and dangerous conduct.

(b) Notwithstanding Section 4321 of the Business and Professions Code, and in addition to any other penalties provided by law, any person who knowingly and unlawfully dispenses or furnishes a dangerous drug or dangerous device, or any material represented as, or presented in lieu of, any dangerous drug or dangerous device, as defined in Section 4022 of the Business and Professions Code, or who knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or dangerous device or any material represented as, or presented in lieu of, any dangerous drug or dangerous device, as defined in Section 4022 of the Business and Professions Code without a license to dispense or furnish these products, shall be guilty of a misdemeanor. Upon the first conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment. Upon a

second or subsequent conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

Added Stats 1998 ch 750 § 1 (AB 2687), effective September 23, 1998. Amended Stats 2000 ch 350 § 1 (AB 751), effective September 8, 2000.

§ 11352.5. Fine in addition to imprisonment for sale of heroin

The court shall impose a fine not exceeding fifty thousand dollars ($50,000), in the absence of a finding that the defendant would be incapable of paying such a fine, in addition to any term of imprisonment provided by law for any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale 14.25 grams or more of a substance containing heroin.

(2) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell 14.25 grams or more of a substance containing heroin.

(3) Any person convicted of violating Section 11351 of the Health and Safety Code by possessing heroin for sale or convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin, and who has one or more prior convictions for violating Section 11351 or Section 11352 of the Health and Safety Code.

Added Stats 1976 ch 1132 § 1. Amended Stats 1983 ch 223 § 1.

§ 11353. Inducement of minor's violation by person 18 years of age or over

Every person 18 years of age or over, (a) who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter or Section 11550 with respect to either (1) a controlled substance which is specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, (b) who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any such controlled substance, or (c) who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor, shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 5, effective October 1, 1973; Stats 1976 ch 1139 § 68, operative July 1, 1977; Stats 1983 ch 790 § 6; Stats 1984 ch 1635 § 53; Stats 1985 ch 1377 § 1; Stats 1986 ch 1035 § 1, ch 1044 § 6; Stats 1987 ch 970 § 4; Stats 1990 ch 1664 § 1.5 (AB 2645); Stats 2000 ch 8 § 6 (SB 550), effective March 29, 2000.

§ 11353.1. Enhancement of sentence

(a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11353, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon the grounds of, or within, a church or

synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) As used in this section the following definitions shall apply:

(1) "Playground" means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

(2) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

(3) "Video arcade" means any premises where 10 or more video game machines or devices are operated, and where minors are legally permitted to conduct business.

(4) "Video game machine" means any mechanical amusement device, which is characterized by the use of a cathode ray tube display and which, upon the insertion of a coin, slug, or token in any slot or receptacle attached to, or connected to, the machine, may be operated for use as a game, contest, or amusement.

(5) "Within 1,000 feet of the grounds of any public or private elementary, vocational, junior high, or high school" means any public area or business

establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

(6) "Child day care facility" has the meaning specified in Section 1596.750.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

Added Stats 1989 ch 1178 § 1. Amended Stats 1990 ch 1663 § 1 (AB 3744), ch 1664 § 2 (AB 2645), ch 1665 § 1 (SB 2112); Stats 1993 ch 556 § 1 (AB 312).

§ 11353.4. Enhancement for second or subsequent conviction of certain offenses

(a) Any person 18 years of age or older who is convicted for a second or subsequent time of violating Section 11353, as that section applies to paragraph (1) of subdivision (f) of Section 11054, where the previous conviction resulted in a prison sentence, shall, as a full and separately served enhancement to the punishment imposed for that second or subsequent conviction of Section 11353, be punished by imprisonment in the state prison for one, two, or three years.

(b) If the second or subsequent violation of Section 11353, as described in subdivision (a), involved a minor who is 14 years of age or younger, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this section, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(c) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(d) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

Added Stats 1993 ch 586 § 1 (AB 313).

§ 11353.5. Preparation or distribution in specified places

Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, a child day care facility, a church, or a synagogue, or sells or gives away a controlled substance, other than a controlled substance described in Section 11353 or 11380, to a minor upon the grounds of, or within, any school, child day care facility, public playground, church, or synagogue providing instruction in preschool, kindergarten, or any of grades 1 to 12, inclusive, or providing child care services, during hours in which those facilities are open for classes, school-related programs, or child care, or at any time when minors are using the facility where the offense occurs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, or at any time when minors are using the facility where the offense occurs, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for five, seven, or nine years. Application of

this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

Added Stats 1983 ch 951 § 1. Amended Stats 1986 ch 1038 § 1; Stats 1988 ch 1266 § 1; Stats 1990 ch 1663 § 2 (AB 3744), ch 1664 § 3 (AB 2645), ch 1665 § 2 (SB 2112); Stats 1993 ch 556 § 2 (AB 312); Stats 2011 ch 15 § 155 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11353.6. Juvenile Drug Trafficking and Schoolyard Act of 1988

(a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, shall receive an additional punishment of three, four, or five years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person, as a full and separately served enhancement to that provided in subdivision (b), shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

Added Stats 1988 ch 1248 § 1. Amended Stats 1992 ch 989 § 1 (AB 2124); Stats 1993 ch 551 § 1 (AB 104); Stats 2011 ch 15 § 156 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11353.7. Preparation for sale, sale or distribution of controlled substance to minor in public park

Except as authorized by law, and except as provided otherwise in Sections 11353.1, 11353.6, and 11380.1 with respect to playgrounds situated in a public park, any person 18 years of age or older who unlawfully prepares for sale in

a public park, including units of the state park system and state vehicular recreation areas, or sells or gives away a controlled substance to a minor under the age of 14 years in a public park, including units of the state park system and state vehicular recreation areas, during hours in which the public park, including units of the state park system and state vehicular recreation areas, is open for use, with knowledge that the person is a minor under the age of 14 years, shall be punished by imprisonment in state prison for three, six, or nine years.

Added Stats 1988 ch 1177 § 1. Amended Stats 1990 ch 1665 § 3 (SB 2112); Stats 2011 ch 15 § 157 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2012 ch 43 § 13 (SB 1023), effective June 27, 2012.

§ 11354. Inducement of minor's violation by person under age of 18

(a) Every person under the age of 18 years who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter or Section 11550, who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison.

(b) This section is not intended to affect the jurisdiction of the juvenile court.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 6, effective October 1, 1973; Stats 1976 ch 1139 § 69, operative July 1, 1977; Stats 1983 ch 790 § 7; Stats 1984 ch 1635 § 54; Stats 1985 ch 1377 § 2; Stats 1986 ch 1044 § 7; Stats 1987 ch 970 § 5; Stats 2000 ch 8 § 7 (SB 550), effective March 29, 2000.

§ 11355. Unlawful sale or transportation pursuant to agreement

Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug to any person, or who offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and who then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 7, effective October 1, 1973; Stats 1976 ch 1139 § 70, operative July 1, 1977; Stats 1983 ch 790 § 8; Stats 1984 ch 1635 § 55; Stats 1986 ch 1044 § 8; Stats 1987 ch 970 § 6; Stats 2000 ch 8 § 8 (SB 550), effective March 29, 2000; Stats 2011–2012 1st Ex Sess ch 12 § 4 (ABX1 17), effective September 21, 2011, operative October 1, 2011.

§ 11356. "Felony offense" and "offense punishable as a felony"

As used in this article "felony offense," and "offense punishable as a felony" refer to an offense prior to October 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after October 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

Added Stats 1972 ch 1407 § 3. Amended Stats 1974 ch 545 § 59; Stats 2011 ch 15 § 158 (AB 109), effective April 4, 2011, operative October 1, 2011, ch 39 § 2 (AB 117), effective June 30, 2011, operative October 1, 2011.

§ 11356.5. Additional punishment for inducement of another's violation

(a) Any person convicted of a violation of Section 11351, 11352, 11379.5, or 11379.6 insofar as the latter section relates to phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055, who, as part of the transaction for which he or she was convicted, has induced another to violate Section 11351, 11352, 11379.5, or 11379.6 insofar as the latter section relates to phencyclidine or its analogs, shall be punished as follows:

(1) By an additional one year in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds five hundred thousand dollars ($500,000).

(2) By an additional two years in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds two million dollars ($2,000,000).

(3) By an additional three years in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds five million dollars ($5,000,000).

(b) For purposes of this section, "value of the controlled substance" means the retail price to the user.

Added Stats 1983 ch 716 § 1. Amended Stats 1985 ch 3 § 2, effective January 29, 1985; Stats 1995 ch 377 § 1 (SB 1095).

ARTICLE 2

Marijuana

§ 11357. Possession

(a) Except as authorized by law, possession of not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, or both, shall be punished or adjudicated as follows:

(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.

(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.

(2) Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars ($100).

(b) Except as authorized by law, possession of more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, shall be punished as follows:

(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.

(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(c) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished as follows:

(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars ($500), or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(d) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of an infraction and shall be punished in the same manner provided in paragraph (1) of subdivision (b).

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 8, effective October 1, 1973; Stats 1975 ch 248 § 2; Stats 1976 ch 1139 § 71, operative July 1, 1977; Stats 1982 ch 1287 § 1, operative September 1, 1983; Stats 1983 ch 223 § 2, ch 434 § 1, effective July 28, 1983, operative September 1, 1983, ch 434 § 1.5, effective July 28, 1983, operative January 1, 1984; Stats 2010 ch 708 § 1 (SB 1449), effective January 1, 2011; Stats 2011 ch 15 § 159 (AB 109), effective April 4, 2011, operative October 1, 2011. Amendment approved by voters, Prop. 47 § 12, effective November 5, 2014. Amendment approved by voters, Prop. 64 § 8.1, effective November 9, 2016.

§ 11357.5. Sale or distribution of synthetic cannabinoid compound or derivative; Use or possession as public offense

(a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic

cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars ($500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) As used in this section, the term "synthetic cannabinoid compound" refers to any of the following substances or an analog of any of the following substances:

(1) Adamantoylindoles or adamantoylindazoles, which includes adamantyl carboxamide indoles and adamantyl carboxamide indazoles, or any compound structurally derived from 3-(1-adamantoyl)indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole, N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl-)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including, but not limited to, 2NE1, 5F-AKB-48, AB-001, AKB-48, AM-1248, JWH-018 adamantyl carboxamide, STS-135.

(2) Benzoylindoles, which includes any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl-)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, AM-630, AM-661, AM-679, AM-694, AM-1241, AM-2233, RCS-4, WIN 48,098 (Pravadoline).

(3) Cyclohexylphenols, which includes any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl-)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent, including, but not limited to, CP 47,497, CP 55,490, CP 55,940, CP 56,667, cannabicyclohexanol.

(4) Cyclopropanoylindoles, which includes any compound structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole,

3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent.

(5) Naphthoylindoles, which includes any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl group, 1-(N-methyl-2-pyrrolidinyl-)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the naphthyl ring to any extent, including, but not limited to, AM-678, AM-1220, AM-1221, AM-1235, AM-2201, AM-2232, EAM-2201, JWH-004, JWH-007, JWH-009, JWH-011, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-022, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-164, JWH-166, JWH-180, JWH-181, JWH-182, JWH-189, JWH-193, JWH-198, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-258, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414, JWH-415, JWH-424, MAM-2201, WIN 55,212.

(6) Naphthoylnaphthalenes, which includes any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including, but not limited to, CB-13.

(7) Naphthoylpyrroles, which includes any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-030, JWH-031, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373, JWH-392.

(8) Naphthylmethylindenes, which includes any compound containing a naphthylideneindene structure or which is structurally derived from 1-(1-naphthylmethyl)indene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-171, JWH-176, JWH-220.

(9) Naphthylmethylindoles, which includes any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitro-

gen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-175, JWH-184, JWH-185, JWH-192, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199.

(10) Phenylacetylindoles, which includes any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl-)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, cannabipiperidiethanone, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8.

(11) Quinolinylindolecarboxylates, which includes any compound structurally derived from quinolin-8-yl-1H-indole-3-carboxylate by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent, including, but not limited to, BB-22, 5-Fluoro-PB-22, PB-22.

(12) Tetramethylcyclopropanoylindoles, which includes any compound structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent, including, but not limited to, 5-bromo-UR-144, 5-chloro-UR-144, 5-fluoro-UR-144, A-796,260, A-834,735, AB-034, UR-144, XLR11.

(13) Tetramethylcyclopropane-thiazole carboxamides, which includes any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene-)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including, but not limited to, A-836,339.

(14) Unclassified synthetic cannabinoids, which includes all of the following:

(A) AM-087, (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-t rimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(B) AM-356, methanandamide, including (5Z,8Z,11Z,14Z)--[(1R)-2-hydroxy-1-methylethyl]icosa-5,8,11,14-tetraenamide and arachidonyl-1'-hydroxy-2'-propylamide.

(C) AM-411, (6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6 a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(D) AM-855, (4aR,12bR)-8-hexyl-2,5,5-trimethyl-1 ,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol.

(E) AM-905, (6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(F) AM-906, (6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(G) AM-2389, (6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6 a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1 ,9 diol.

(H) BAY 38-7271, (-)-(R)-3-(2-Hydroxymethylindanyl-4-o xy)phenyl-4,4,4-trifluorobutyl-1-sulfonate.

(I) CP 50,556-1, Levonantradol, including 9-hydroxy-6-methyl-3 -[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenant hridin-1-yl]acetate; [(6S,6aR,9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; and [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate.

(J) HU-210, including (6aR,10aR)-9-(hydroxymethyl)-6,6-d imethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol; [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyl octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-o l and 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol.

(K) HU-211, Dexanabinol, including (6aS, 10aS)-9-(hydroxy methyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-t etrahydrobenzo[c]chromen-1-ol and (6aS, 10aS)-9-(hydroxy methyl)-6,6-dimethyl- 3-(2-methyloctan-2-yl)-6a,7,10,10a-t etrahydrobenzo[c]chromen-1-ol.

(L) HU-243, 3-dimethylheptyl-11-hydroxyhexahydrocannabinol.

(M) HU-308, [(91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2 -yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol.

(N) HU-331, 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-m ethylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1 ,4-dione.

(O) HU-336, (6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,10,10a-t etrahydro-1H-benzo[c]chromene-1,4(6H)-dione.

(P) JTE-907, N-(benzol[1,3]dioxol-5-ylmethyl)-7-methoxy-2-o xo-8-pentyloxy-1,2-dihydroquinoline-3-carboxamide.

(Q) JWH-051, ((6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-y l)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol.

(R) JWH-057 (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-t etrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran.

(S) JWH-133 (6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-t etrahydro -6,6,9-trimethyl-6H-dibenzo[b,d]pyran.

(T) JWH-359, (6aR,10aR)- 1-methoxy- 6,6,9-trimethyl- 3-[(2R)-1 ,1,2-trimethylbutyl]- 6a,7,10,10a-tetrahydrobenzo[c]chromene.

(U) URB-597 [3-(3-carbamoylphenyl)phenyl]-N-cyclohexylcarb amate.

(V) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; OR cyclohexyl [1,1'-biphenyl]-3-ylcarbamate.

(W) URB-754 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-b enzoxazin-4-one.

(X) URB-937 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyc lohexylcarbamate.

(Y) WIN 55,212-2, including (R)-(+)-[2,3-dihydro-5-methyl-3 -(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1 -napthalenylmethanone and [2,3-Dihydro-5-methyl-3-(4-morp holinylmethyl)pyrrolo[(1,2,3-de)-1,4-benzoxazin-6-yl]-1-n apthalenylmethanone.

(d) The substances or analogs of substances identified in subdivision (c) may be lawfully obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law.

(e) As used in this section, "synthetic cannabinoid compound" does not include either of the following:

(1) Any substance for which there is an approved new drug application, as defined in Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally recognized as safe and effective for use pursuant to Section 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act and Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person pursuant to Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

Added Stats 2014 ch 372 § 2 (SB 1283), effective January 1, 2015, operative January 1, 2016. Amended Stats 2016 ch 624 § 2 (SB 139), effective September 25, 2016.

§ 11358. Planting, harvesting, or processing

Every person who plants, cultivates, harvests, dries, or processes marijuana plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars ($100).

(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Codeif:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (c); or

(3) The offense resulted in any of the following:

(A) Violation of Section 1052 of the Water Code relating to illegal diversion of water;

(B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;

(C) Violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;

(D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;

(E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;

(F) Violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or

(G) Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 9, effective October 1, 1973; Stats 1976 ch 1139 § 72, operative July 1, 1977; Stats 2011 ch 15 § 160 (AB 109), effective April 4, 2011, operative October 1, 2011. Amendment approved by voters, Prop. 64 § 8.2, effective November 9, 2016.

§ 11359. Possession for sale

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person 18 years of age or over who possesses marijuana for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Codeif:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (b); or

(3) The offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.

(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20 years of age or younger in

unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 10, effective October 1, 1973; Stats 1976 ch 1139 § 73, operative July 1, 1977; Stats 2011 ch 15 § 161 (AB 109), effective April 4, 2011, operative October 1, 2011. Amendment approved by voters, Prop. 64 § 8.3, effective November 9, 2016.

§ 11360. Unlawful transportation, importation, sale, or gift

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished as follows:

(1) Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of Section 11357.

(2) Persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three or four yearsif:

(A) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(B) The person has two or more prior convictions under paragraph (2);

(C) The offense involved the knowing sale, attempted sale, or the knowing offer to sell, furnish, administer or give away marijuana to a person under the age of 18 years; or

(D) The offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a infraction and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 11, effective October 1, 1973; Stats 1975 ch 248 § 3; Stats 1976 ch 1139 § 74, operative July 1, 1977; Stats 1983 ch 223 § 3; Stats 2011 ch 15 § 162 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2015 ch 77 § 1 (AB 730), effective January 1, 2016. Amendment approved by voters, Prop. 64 § 8.4, effective November 9, 2016.

§ 11361. Transportation, sale or distribution by or to minor

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 12, effective October 1, 1973; Stats 1976 ch 1139 § 75, operative July 1, 1977; Stats 1986 ch 1035 § 2.

§ 11361.1. Drug education and counseling requirements

(a) The drug education and counseling requirements under Sections 11357, 11358, 11359, and 11360 shall be:

(1) Mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;

(2) Free to participants, and the drug education provides at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(b) For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the drug education and counseling required under Sections 11357, 11358, 11359, and 11360.

Adopted by voters, Prop. 64 § 8.5, effective November 9, 2016.

§ 11361.5. Destruction of arrest and conviction records; Procedure; Exceptions

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of Section 11357 or subdivision (b) of Section 11360, or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this article except Section 11357.5, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (d) of Section 11357, or any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs, the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records, including the statewide criminal databases, shall provide for the timely destruction of the records in accordance with subdivision (c), and such records must also be purged from the statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or conviction" shall include

records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody. The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date, or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the

application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars ($10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

Added Stats 1975 ch 248 § 4. Amended Stats 1976 ch 952 § 1; Stats 1980 ch 676 § 163.5; Stats 1981 ch 714 § 222; Stats 1982 ch 1287 § 2; Stats 1983 ch 434 § 2, effective July 28, 1983; Stats 1984 ch 1635 § 55.5; Stats 1993 ch 59 § 12 (SB 443), effective June 30, 1993. Amendment approved by voters, Prop. 64 § 8.6, effective November 9, 2016.

§ 11361.7. Records not considered accurate, timely, or complete; Use of records

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

Added Stats 1976 ch 952 § 2.

§ 11361.8. Recall or dismissal of sentence in accordance with Control, Regulate and Tax Adult Use of Marijuana Act; Dismissal and sealing of conviction; Applicability to juvenile delinquency adjudications and dispositions

(a) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense, or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(b) Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.

(2) As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and is resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Section 3000.08 of the Penal Code or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.

(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(*l*) A resentencing hearing ordered under the Control, Regulate and Tax Adult Use of Marijuana Act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

Adopted by voters, Prop. 64 § 8.7, effective November 9, 2016.

§ 11362. "Felony offense" and offense "punishable as a felony"

As used in this article "felony offense," and offense "punishable as a felony" refer to an offense prior to July 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

Added Stats 1972 ch 1407 § 3. Amended Stats 2011 ch 15 § 163 (AB 109), effective April 4, 2011, October 1, 2011.

§ 11362.1. Lawful condluct involving marijuana and marijuana products by persons 21 years of age or older

(a) Subject to Sections 11362.2, 11362.3, 11362.4, and 11362.45, but notwithstanding any other provision of law, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:

(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;

(2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;

(3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;

(4) Smoke or ingest marijuana or marijuana products; and

(5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.

(b) Paragraph (5) of subdivision (a) is intended to meet the requirements of subsection (f) of Section 863 of Title 21 of the United States Code (21 U.S.C. Sec. 863(f)) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana accessories.

(c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no

conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.

Adopted by voters, Prop. 64 § 4.4, effective November 9, 2016.

§ 11362.2. Personal cultivation of marijuana; Restrictions; Local regulation

(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b).

(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(b)(1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.

(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

(3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.

(4) Paragraph (3) shall become inoperative upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the Attorney General.

(5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

Adopted by voters, Prop. 64 § 4.5, effective November 9, 2016.

§ 11362.3. Prohibited conduct involving marijuana and marijuana products

(a) Nothing in Section 11362.1 shall be construed to permit any person to:

(1) Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

(2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.

(3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of, or Chapter 3.5 (commencing

with Section 19300) of Division 8 of, the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.

(4) Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(5) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

(6) Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 (commencing with Section 19300) of Division 8 of, or Division 10 of, the Business and Professions Code.

(7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(8) Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present.

(b) For purposes of this section, "day care center" has the same meaning as in Section 1596.76.

(c) For purposes of this section, "smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana or marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoke" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.

(d) For purposes of this section, "volatile solvent" means volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, 02 or H2; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Trichloro- ethylene.

(e) For purposes of this section, "youth center" has the same meaning as in Section 11353.1.

(f) Nothing in this section shall be construed or interpreted to amend, repeal, affect, restrict, or preempt laws pertaining to the Compassionate Use Act of 1996.

Adopted by voters, Prop. 64 § 4.6, effective November 9, 2016.

§ 11362.4. Violations; Punishment

(a) A person who engages in the conduct described in paragraph (1) of subdivision (a) of Section 11362.3 is guilty of an infraction punishable by no more than a one hundred dollar ($100) fine; provided, however, that persons under the age of 18 shall instead be required to complete four hours of a drug education program or counseling, and up to 10 hours of community service, over a period not to exceed 60 days once the drug education program or

counseling and community service opportunity are made available to the person.

(b) A person who engages in the conduct described in paragraphs (2) through (4) of subdivision (a) of Section 11362.3 shall be guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine, unless such activity is otherwise permitted by state and local law; provided, however, that persons under the age of 18 shall instead be required to complete four hours of drug education or counseling, and up to 20 hours of community service, over a period not to exceed 90 days once the drug education program or counseling and community service opportunity are made available to the person.

(c) A person who engages in the conduct described in paragraph (5) of subdivision (a) of Section 11362.3 shall be subject to the same punishment as provided under subdivision (c) or (d) of Section 11357.

(d) A person who engages in the conduct described in paragraph (6) of subdivision (a) of Section 11362.3 shall be subject to punishment under Section 11379.6.

(e) A person who violates the restrictions in subdivision (a) of Section 11362.2 is guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine.

(f) Notwithstanding subdivision (e), a person under the age of 18 who violates the restrictions in subdivision (a) of Section 11362.2 shall be punished under subdivision (a) of Section 11358.

(g)(1) The drug education program or counseling hours required by this section shall be mandatory unless the court makes a finding that such a program or counseling is unnecessary for the person or that a drug education program or counseling is unavailable.

(2) The drug education program required by this section for persons under the age of 18 must be free to participants and provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(h) Upon a finding of good cause, the court may extend the time for a person to complete the drug education or counseling, and community service required under this section.

Adopted by voters, Prop. 64 § 4.7, effective November 9, 2016.

§ 11362.45. Effect on other laws

Nothing in Section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:

(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.

(b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana, marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years of age.

(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.

(d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.

(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

(g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.

(h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.

(i) Laws pertaining to the Compassionate Use Act of 1996.

Adopted by voters, Prop. 64 § 4.8, effective November 9, 2016.

§ 11362.5. Use of marijuana for medical purposes

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or

to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

Adopted by the voters, Prop. 215 § 1, effective November 6, 1996.

§ 11362.9. Marijuana Research Program

(a)(1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana. The studies may include studies to ascertain the effect of marijuana on motor skills.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National

Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the

Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(*l*)(1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m)(1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or

timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o)(1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

Added Stats 1999 ch 750 § 3 (SB 847). Amended Stats 2001 ch 854 § 7 (SB 205); Stats 2003 ch 704 § 1 (SB 295); Stats 2016 ch 828 § 3 (AB 2679), effective January 1, 2017.

ARTICLE 2.5

Medical Marijuana Program

§ 11362.7. Definitions

For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.
(6) Chronic pain.
(7) Glaucoma.
(8) Migraine.
(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
(10) Seizures, including, but not limited to, seizures associated with epilepsy.
(11) Severe nausea.
(12) Any other chronic or persistent medical symptom that either:
(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.71. Identification card program; Duties of county health department or designee; Immunity of cardholder

(a)(1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.
(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.
(b) Every county health department, or the county's designee, shall do all of the following:
(1) Provide applications upon request to individuals seeking to join the identification card program.
(2) Receive and process completed applications in accordance with Section 11362.72.
(3) Maintain records of identification card programs.
(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.
(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.712. Physician's recommendation required

(a) Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code. Failure to comply with this requirement shall not, however, affect any of the protections provided to patients or their primary caregivers by Section 11362.5.

(b) A county health department or the county's designee shall develop protocols to ensure that, commencing upon January 1, 2018, all identification cards issued pursuant to Section 11362.71 are supported by a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.

Adopted by voters, Prop. 64 § 5.1, effective November 9, 2016.

§ 11362.713. Disclosure of patient's identifying information; Prohibition against personal information in state or county department of public health identification card application system or database

(a) Information identifying the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the State Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) and shall not be disclosed by the department or by any county public health department except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.

(b) Within 24 hours of receiving any request to disclose the name, address, or social security number of a patient, their medical condition, or the name of their primary caregiver, the State Department of Public Health or any county public health agency shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.

(c) Notwithstanding Section 56.10 of the Civil Code, neither the State Department of Public Health, nor any county public health agency, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.

(d) No identification card application system or database used or maintained by the State Department of Public Health or by any county department of public health or the county's designee as provided in Section 11362.71 shall contain any personal information of any qualified patient, including, but not limited to, the patient's name, address, social security number, medical conditions, or the names of their primary caregivers. Such an application system or database may only contain a unique user identification number, and when that number is entered, the only information that may be provided is whether the card is valid or invalid.

Adopted by voters, Prop. 64 § 5.2, effective November 9, 2016.

§ 11362.715. Application for identification card

(a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a

primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.72. Processing of application; Temporary identification card

(a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.735. Numbering and contents of identification card; Separate card for primary caregiver

(a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.74. Grounds for denial of application; When applicant may reapply; Appeal to department

(a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.745. Term of identification card; Annual renewal; Transmittal of determination

(a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.755. Fees; Reduction for Medi-Cal beneficiary, medically indigent adult

(a) Each county health department or the county's designee may charge a fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) In no event shall the amount of the fee charged by a county health department exceed one hundred dollars ($100) per application or renewal.

(c) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

(d) Upon satisfactory proof that a qualified patient, or the legal guardian of a qualified patient under the age of 18, is a medically indigent adult who is eligible for and participates in the County Medical Services Program, the fee established pursuant to this section shall be waived.

(e) In the event the fees charged and collected by a county health department are not sufficient to pay for the administrative costs incurred in discharging the county health department's duties with respect to the mandatory identification card system, the Legislature, upon request by the county health department, shall reimburse the county health department for those reasonable administrative costs in excess of the fees charged and collected by the county health department.

Added Stats 2003 ch 875 § 2 (SB 420). Amendment approved by voters, Prop. 64 § 5.3, effective November 9, 2016.

§ 11362.76. Duties of cardholder; Effect of noncompliance; Change of primary caregiver

(a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.765. Specified individuals not subject to criminal liability

(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However,

nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.768. Location of marijuana cooperative, collective, dispensary, operator, establishment, or provider; Distance; Applicability; Restrictions

(a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or

establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

Added Stats 2010 ch 603 § 1 (AB 2650), effective January 1, 2011.

§ 11362.769. Conduct of indoor and outdoor medical cannabis cultivation

Indoor and outdoor medical cannabis cultivation shall be conducted in accordance with state and local laws. State agencies, including, but not limited to, the Department of Food and Agriculture, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical cannabis cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

Added Stats 2015 ch 688 § 5 (AB 243), effective January 1, 2016. Amended Stats 2016 ch 32 § 66 (SB 837), effective June 27, 2016.

§ 11362.77. Quantity of marijuana which qualified patient or primary caregiver may possess; Local guidelines; Recommendations by Attorney General

(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.775. (Operative term contingent; Repeal contingent) Collective or cooperative cultivation of cannabis by qualified persons

(a) Subject to subdivision (d), qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) A collective or cooperative that operates pursuant to this section and manufactures medical cannabis products shall not, solely on the basis of that fact, be subject to state criminal sanctions under Section 11379.6 if the collective or cooperative abides by all of the following requirements:

(1) The collective or cooperative does either or both of the following:

(A) Utilizes only manufacturing processes that are either solventless or that employ only nonflammable, nontoxic solvents that are generally recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

(B) Utilizes only manufacturing processes that use solvents exclusively within a closed-loop system that meets all of the following requirements:

(i) The system uses only solvents that are generally recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

(ii) The system is designed to recapture and contain solvents during the manufacturing process, and otherwise prevent the off-gassing of solvents into the ambient atmosphere to mitigate the risks of ignition and explosion during the manufacturing process.

(iii) A licensed engineer certifies that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, including, but not limited to, the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), or OSHA Nationally Recognized Testing Laboratories (NRTLs).

(iv) The system has a certification document that contains the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

(2) The collective or cooperative receives and maintains approval from the local fire official for the closed-loop system, other equipment, the extraction operation, and the facility.

(3) The collective or cooperative meets required fire, safety, and building code requirements in one or more of the following:

(A) The California Fire Code.

(B) The National Fire Protection Association (NFPA) standards.

(C) International Building Code (IBC).

(D) The International Fire Code (IFC).

(E) Other applicable standards, including complying with all applicable fire, safety, and building codes in processing, handling, and storage of solvents or gasses.

(4) The collective or cooperative is in possession of a valid seller's permit issued by the State Board of Equalization.

(5) The collective or cooperative is in possession of a valid local license, permit, or other authorization specific to the manufacturing of medical cannabis products, and in compliance with any additional conditions imposed by the city or county issuing the local license, permit, or other authorization.

(c) For purposes of this section, "manufacturing" means compounding, converting, producing, deriving, processing, or preparing, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, medical cannabis products.

(d) This section shall remain in effect only until one year after the Bureau of Medical Cannabis Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Cannabis Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code).

(e) This section is repealed one year after the date upon which the notice is posted pursuant to subdivision (d).

Added Stats 2003 ch 875 § 2 (SB 420). Amended Stats 2015 ch 689 § 6 (AB 266), effective January 1, 2016, repeal contingent; Stats 2016 ch 32 § 67 (SB 837), effective June 27, 2016, operative term contingent, repeal contingent, Stats 2016 ch 828 § 2 (AB 2679), effective January 1, 2017.

Note—Stats 2015 ch 689 provides:

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

Editor's Notes—

Senate Bill 643 and Assembly Bill 243 of the 2015-2016 Regular Session were enacted as Stats 2015 ch 719, effective January 1, 2016, and Stats 2015 ch 688, effective January 1, 2016, respectively.

§ 11362.777. Medical Cannabis Cultivation Program; Required licenses and permits; Regulations; Unique identification program; Notice by city and county issuing licenses; Exemption

(a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary and, except as specified in subdivision (c), shall administer this section as it pertains to the commercial cultivation of medical cannabis. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code, medical cannabis is an agricultural product.

(b)(1) A person or entity shall not cultivate medical cannabis without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license pursuant to this section unless that person or entity has received a license,

permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license pursuant to this section if the proposed cultivation of cannabis will violate the provisions of any local ordinance or regulation, or if medical cannabis is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c)(1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical cannabis pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability before issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical cannabis cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical cannabis before obtaining both a permit from the city, county, or city and county and a state medical cannabis cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical cannabis pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(d)(1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical cannabis. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e)(1) The department, in consultation with, but not limited to, the Bureau of Medical Cannabis Regulation, the State Water Resources Control Board,

and the Department of Fish and Wildlife, shall implement a unique identification program for medical cannabis. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure compliance with Section 19332.2 of the Business and Professions Code.

(2) The department shall establish a program for the identification of permitted medical cannabis plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical cannabis plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical cannabis plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f)(1) A city, county, or city and county that issues or denies licenses, permits, or other entitlements to cultivate medical cannabis pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city, county, or city and county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating cannabis pursuant to Section 11362.5 if the area he or she uses to cultivate cannabis does not exceed 100 square feet and he or she cultivates cannabis for his or her personal medical use and does not sell, distribute, donate, or provide cannabis to any other person or entity. This section does not apply to a primary caregiver cultivating cannabis pursuant to Section 11362.5 if the area he or she uses to cultivate cannabis does not exceed 500 square feet and he or she cultivates cannabis exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate cannabis shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.

Added Stats 2015 ch 688 § 6 (AB 243), effective January 1, 2016. Amended Stats 2016 ch 1 § 1 (AB 21), effective February 3, 2016, Stats 2016 ch 32 § 68 (SB 837), effective June 27, 2016.

§ 11362.78. Acceptance of identification card by law enforcement agency or officer

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law

enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.785. Places of employment; Penal institutions; Incarcerated persons; Health insurance providers

(a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.79. Circumstances in which smoking of medical marijuana is not authorized

Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.795. Use of medical marijuana by person on probation or parole or released on bail; Court request; Request and appeal by parolee

(a)(1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b)(1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.8. Disciplinary action against licensee of professional licensing board; Discussions between physician and patient

No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.81. Penalties for specified activities; Guidelines to ensure security and nondiversion of marijuana grown for medical use

(a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health

department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.82. Severability

If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

Added Stats 2003 ch 875 § 2 (SB 420).

§ 11362.83. Adoption and enforcement of ordinances, civil and criminal enforcement of local ordinances, and other laws by city or other local governing body

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

(a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.

(b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

Added Stats 2003 ch 875 § 2 (SB 420). Amended Stats 2011 ch 196 § 1 (AB 1300), effective January 1, 2012.

§ 11362.84. Effect of actions in accordance with Compassionate Use Act on custodial or parental rights in family or juvenile court proceeding

The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.

Adopted by voters, Prop. 64 § 5.4, effective November 9, 2016.

§ 11362.85. Conformance to federal law

Upon a determination by the California Attorney General that the federal schedule of controlled substances has been amended to reclassify or declassify marijuana, the Legislature may amend or repeal the provisions of the Health and Safety Code, as necessary, to conform state law to such changes in federal law.

Adopted by voters, Prop. 64 § 5.5, effective November 9, 2016.

ARTICLE 3

Peyote

§ 11363. Unlawful planting, harvesting, or processing

Every person who plants, cultivates, harvests, dries, or processes any plant of the genus Lophophora, also known as peyote, or any part thereof shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 13, effective October 1, 1973; Stats 1975 ch 248 § 5; Stats 1976 ch 1139 § 76, operative July 1, 1977.

ARTICLE 4

Miscellaneous Offenses and Provisions

§ 11364. Possession of opium pipe or paraphernalia for unlawfully injecting or smoking controlled substance; Application to hypodermic needles or syringes

(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section shall not apply to the possession solely for personal use of hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 14, effective October 1, 1973; Stats 1975 ch 248 § 6; Stats 1983 ch 790 § 9; Stats 1984 ch 1635 § 56; Stats 1986 ch 1044 § 9; Stats 1990 ch 544 § 1 (SB 2028), ch 1664 § 4 (AB 2645); Stats 2004 ch 608 § 4 (SB 1159); Stats 2010 ch 667 § 2 (AB 1701), effective January 1, 2011; Stats 2011 ch 296 § 152 (AB 1023), effective January 1, 2012, ch 738 § 10 (SB 41) (ch 738 prevails), effective January 1, 2012; Stats 2012 ch 162 § 86 (SB 1171), effective January 1, 2013; Stats 2014 ch 331 § 8 (AB 1743), effective January 1, 2015.

§ 11364.5. Exclusion of minors from place of business dealing in drug paraphernalia

(a) Except as authorized by law, no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded.

(b) Except as authorized by law, no owner, manager, proprietor or other person in charge of any room or enclosure, within any place of business, in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away shall permit or allow any person under the age of 18 years to enter, be in, remain in or visit such room or enclosure unless such minor person is accompanied by one of his or her parents or by his or her legal guardian.

(c) Unless authorized by law, no person under the age of 18 years shall enter, be in, remain in or visit any room or enclosure in any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless accompanied by one of his or her parents or by his or her legal guardian.

(d) As used in this section, "drug paraphernalia" means all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. "Drug paraphernalia" includes, but is not limited to, all of the following:

(1) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances intended for use or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances.

(7) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

(8) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances.

(9) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects intended for use or designed for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body.

(12) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as the following:

(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(B) Water pipes.

(C) Carburetion tubes and devices.

(D) Smoking and carburetion masks.

(E) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand.

(F) Miniature cocaine spoons, and cocaine vials.

(G) Chamber pipes.

(H) Carburetor pipes.

(I) Electric pipes.

(J) Air-driven pipes.

(K) Chillums.

(L) Bongs.

(M) Ice pipes or chillers.

(e) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

(3) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

(4) Instructions, oral or written, provided with the object concerning its use.

(5) Descriptive materials, accompanying the object which explain or depict its use.

(6) National and local advertising concerning its use.

(7) The manner in which the object is displayed for sale.

(8) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(9) The existence and scope of legitimate uses for the object in the community.

(10) Expert testimony concerning its use.

(f) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia described in paragraph (11) of subdivision (d) upon the prescription of a physician, dentist, podiatrist or veterinarian.

(2) Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes drug paraphernalia described in paragraph (11) of subdivision (d) to his or her patients.

(3) Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia described in paragraph (11) of subdivision (d).

(g) Notwithstanding any other provision of law, including Section 11374, violation of this section shall not constitute a criminal offense, but operation of a business in violation of the provisions of this section shall be grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in such business and shall be grounds for denial of any future license, permit, or other entitlement authorizing the conduct of such business or any other business, if the business includes the sale of drug paraphernalia.

Added Stats 1980 ch 505 § 1. Amended Stats 1984 ch 1635 § 57.

§ 11364.7. Trafficking in drug paraphernalia

(a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug para-

phernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

Added Stats 1982 ch 1278 § 2. Amended Stats 1991 ch 573 § 1 (AB 898); Stats 1992 ch 983 § 1 (AB 565); Stats 1999 ch 762 § 1 (AB 136); Stats 2005 ch 692 § 2 (AB 547), effective January 1, 2006.

§ 11365. Presence in place where substance used

(a) It is unlawful to visit or to be in any room or place where any controlled substances which are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) or paragraph (2) of subdivision (d) of Section 11055, or which are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring.

(b) This section shall apply only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of a controlled substance specified in subdivision (a). This subdivision is declaratory of existing law as expressed in People v. Cressey (1970) 2 Cal. 3d 836.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 15, effective October 1, 1973; Stats 1975 ch 248 § 7; Stats 1983 ch 790 § 10; Stats 1984 ch 1635 § 58; Stats 1986 ch 1044 § 10; Stats 1991 ch 551 § 1 (AB 55).

§ 11366. Opening or maintaining place for trafficking in controlled substances

Every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 16, effective October 1, 1973; Stats 1976 ch 1139 § 77, operative July 1, 1977; Stats 1983 ch 790 § 11; Stats 1984 ch 1635 § 59; Stats 1986 ch 1044 § 11; Stats 1991 ch 492 § 1 (SB 32).

§ 11366.5. Providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry

(a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide and who obtains excessive profits from the use of the building, room, space, or enclosure shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(c) Any person who violates subdivision (a) after previously being convicted of a violation of subdivision (a) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(d) For the purposes of this section, "excessive profits" means the receipt of consideration of a value substantially higher than fair market value.

Added Stats 1982 ch 1279 § 4. Amended Stats 1985 ch 1533 § 1; Stats 1986 ch 1026 § 1; Stats 1987 ch 1174 § 4, effective September 26, 1987; Stats 2011 ch 15 § 164 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11366.6. Use of place designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale controlled substance

Any person who utilizes a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

Added Stats 1985 ch 1533 § 2. Amended Stats 1986 ch 1026 § 2, ch 1044 § 12.5; Stats 1987 ch 1174 § 5, effective September 26, 1987; Stats 2011 ch 15 § 165 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11366.7. Sale of drugs or devices used to prepare controlled substances

(a) This section shall apply to the following:

(1) Any chemical or drug.

(2) Any laboratory apparatus or device.

(b) Any retailer or wholesaler who sells any item in paragraph (1) or (2) of subdivision (a) with knowledge or the intent that it will be used to unlawfully manufacture, compound, convert, process, or prepare a controlled substance for unlawful sale or distribution, shall be punished by imprisonment in a county jail for not more than one year, or in the state prison, or by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that imprisonment and fine. Any fine collected pursuant to this section shall be distributed as specified in Section 1463.10 of the Penal Code.

Added Stats 1982 ch 1279 § 5. Amended Stats 1984 ch 1547 § 2; Stats 1990 ch 350 § 6 (SB 2084); Stats 1994 ch 979 § 1 (SB 937).

§ 11366.8. "False compartment"

(a) Every person who possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment shall be punished by imprisonment in a county jail for a term of imprisonment not to exceed one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Every person who designs, constructs, builds, alters, or fabricates a false compartment for, or installs or attaches a false compartment to, a vehicle with the intent to store, conceal, smuggle, or transport a controlled substance shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

(c) The term "vehicle" means any of the following vehicles without regard to whether the vehicles are private or commercial, including, but not limited to, cars, trucks, buses, aircraft, boats, ships, yachts, and vessels.

(d) The term "false compartment" means any box, container, space, or enclosure that is intended for use or designed for use to conceal, hide, or otherwise prevent discovery of any controlled substance within or attached to a vehicle, including, but not limited to, any of the following:

(1) False, altered, or modified fuel tanks.

(2) Original factory equipment of a vehicle that is modified, altered, or changed.

(3) Compartment, space, or box that is added to, or fabricated, made, or created from, existing compartments, spaces, or boxes within a vehicle.

Added Stats 1993 ch 562 § 1 (AB 1760). Amended Stats 1994 ch 146 § 106 (AB 3601); Stats 2011 ch 15 § 166 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11367. Immunity from prosecution

All duly authorized peace officers, while investigating violations of this division in performance of their official duties, and any person working under their immediate direction, supervision or instruction, are immune from prosecution under this division.

Added Stats 1972 ch 1407 § 3.

§ 11367.5. Controlled substances for substance abuse training; Immunity from prosecution; Custody and control

(a) Any sheriff, chief of police, the Chief of the Division of Law Enforcement, or the Commissioner of the California Highway Patrol, or a designee thereof, may, in his or her discretion, provide controlled substances in his or her possession and control to any duly authorized peace officer or civilian drug

detection canine trainer working under the direction of a law enforcement agency, provided the controlled substances are no longer needed as criminal evidence and provided the person receiving the controlled substances, if required by the federal Drug Enforcement Administration, possesses a current and valid federal Drug Enforcement Administration registration which specifically authorizes the recipient to possess controlled substances while providing substance abuse training to law enforcement or the community or while providing canine drug detection training.

(b) All duly authorized peace officers, while providing substance abuse training to law enforcement or the community or while providing canine drug detection training, in performance of their official duties, and any person working under their immediate direction, supervision, or instruction, are immune from prosecution under this division.

(c)(1) Any person receiving controlled substances pursuant to subdivision (a) shall maintain custody and control of the controlled substances and shall keep records regarding any loss of, or damage to, those controlled substances.

(2) All controlled substances shall be maintained in a secure location approved by the dispensing agency.

(3) Any loss shall be reported immediately to the dispensing agency.

(4) All controlled substances shall be returned to the dispensing agency upon the conclusion of the training or upon demand by the dispensing agency.

Added Stats 1992 ch 137 § 1 (AB 2308). Amended Stats 2012 ch 867 § 9 (SB 1144), effective January 1, 2013.

§ 11368. Illegal prescription for narcotic drug

Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 17, effective October 1, 1973; Stats 1976 ch 1139 § 78, operative July 1, 1977; Stats 1990 ch 43 § 1 (AB 1577).

§ 11369. Notification to deportation agency on arrest of person believed to be alien

When there is reason to believe that any person arrested for a violation of Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550, may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

Added Stats 1972 ch 1407 § 3. Amended Stats 1991 ch 573 § 2 (AB 898).

§ 11370. Prohibition of probation or suspended sentence; Prior conviction

(a) Any person convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, or 11368, or of committing any offense referred to in those sections, shall not, in any case, be granted probation by the trial court or have the execution of the sentence

imposed upon him or her suspended by the court, if he or she has been previously convicted of any offense described in subdivision (c).

(b) Any person who was 18 years of age or over at the time of the commission of the offense and is convicted for the first time of selling, furnishing, administering, or giving a controlled substance which is (1) specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, to a minor or inducing a minor to use such a controlled substance in violation of law shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed upon him or her suspended by the court.

(c) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall render a person ineligible for probation or suspension of sentence pursuant to subdivision (a) of this section:

(1) Any felony offense described in this division involving a controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(2) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(d) The existence of any previous conviction or fact which would make a person ineligible for suspension of sentence or probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 18, effective October 1, 1973; Stats 1975 ch 1087 § 4; Stats 1983 ch 790 § 12; Stats 1984 ch 1635 § 60; Stats 1986 ch 1030 § 1, ch 1044 § 13.5.

§ 11370.1. Unlawful possession of specified controlled substance while armed with firearm

(a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "armed with" means having available for immediate offensive or defensive use.

(b) Any person who is convicted under this section shall be ineligible for diversion or deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.

Added Stats 1989 ch 1041 § 1. Amended Stats 1990 ch 41 § 1 (AB 664); Stats 1991 ch 469 § 1 (AB 154); Stats 1996 ch 1132 § 1 (SB 1369).

§ 11370.2. Enhancement of punishment for prior felony convictions related to controlled substances

(a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(f) Prior convictions from another jurisdiction qualify for use under this section pursuant to Section 668.

Added Stats 1985 ch 1398 § 2. Amended Stats 1986 ch 80 § 1, ch 1044 § 15; Stats 1989 ch 1245 § 1, operative January 1, 1990, ch 1326 § 1.5; Stats 1998 ch 936 § 1 (AB 105), effective September 28, 1998.

§ 11370.4. Enhancement of punishment upon conviction related to unlawful possession or sale of controlled substances based on amount involved

(a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(5) Where the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(6) Where the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

Added Stats 1985 ch 1398 § 3. Amended Stats 1986 ch 80 § 2, ch 1044 § 17; Stats 1987 ch 991 § 1, ch 1174 § 6, effective September 26, 1987, ch 1174 § 6.5, effective September 26, 1987, operative January 1, 1988; Stats 1989 ch 1245 § 2, operative January 1, 1990, ch 1326 § 2.5; Stats 1992 ch 680 § 1 (SB 1363); Stats 1997 ch 505 § 1 (AB 513); Stats 1998 ch 425 § 1 (AB 2369).

§ 11370.6. Possession of money or negotiable instruments obtained as result of offenses or intended for purchase of controlled substances; Acceptance of money or instrument by attorney as fee

(a) Every person who possesses any moneys or negotiable instruments in excess of one hundred thousand dollars ($100,000) which have been obtained as the result of the unlawful sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058, with knowledge that the moneys or negotiable instruments have been so obtained, and any person who possesses any moneys or negotiable instruments in excess of one hundred thousand dollars ($100,000) which are intended by that person for the unlawful purchase of any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 and who commits an act in substantial furtherance of the unlawful purchase, shall be punished by imprisonment in a county jail for a term not to exceed one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(b) In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, when a case charged under subdivision (a) involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the moneys or negotiable instruments were accepted by the attorney with the intent to participate in the unlawful conduct described in subdivision (a) or to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

(c) In determining the guilt or innocence of a person charged under subdivision (a), the trier of fact may consider the following in addition to any other relevant evidence:

(1) The lack of gainful employment by the person charged.

(2) The expert opinion of a qualified controlled substances expert as to the source of the assets.

(3) The existence of documents or ledgers that indicate sales of controlled substances.

Added Stats 1988 ch 267 § 1. Amended Stats 2011 ch 15 § 167 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11370.9. Concealment or disguise of nature, location, ownership, control, or source of proceeds of offense; Avoidance of transaction report

(a) It is unlawful for any person knowingly to receive or acquire proceeds, or engage in a transaction involving proceeds, known to be derived from any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(b) It is unlawful for any person knowingly to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in, or otherwise make available, anything of value which that person knows is intended to be used for the purpose of committing, or furthering the commission of, any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in

concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(c) It is unlawful for any person knowingly to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(d) It is unlawful for any person knowingly to conduct a transaction involving proceeds derived from a violation of this division or Division 10.1 when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(e) A violation of this section shall be punished by imprisonment in a county jail for not more than one year or in the state prison for a period of two, three, or four years, by a fine of not more than two hundred fifty thousand dollars ($250,000) or twice the value of the proceeds or property involved in the violation, whichever is greater, or by both that imprisonment and fine. Notwithstanding any other provision of law, each violation of this section shall constitute a separate, punishable offense without limitation.

(f) This section shall apply only to a transaction, or series of related transactions within a 30-day period, involving over twenty-five thousand dollars ($25,000) or to proceeds of a value exceeding twenty-five thousand dollars ($25,000).

(g) In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, this section is not intended to apply to the receipt of, or a related transaction involving, a fee by an attorney for the purpose of providing advice or representing a person in a criminal investigation or prosecution.

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Proceeds" means property acquired or derived directly or indirectly from, produced through, or realized through any violation of this division or Division 10.1.

(2) "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, electronic, magnetic, or manual transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, or any other acquisition or disposition of property by whatever means effected.

(3) "Represented by a law enforcement officer" means any representation of fact made by a peace officer as defined in Section 7 of the Penal Code, or a federal officer described in subsection (e) of Sections 1956 and 1957 of Title 18 of the United States Code, or by another person at the direction of, or with the approval of, that peace officer or federal officer.

Added Stats 1992 ch 503 § 1 (SB 386). Amended Stats 1993 ch 589 § 89 (AB 2211).

§ 11371. Punishment for violations

Any person who shall knowingly violate any of the provisions of Section 11153, 11154, 11155, or 11156 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both such fine and imprisonment.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 19, effective October 1, 1973; Stats 1976 ch 1136 § 1, operative until July 1, 1977, ch 1139 § 80.5, operative July 1, 1977; Stats 1979 ch 879 § 2; Stats 1983 ch 790 § 13; Stats 2011 ch 15 § 168 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11371.1. Violations with respect to prescriptions; Fraud

Any person who shall knowingly violate any of the provisions of Section 11173 or 11174 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year.

Added Stats 1976 ch 1136 § 4, operative July 1, 1977. Amended Stats 1979 ch 879 § 3; Stats 1983 ch 790 § 14; Stats 2011 ch 15 § 169 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11372. Imposition of fine in addition to term of imprisonment for violating certain provisions

(a) In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars ($20,000) for each offense. In no event shall a fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of these offenses.

(b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not exceeding one million dollars ($1,000,000) for each offense.

(c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed four million dollars ($4,000,000) for each offense.

(d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed eight million dollars ($8,000,000) for each offense.

(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivisions (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected

within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources.

Added Stats 1972 ch 1407 § 3. Amended Stats 1986 ch 1044 § 18; Stats 1987 ch 656 § 1; Stats 2002 ch 787 § 2 (SB 1798).

§ 11372.5. Criminal laboratory analysis fee; Incremental fines; Criminalistics laboratories fund

(a) Every person who is convicted of a violation of Section 11350, 11351, 11351.5, 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550 or subdivision (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or Section 4230 of the Business and Professions Code shall pay a criminal laboratory analysis fee in the amount of fifty dollars ($50) for each separate offense. The court shall increase the total fine necessary to include this increment.

With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars ($50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law.

(b) The county treasurer shall maintain a criminalistics laboratories fund. The sum of fifty dollars ($50) shall be deposited into the fund for every conviction under Section 11350, 11351, 11351.5, 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550, subdivision (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or Section 4230 of the Business and Professions Code, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Section 11502. The deposits shall be made prior to any transfer pursuant to Section 11502. The county may retain an amount of this money equal to its administrative cost incurred pursuant to this section. Moneys in the criminalistics laboratories fund shall, except as otherwise provided in this section, be used exclusively to fund (1) costs incurred by criminalistics laboratories providing microscopic and chemical analyses for controlled substances, in connection with criminal investigations conducted within both the incorporated or unincorporated portions of the county, (2) the purchase and maintenance of equipment for use by these laboratories in performing the analyses, and (3) for continuing education, training, and scientific development of forensic scientists regularly employed by these laboratories. Moneys in the criminalistics laboratory fund shall be in addition to any allocations pursuant to existing law. As used in this section, "criminalistics laboratory" means a laboratory operated by, or under contract with, a city, county, or other public agency, including a criminalistics laboratory of the Department of Justice, (1) which has not less than one regularly employed forensic scientist engaged in the analysis of solid-dose controlled substances, and (2) which is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for the possession of all scheduled controlled substances. In counties served by criminalistics laboratories of the Department of Justice, amounts deposited in the criminalistics laboratories fund, after deduction of appropriate and rea-

sonable county overhead charges not to exceed 5 percent attributable to the collection thereof, shall be paid by the county treasurer once a month to the Controller for deposit into the state General Fund, and shall be excepted from the expenditure requirements otherwise prescribed by this subdivision.

(c) The county treasurer shall, at the conclusion of each fiscal year, determine the amount of any funds remaining in the special fund established pursuant to this section after expenditures for that fiscal year have been made for the purposes herein specified. The board of supervisors may, by resolution, assign the treasurer's duty to determine the amount of remaining funds to the auditor or another county officer. The county treasurer shall annually distribute those surplus funds in accordance with the allocation scheme for distribution of fines and forfeitures set forth in Section 11502.

Added Stats 1980 ch 1222 § 1. Amended Stats 1983 ch 101 § 110, ch 626 § 1; Stats 1985 ch 1098 § 5, effective September 27, 1985, ch 1264 § 1; Stats 1986 ch 587 § 1, ch 1044 § 19.5; Stats 1992 ch 1159 § 1 (SB 1729); Stats 2005 ch 158 § 23 (SB 966), effective January 1, 2006.

§ 11372.7. Drug program fee; Drug program fund

(a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of education, school districts,

and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

Added Stats 1986 ch 1027 § 3. Amended Stats 1987 ch 247 § 1, effective July 27, 1987, ch 621 § 4.5; Stats 1993 ch 474 § 1 (AB 855); Stats 2001 ch 750 § 19 (AB 1107), ch 854 § 8 (SB 205); Stats 2002 ch 545 § 1.5 (SB 1852).

§ 11373. Ordering education or treatment as condition of probation

(a) Whenever any person who is otherwise eligible for probation is granted probation by the trial court after conviction for a violation of any controlled substance offense under this division, the trial court shall, as a condition of probation, order that person to secure education or treatment from a local community agency designated by the court, if the service is available and the person is likely to benefit from the service.

If the defendant is a minor, the trial court shall also order his or her parents or guardian to participate in the education or treatment to the extent the court determines that participation will aid the education or treatment of the minor.

If a minor is found by a juvenile court to have been in possession of any controlled substance, in addition to any other order it may make, the juvenile court shall order the minor to receive education or treatment from a local community agency designated by the court, if the service is available and the person is likely to benefit from the service, and it shall also order his or her parents or guardian to participate in the education or treatment to the extent the court determines that participation will aid the education or treatment of the minor.

(b) The willful failure to complete a court ordered education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for a violation of Section 11353, 11354, or 11380. The failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavail-

ability to the defendant of appropriate programs is not a willful failure to complete the program.

Added Stats 1972 ch 1407 § 3. Amended Stats 1984 ch 1635 § 61; Stats 1992 ch 185 § 1 (AB 1847).

§ 11374. Misdemeanor offenses and punishment

Every person who violates or fails to comply with any provision of this division, except one for which a penalty is otherwise in this division specifically provided, is guilty of a misdemeanor punishable by a fine in a sum not less than thirty dollars ($30) nor more than five hundred dollars ($500), or by imprisonment for not less than 15 nor more than 180 days, or by both.

Added Stats 1972 ch 1407 § 3.

§ 11374.5. Disposal of hazardous substance

(a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years or in the county jail not exceeding one year.

(b)(1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a), or any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law, shall pay a penalty equal to the amount of the actual cost incurred by the state or local agency to remove and dispose of the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the state or local agency requests the prosecuting authority to seek recovery of that cost. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that requested recovery of the cost for the removal action. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Toxic Substances Control has requested recovery of the cost of removing the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance or taking removal action with respect to any release of the hazardous substance, the county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account, which is hereby created in the General Fund in the State Treasury. The Department of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup Account, upon appropriation by the Legislature, to cover the cost of taking removal actions pursuant to Section 25354.5.

(3) If a local agency and the Department of Toxic Substances Control have both requested recovery of removal costs with respect to a hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, the county treasurer shall apportion any penalty collected among the agencies involved in proportion to the costs incurred.

(c) As used in this section the following terms have the following meaning:

(1) "Dispose" means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) "Hazardous substance" has the same meaning as defined in Section 25316.

(3) "Hazardous waste" has the same meaning as defined in Section 25117.

(4) For purposes of this section, "remove" or "removal" has the same meaning as set forth in Section 25323.

Added Stats 1986 ch 1031 § 1. Amended Stats 1993 ch 549 § 1 (SB 1175); Stats 1998 ch 425 § 2 (AB 2369); Stats 2011 ch 15 § 170 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11375. (First of two; Operative term contingent) Sale or possession for sale of certain controlled substances

(a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b)(1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.
(2) Clonazepam.
(3) Clorazepate.
(4) Diazepam.
(5) Flurazepam.
(6) Lorazepam.
(7) Mebutamate.
(8) Oxazepam.
(9) Prazepam.
(10) Temazepam.
(11) Halazepam.
(12) Alprazolam.
(13) Propoxyphene.
(14) Diethylpropion.
(15) Phentermine.
(16) Pemoline.
(17) Fenfluramine.
(18) Triazolam.

Added Stats 1984 ch 1635 § 63. Amended Stats 1992 ch 616 § 3 (SB 2013); Stats 2001 ch 838 § 2 (AB 98).

§ 11375. (Second of two; Operation contingent) Possession or sale of certain controlled substances

(a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b)(1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.
(2) Clonazepam.
(3) Clorazepate.
(4) Diazepam.
(5) Flurazepam.
(6) Lorazepam.
(7) Mebutamate.
(8) Oxazepam.
(9) Prazepam.
(10) Temazepam.
(11) Halazepam.
(12) Alprazolam.
(13) Propoxyphene.
(14) Diethylpropion.
(15) Phentermine.
(16) Pemoline.
(17) Triazolam.

Amended Stats 1996 ch 109 § 2 (SB 1426), effective July 1, 1996; Stats 2001 ch 838 § 1 (AB 98).

Note—Stats 1996 ch 109 provides:

SEC. 3. This bill shall not become operative unless fenfluramine and its salts and isomers are removed from Schedule IV of the federal Controlled Substances Act (21 U.S.C.A. Sec. 812; 21 C.F.R. 1308.14).

§ 11375.5. Sale or distribution of synthetic stimulant compound or derivative; Use or possession as public offense

(a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, any synthetic stimulant compound specified in subdivision (c), or any synthetic stimulant derivative, to any person, or who possesses that compound or derivative for sale, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic stimulant compound specified in subdivision (c), or any synthetic stimulant derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars ($500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) Unless specifically excepted, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, or unless listed in another schedule, subdivisions (a) and (b) apply to any material, compound, mixture, or preparation which contains any quantity of a substance or analog of a substance, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers whenever the existence of such salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers is possible, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the following ways:

(1) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents.

(2) By substitution at the 3-position with an alkyl substituent.

(3) By substitution at the nitrogen atom with alkylor dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(d) This section shall not prohibit prosecution under any other provision of law.

Added Stats 2014 ch 372 § 4 (SB 1283), effective January 1, 2015, operative January 1, 2016. Amended Stats 2016 ch 624 § 3 (SB 139), effective September 25, 2016.

§ 11375.7. Eligibility for preguilty plea drug court program; Persons excluded

(a) Unless otherwise excluded pursuant to this section, a person charged with a misdemeanor pursuant to paragraph (3) of subdivision (b) of Section 11357.5 or paragraph (3) of subdivision (b) of 11375.5 shall be eligible to participate in a preguilty plea drug court program, as described in Section 1000.5 of the Penal Code.

(b) Notwithstanding any other law, a positive test for use of a controlled substance, any other drug that may not be possessed without a prescription, or alcohol shall not be grounds for dismissal from the program, unless the person is not making progress in the program. The court shall consider any report or recommendation of the treatment provider in making this determination. It shall be presumed that a person engaged in a program is making progress, unless that presumption is defeated by clear and convincing evidence. The person may offer evidence or an argument that he or she would benefit from and make progress in a different program or mode. If the court so finds, it may place the person in a different treatment program.

(c) Notwithstanding any other law, the following persons are excluded from participation in the program under this section:

(1) Any person with a history of violence that indicates that he or she presents a current risk of violent behavior currently or during the treatment program. This ground for exclusion shall be established by clear and convincing evidence.

(2) Any person required to register as a sex offender pursuant to Section 290, unless the court finds by clear and convincing evidence that the person does not present a substantial risk of committing sexual offenses currently or through the course of the program and the person would benefit from the program, including that treatment would reduce the risk that the person would sexually reoffend.

(3) Any person that the treatment provider concludes is unamenable to any and all forms of drug treatment. The defendant may present evidence that he or she is amenable to treatment and the court may retain the person in the program if the court finds that the person is amenable to treatment through a different provider or a different mode of treatment.

(d) Notwithstanding any other law, a prior conviction for an offense involving a controlled substance or drug that may not be possessed without a prescription, including a substance listed in Section 11357.5 or 11375.5, is not grounds for exclusion from the program, unless the court finds by clear and convincing evidence that the person is likely to engage in drug commerce for financial gain, rather than for purposes of obtaining a drug or drugs for personal use.

Added Stats 2016 ch 624 § 4 (SB 139), effective September 25, 2016.

§ 11376. Counseling or education programs

Upon the diversion or conviction of a person for any offense involving substance abuse, the court may require, in addition to any or all other terms of diversion or imprisonment, fine, or other reasonable conditions of sentencing or probation imposed by the court, that the defendant participate in and complete counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

Added Stats 1996 ch 210 § 1 (SB 1443).

§ 11376.5. Medical assistance for person experiencing drug-related overdose; Protections from arrest or prosecution

(a) Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(b) Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(c) This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will.

(d) Nothing in this section shall affect liability for any offense that involves activities made dangerous by the consumption of a controlled substance or controlled substance analog, including, but not limited to, violations of Section 23103 of the Vehicle Code as specified in Section 23103.5 of the Vehicle Code, or violations of Section 23152 or 23153 of the Vehicle Code.

(e) For the purposes of this section, "drug-related overdose" means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual's condition shall be deemed to be a "drug-related overdose" if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury.

Added Stats 2012 ch 338 § 2 (AB 472), effective January 1, 2013.

ARTICLE 5

Offenses Involving Controlled Substances Formerly Classified as Restricted Dangerous Drugs

§ 11377. (First of two) Possession

(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b)(1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.

(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(d) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(e) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 22, effective October 1, 1973, ch 1088 § 3, effective October 1, 1973; Stats 1976 ch 1139 § 81, operative July 1, 1977; Stats 1977 ch 843 § 23; Stats 1978 ch 699 § 3; Stats 1981 ch 742 § 1; Stats 1984 ch 1635 § 65; Stats 1985 ch 3 § 3, effective January 29, 1985; Stats 1986 ch 1033 § 2, ch 1044 § 20.5; Stats 1988 ch 1243 § 3; Stats 1991 ch 294 § 2 (AB 444); Stats 1998 ch 358 § 1 (AB 1731); Stats 1999 ch 975 § 3 (AB 924); Stats 2001 ch 838 § 3 (AB 98), ch 841 § 5.5 (AB 258); Stats 2002 ch 664 § 131 (AB 3034); Stats 2008 ch 292 § 3 (AB 1141), effective January 1, 2009; Stats 2011 ch 15 § 171 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2014 ch 540 § 2 (AB 2603), effective January 1, 2015.

§ 11377. (Second of two) Possession

(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) The judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 22, effective October 1, 1973, ch 1088 § 3, effective October 1, 1973; Stats 1976 ch 1139 § 81, operative July 1, 1977; Stats 1977 ch 843

§ 23; Stats 1978 ch 699 § 3; Stats 1981 ch 742 § 1; Stats 1984 ch 1635 § 65; Stats 1985 ch 3 § 3, effective January 29, 1985; Stats 1986 ch 1033 § 2, ch 1044 § 20.5; Stats 1988 ch 1243 § 3; Stats 1991 ch 294 § 2 (AB 444); Stats 1998 ch 358 § 1 (AB 1731); Stats 1999 ch 975 § 3 (AB 924); Stats 2001 ch 838 § 3 (AB 98), ch 841 § 5.5 (AB 258); Stats 2002 ch 664 § 131 (AB 3034); Stats 2008 ch 292 § 3 (AB 1141), effective January 1, 2009; Stats 2011 ch 15 § 171 (AB 109), effective April 4, 2011, operative October 1, 2011. Amendment approved by voters, Prop. 47 § 13, effective November 5, 2014.

§ 11377.5. Possession of specified controlled substance with intent to commit sexual assault; Punishment

(a) Except as otherwise provided in this division, every person who possesses any controlled substance specified in paragraph (11) of subdivision (c) of, or subdivision (g) of, Section 11056 of this code, or paragraph (13) of subdivision (d) of Section 11057 of this code, with the intent to commit sexual assault, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) For purposes of this section, "sexual assault" means conduct in violation of Section 243.4, 261, 262, 286, 288a, or 289 of the Penal Code.

Added Stats 2016 ch 893 § 3 (SB 1182), effective January 1, 2017.

§ 11378. Possession for sale

Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.

(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).

(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.

(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.

(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 23, effective October 1, 1973; Stats 1976 ch 1139 § 82, operative July 1, 1977; Stats 1984 ch 1635 § 66; Stats 1985 ch 3 § 4, effective January 29, 1985; Stats 1986 ch 1044 § 21; Stats 1991 ch 294 § 3 (AB 444); Stats 2001 ch 841 § 6 (AB 258); Stats 2011 ch 15 § 172 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2013 ch 76 § 110 (AB 383), effective January 1, 2014.

§ 11378.5. Possession for sale of phencyclidine (PCP) or specified precursors or analogs

Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale phencyclidine or any analog or any precursor of phencyclidine which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) or in subdivision (f), except subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

Added Stats 1978 ch 699 § 4. Amended Stats 1984 ch 1635 § 67; Stats 1985 ch 3 § 5, effective January 29, 1985; Stats 2011 ch 15 § 173 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11379. Transportation, sale, or distribution of specified controlled substances

(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transports" means to transport for sale.

(d) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 24, effective October 1, 1973; Stats 1976 ch 1139 § 83, operative July 1, 1977; Stats 1977 ch 843 § 24; Stats 1984 ch 1635 § 68; Stats 1985 ch 3 § 6, effective January 29, 1985; Stats 1986 ch 1044 § 22; Stats 1989 ch 1102 § 2; Stats 1991 ch 294 § 4 (AB 444); Stats 2001 ch 841 § 7 (AB 258); Stats 2011 ch 15 § 174 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2013 ch 504 § 2 (AB 721), effective January 1, 2014; Stats 2014 ch 54 § 8 (SB 1461), effective January 1, 2015 (ch 54 prevails), ch 71 § 88 (SB 1304), effective January 1, 2015.

§ 11379.2. Sale or possession for sale

Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale or sells any controlled substance specified in subdivision (g) of Section 11056 shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

Added Stats 1991 ch 294 § 5 (AB 444).

§ 11379.5. Transportation, sale, or distribution of phencyclidine (PCP) or specified analogs or precursors

(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph

(3) of subdivision (e) of Section 11055, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

Added Stats 1978 ch 699 § 5. Amended Stats 1984 ch 1635 § 69; Stats 1985 ch 3 § 7, effective January 29, 1985; Stats 1989 ch 1102 § 3; Stats 2011 ch 15 § 175 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2015 ch 77 § 2 (AB 730), effective January 1, 2016.

§ 11379.6. Manufacture of controlled substances by chemical extraction or chemical synthesis; Punishment; Factors in aggravation; Transmission of fines

(a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000).

(b) Except when an enhancement pursuant to Section 11379.7 is pled and proved, the fact that a person under 16 years of age resided in a structure in which a violation of this section involving methamphetamine occurred shall be considered a factor in aggravation by the sentencing court.

(c) Except when an enhancement pursuant to Section 11379.7 is pled and proved, the fact that a violation of this section involving methamphetamine occurred within 200 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court.

(d) The fact that a violation of this section involving the use of a volatile solvent to chemically extract concentrated cannabis occurred within 300 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court.

(e) Except as otherwise provided by law, every person who offers to perform an act which is punishable under subdivision (a) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

(f) All fines collected pursuant to subdivision (a) shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account, as established by Section 5 of Chapter 1295 of the Statutes of 1987. The

transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by the county.

Added Stats 1985 ch 3 § 8, effective January 29, 1985. Amended Stats 1985 ch 323 § 1, effective July 29, 1985; Stats 1989 ch 1024 § 1; Stats 2003 ch 620 § 1 (AB 233); Stats 2011 ch 15 § 176 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2015 ch 141 § 1 (SB 212), effective January 1, 2016.

§ 11379.7. Enhanced punishment for certain offenses causing injury to child or occurring where child is present

(a) Except as provided in subdivision (b), any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of two years in the state prison.

(b) Any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under 16 years of age to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of five years in the state prison.

(c) As used in this section, "structure" means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

(d) As used in this section, "great bodily injury" has the same meaning as defined in Section 12022.7 of the Penal Code.

Added Stats 1996 ch 871 § 1 (AB 3392).

§ 11379.8. Enhancement of punishment based on amount of substance involved

(a) Any person convicted of a violation of subdivision (a) of Section 11379.6, or of a conspiracy to violate subdivision (a) of Section 11379.6, with respect to any substance containing a controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054, or in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) or in paragraph (2) of subdivision (f) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds three gallons of liquid by volume or one pound of solid substances by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 gallons of liquid by volume or three pounds of solid substance by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 gallons of liquid by volume or 10 pounds of solid substance by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 105 gallons of liquid by volume or 44 pounds of solid substance by weight, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(b) The additional terms provided in this section shall not be imposed unless the allegation that the controlled substance exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(c) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the direction or supervision of, or in a significant portion of the financing of, the underlying offense.

Added Stats 1985 ch 1398 § 4. Amended Stats 1986 ch 80 § 3; Stats 1992 ch 578 § 2 (SB 1057); Stats 1998 ch 425 § 3 (AB 2369).

§ 11379.9. Additional term for certain offenses

(a) Except as provided by Section 11379.7, any person convicted of a violation of, or of an attempt to violate, subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice, shall, in addition and consecutive to any other punishment authorized by law, be punished by an additional term of one year in the state prison for each death or injury.

(b) Nothing in this section shall preclude prosecution under both this section and Section 187, 192, or 12022.7, or any other provision of law. However, a person who is punished under another provision of law for causing death or great bodily injury as described in subdivision (a) shall not receive an additional term of imprisonment under this section.

Added Stats 1997 ch 553 § 1 (AB 904). Amended Stats 1998 ch 936 § 2 (AB 105), effective September 28, 1998.

§ 11380. Inducing violation by minor

(a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, specified in paragraph (2) or (3) or subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving those controlled

substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(b) Nothing in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 25, effective October 1, 1973; Stats 1976 ch 1139 § 84, operative July 1, 1977; Stats 1984 ch 1635 § 70; Stats 1985 ch 3 § 9, effective January 29, 1985; Stats 1986 ch 248 § 145 (ch 1044 prevails), ch 1035 § 3, ch 1044 § 23; Stats 1990 ch 1664 § 5 (AB 2645), ch 1665 § 5 (SB 2112); Stats 2001 ch 841 § 8 (AB 258).

§ 11380.1. Enhancement of punishment for offenses involving specified substances or certain minors

(a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

Added Stats 1990 ch 1665 § 6 (SB 2112). Amended Stats 1993 ch 305 § 1 (AB 246), ch 556 § 3.5 (AB 312).

§ 11380.7. Trafficking in vicinity of drug treatment center, detoxification facility or homeless shelter

(a) Notwithstanding any other provision of law, any person who is convicted of trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), or of a conspiracy to commit trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for the conviction, shall be imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code for an additional one year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter.

(b)(1) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(2) The additional punishment provided in this section shall not be imposed if any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(c) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment. In determining whether or not to strike the additional punishment, the court shall consider the following factors and any relevant factors in aggravation or mitigation in Rules 4.421 and 4.423 of the California Rules of Court.

(1) The following factors indicate that the court should exercise its discretion to strike the additional punishment unless these factors are outweighed by factors in aggravation:

(A) The defendant is homeless, or is in a homeless shelter or transitional housing.

(B) The defendant lacks resources for the necessities of life.

(C) The defendant is addicted to or dependent on controlled substances.

(D) The defendant's motive was merely to maintain a steady supply of drugs for personal use.

(E) The defendant was recruited or exploited by a more culpable person to commit the crime.

(2) The following factors indicate that the court should not exercise discretion to strike the additional punishment unless these factors are outweighed by factors in mitigation:

(A) The defendant, in committing the crime, preyed on homeless persons, drug addicts or substance abusers who were seeking treatment, shelter or transitional services.

(B) The defendant's primary motive was monetary compensation.

(C) The defendant induced others, particularly homeless persons, drug addicts and substance abusers, to become involved in trafficking.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Detoxification facility" means any premises, place, or building in which 24-hour residential nonmedical services are provided to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(2) "Drug treatment program" or "drug treatment" has the same meaning set forth in subdivision (b) of Section 1210 of the Penal Code.

(3) "Homeless shelter" includes, but is not limited to, emergency shelter housing, as well as transitional housing, but does not include domestic violence shelters. "Emergency shelter housing" is housing with minimal support services for homeless persons in which residency is limited to six months or less and is not related to the person's ability to pay. "Transitional housing" means housing with supportive services, including self-sufficiency development services, which is exclusively designed and targeted to help recently homeless persons find permanent housing as soon as reasonably possible, limits residency to 24 months, and in which rent and service fees are based on ability to pay.

(4) "Trafficking" means any of the unlawful activities specified in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession or drug use.

Added Stats 2006 ch 650 § 2 (SB 1318), effective January 1, 2007. Amended Stats 2011 ch 15 § 177 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11381. "Felony offense" and offense "punishable as a felony"

As used in this article "felony offense" and offense "punishable as a felony" refer to an offense prior to October 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after October 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

Added Stats 1972 ch 1407 § 3. Amended Stats 2011 ch 15 § 178 (AB 109), effective April 4, 2011, operative October 1, 2011, ch 39 § 3 (AB 117), effective June 30, 2011, operative October 1, 2011.

§ 11382. Sale, transportation, or distribution of controlled substance pursuant to agreement

Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (a) classified in Schedule III, IV, or V and which is not a narcotic drug, or (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 26, effective October 1, 1973; Stats 1976 ch 1139 § 85, operative July 1, 1977; Stats 1978 ch 699 § 7; Stats 1984 ch 1635 § 72; Stats 1985

ch 3 § 11, effective January 29, 1985; Stats 2001 ch 841 § 9 (AB 258); Stats 2002 ch 664 § 132 (AB 3034); Stats 2011–2012 1st Ex Sess ch 12 § 5 (ABX1 17), effective September 21, 2011, operative October 1, 2011.

§ 11382.5. Identifying device, insignia, or manufacturer's mark required for sale or distribution

All controlled substances in Schedules I, II, III, IV, and V, in solid or capsule form, except for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist on January 1, 1975, shall not be sold, furnished, or distributed in this state unless they have on the controlled substance if in solid form, or on the capsule if in capsule form, an identifying device, insignia, or mark of the manufacturer of such controlled substance. However, the exception for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist shall not be available to any wholesaler, retailer, or pharmacist under the control or jurisdiction of a manufacturer of controlled substances.

This section shall not apply to a pharmacist who, in accordance with applicable state law, compounds such controlled substance in the course of his practice as a pharmacist for direct dispensing by him upon a prescription of any person licensed to prescribe such controlled substances.

Added Stats 1974 ch 926 § 1.

ARTICLE 6

Precursors of Phencyclidine (PCP) and Methamphetamine

§ 11383. Possession with intent to manufacture phencyclidine (PCP); Punishment

(a) Any person who possesses at the same time any of the following combinations, a combination product thereof, or possesses any compound or mixture containing the chemicals listed in the following combinations, with the intent to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (d) of Section 11054 or subdivision (e) of Section 11055, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1-phenylcyclohexylamine (PCA), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide

(PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 1116 § 2, ch 1139 § 86, operative July 1, 1977; Stats 1977 ch 165 § 3.6, effective June 29, 1977, operative July 1, 1977; Stats 1978 ch 699 § 8; Stats 1980 ch 749 § 3, effective July 28, 1980; Stats 1982 ch 1279 § 6; Stats 1984 ch 1635 § 73; Stats 1985 ch 3 § 12, effective January 29, 1985; Stats 1987 ch 424 § 1; Stats 1988 ch 712 § 3, effective August 29, 1988; Stats 1990 ch 1591 § 1 (SB 1894); Stats 1992 ch 49 § 1 (AB 823), ch 578 § 3 (SB 1057); Stats 1993 ch 1 § 1 (SB 92), effective February 6, 1993; Stats 1995 ch 571 § 1 (SB 419); Stats 2003 ch 619 § 1 (AB 158); Stats 2006 ch 646 § 2 (SB 1299), effective January 1, 2007; Stats 2011 ch 15 § 179 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11383.5. Possession with intent to manufacture phencyclidine (PCP); Punishment

(a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(b)(1) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture any of the following controlled substances, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(e) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(f) Any person who possesses any compound or mixture containing ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years.

(g) For purposes of this section, a "reducing agent" for the purposes of manufacturing methamphetamine means an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

(h) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

Added Stats 2006 ch 646 § 3 (SB 1299), effective January 1, 2007. Amended Stats 2011 ch 15 § 180 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11383.6. Possession with intent to sell precursors for manufacture of phencyclidine (PCP); Punishment

(a) Any person who possesses at the same time any of the following combinations, a combination product thereof, or possesses any compound or mixture containing the chemicals listed in the following combinations, with the

intent to sell, transfer, or otherwise furnish those chemicals, combinations, or mixtures to another person with the knowledge that they will be used to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (d) of Section 11054 or subdivision (e) of Section 11055 is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish the isomer to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1-phenylcyclohexylamine (PCA), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide (PMB) with the intent to sell, transfer, or otherwise furnish the compound or mixture to another person with the knowledge that it will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to sell, transfer or otherwise furnish the immediate precursors to another person with the knowledge that they will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

Added Stats 2006 ch 646 § 4 (SB 1299), effective January 1, 2007. Amended Stats 2011 ch 15 § 181 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11383.7. Possession with intent to sell precursors for manufacture of methamphetamine; Punishment

(a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(b)(1) Any person who possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, with the intent to sell, transfer, or otherwise furnish those chemicals, substances, or products to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish that chemical, product, or substance to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish any of the compounds to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish these substances to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be

punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(e) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish those chemicals to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(f) Any person who possesses any compound or mixture containing ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish that compound or mixture to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, two, or three years.

(g) For purposes of this section, a "reducing agent" for the purposes of manufacturing methamphetamine means an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

(h) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

Added Stats 2006 ch 646 § 5 (SB 1299), effective January 1, 2007. Amended Stats 2011 ch 15 § 182 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 11384. Regulation authorizing possession for lawful purpose

The Board of Pharmacy shall, by regulation, authorize such persons to possess any combinations of substance specified in subdivision (a) or (b) of Section 11383 as it determines need and will use such substance for a lawful purpose.

Added Stats 1972 ch 1407 § 3. Amended Stats 1976 ch 1116 § 3.

ARTICLE 7
Mushrooms

§ 11390. Unauthorized cultivation of material containing controlled substance

Except as otherwise authorized by law, every person who, with intent to produce a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

Added Stats 1985 ch 1264 § 2.

§ 11391. Unauthorized transportation, sale, or furnishing of material containing controlled substance

(a) Except as otherwise authorized by law, every person who transports, imports into this state, sells, furnishes, gives away, or offers to transport,

import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054 for the purpose of facilitating a violation of Section 11390 shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

(b) For purposes of this section, "transport" means to transport for sale.

(c) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

Added Stats 1985 ch 1264 § 2. Amended Stats 2015 ch 77 § 3 (AB 730), effective January 1, 2016.

§ 11392. Authorized acquisition for use in bona fide research, instruction, or analysis

Spores or mycelium capable of producing mushrooms or other material which contains psilocyn or psyoclyin may be lawfully obtained and used for bona fide research, instruction, or analysis, if not in violation of federal law, and if the research, instruction, or analysis is approved by the Research Advisory Panel established pursuant to Sections 11480 and 11481.

Added Stats 1985 ch 1264 § 2.

CHAPTER 6.5

Analogs

§ 11400. Legislative findings and declarations

The Legislature finds and declares that the laws of this state which prohibit the possession, possession for sale, offer for sale, sale, manufacturing, and transportation of controlled substances are being circumvented by the commission of those acts with respect to analogs of specified controlled substances which have, are represented to have, or are intended to have effects on the central nervous system which are substantially similar to, or greater than, the controlled substances classified in Sections 11054 and 11055 and the synthetic cannabinoid compounds defined in Section 11357.5, of which they are analogs. These analogs have been synthesized by so-called "street chemists" and imported into this state from other jurisdictions as precursors to, or substitutes for, controlled substances and synthetic cannabinoid compounds, due to the nonexistence of applicable criminal penalties. These analogs present grave dangers to the health and safety of the people of this state. Therefore, it is the intent of the Legislature that a controlled substance or synthetic cannabinoid compound analog as defined in Section 11401 be considered identical, for purposes of the penalties and punishment specified in Chapter 6 (commencing with Section 11350), to the controlled substance in Section 11054 or 11055 or the synthetic cannabinoid compound defined in Section 11357.5 of which it is an analog.

Added Stats 1988 ch 712 § 4, effective August 29, 1988. Amended Stats 2016 ch 627 § 1 (SB 1036), effective January 1, 2017.

§ 11401. "Controlled substance analog"

(a) A controlled substance analog shall, for the purposes of Chapter 6 (commencing with Section 11350), be treated the same as the controlled

substance classified in Section 11054 or 11055 or the synthetic cannabinoid compound defined in Section 11357.5 of which it is an analog.

(b) Except as provided in subdivision (c), the term "controlled substance analog" means either of the following:

(1) A substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in Section 11054 or 11055 or a synthetic cannabinoid compound defined in Section 11357.5.

(2) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance classified in Section 11054 or 11055 or a synthetic cannabinoid compound defined in Section 11357.5.

(c) The term "controlled substance analog" does not mean any of the following:

(1) A substance for which there is an approved new drug application as defined under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or that is generally recognized as safe and effective for use pursuant to Sections 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 351, 352, and 353) and Section 330 et seq. of Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, a substance for which an exemption is in effect for investigational use for that person under Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

(3) A substance, before an exemption as specified in paragraph (2) takes effect with respect to the substance, to the extent the substance is not intended for human consumption.

Added Stats 1988 ch 712 § 4, effective August 29, 1988. Amended Stats 2016 ch 627 § 2 (SB 1036), effective January 1, 2017.

DIVISION 105

Communicable Disease Prevention and Control

PART 1

Administration of Communicable Disease Prevention and Control

CHAPTER 3.5

Communicable Diseases Exposure Notification Act

§ 120260. Legislative findings

(a) The Legislature finds and declares all of the following:

(1) Early knowledge of infection with communicable disease is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.

(2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose communicable disease infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent transmission of communicable diseases, there will be occasions when they experience significant exposure to the blood or other potentially infectious materials of patients.

(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the communicable disease infection status of the patient.

Added Stats 2002 ch 342 § 1 (AB 2423).

§ 120260.5. Testing and notification procedures additional.

The communicable disease testing and notification procedures provided for in this chapter are in addition to the notification to which prehospital emergency medical care persons or personnel are entitled under Section 1797.188.

Added Stats 2006 ch 102 § 2 (AB 2056), effective January 1, 2007.

§ 120261. Definitions

For the purposes of this chapter, the following definitions apply:

(a) "Attending physician of the source patient" means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

(1) The private physician of the source patient.

(2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.

(3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) "Available blood or patient sample" means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the release of the source patient from the physician's or health care provider's facility.

(c) "Certifying physician" means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) "Communicable disease" means any disease that was transferable through the exposure incident, as determined by the certifying physician.

(e) "Exposed individual" means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(f) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or health care facilities or health care providers described in this subdivision.

(g) "First responder" means a police officer, firefighter, rescue worker, or any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person's occupational duties or as a volunteer.

(h) "Other potentially infectious materials" means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting a communicable disease.

(i) "Significant exposure" means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting a communicable disease.

(j) "Source patient" means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

Added Stats 2002 ch 342 § 1 (AB 2423).

§ 120262. Testing of source patient; Notification to exposed individual

Notwithstanding Chapter 7 (commencing with Section 120975) or any other law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed whether the patient has tested positive or negative for a communicable disease if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a)(1) If a person becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure, as defined in subdivision (h) of Section 120261. A physician or other exposed individual shall not certify his or her own significant exposure. However, an employing physician may certify the

exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b)(1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of the testing performed, the need for followup testing, and the procedures that the exposed individual must follow regardless of whether the source patient has tested positive or negative for a communicable disease. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of infection to a communicable disease, without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on whether the source patient has tested positive or negative for a communicable disease, and the availability of blood or other patient samples. An attending physician shall respond to the request for information within three working days.

(c) If test results of the source patient are already known to be positive for a communicable disease then, except as provided in subdivisions (b) and (c) of Section 121010, when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the testing results of the source patient regarding communicable diseases. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the test results regarding communicable diseases of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other law.

(d) If the communicable disease status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline test for communicable diseases, the source patient shall be given the opportunity to give informed consent to a test for communicable diseases in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with a certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An

inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2). An inability of the source patient to provide informed consent shall constitute a refusal of consent pursuant to paragraph (2), provided all of the following conditions are met:

(i) The source patient has no authorized legal representative.

(ii) The source patient is incapable of giving consent.

(iii) In the opinion of the attending physician, it is likely that the source patient will be unable to grant informed consent within the 72-hour period during which the physician is required to respond pursuant to paragraph (1).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform a test for a communicable disease, on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for testing for communicable diseases from the source patient.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup, if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to test for a communicable disease after a documented effort has been made to obtain consent, any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the test results regarding communicable diseases.

(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform a test for a communicable disease on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the test for communicable diseases only if he or she wishes to be so informed. If a patient refuses to provide informed consent to testing for communicable diseases and refuses to learn the results of the testing, he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the test results regarding communicable diseases. Test results for communicable diseases shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(5) Notwithstanding any other law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, the test results regarding communicable diseases of that source patient shall only be provided to the exposed individual in accordance with the then

applicable regulations established by the Division of Occupational Safety and Health.

(6) The source patient's identity shall be encoded on the communicable disease test result record.

(e) If an exposed individual is informed of the status of a source patient with regard to a communicable disease pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the communicable disease test results, and that medical information regarding the communicable disease status of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the test and counseling for communicable diseases of the exposed individual, or the source patient, or both, shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) This section does not authorize the disclosure of the source patient's identity.

(h) This section does not authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude testing of source patients for a communicable disease, as authorized by any other law.

(j) Except as otherwise provided under this section, all confidentiality requirements regarding medical records that are provided for under existing law apply to this section.

Added Stats 2002 ch 342 § 1 (AB 2423). Amended Stats 2015 ch 303 § 348 (AB 731), effective January 1, 2016.

§ 120263. Liability of health care provider

(a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing tests for a communicable disease on the available blood or patient sample of a source patient, or for disclosing the communicable disease status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of a test for a communicable disease on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars ($10,000), or by both.

Added Stats 2002 ch 342 § 1 (AB 2423), as H & S C § 121140. Renumbered by Stats 2003 ch 62 § 195 (SB 600).

PART 4

Human Immunodeficiency Virus (HIV)

CHAPTER 2

California Acquired Immune Deficiency Syndrome (AIDS) Program (CAP)

§ 120800. Legislative intent

The intent of the Legislature in enacting this chapter is as follows:

(a) To fund specified pilot AIDS education programs.

(b) To fund pilot projects to demonstrate the value of noninstitutional health care services such as hospice, home health, and attendant care in controlling costs and providing humane care to people with AIDS and AIDS-related conditions.

(c) To fund clinical research.

(d) To fund the development of an AIDS Mental Health Project.

(e) To fund specified needs assessments, studies, and program evaluations.

(f) To authorize the use of funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for preventive education for individuals who are seropositive as a result of antibody testing.

(g) To promote broad-based support for AIDS programs by encouraging community level networking and coordination of efforts among private sector, nonprofit, and public service agencies as well as health care professionals and providers of essential services.

(h) To promote an aggressive community-based HIV infection prevention program in all communities and areas where behaviors and prevalence indicate high risk of HIV infection, and to encourage local programs to involve racial and ethnic minorities in a leading role to plan the development, implementation, and evaluation of preventive education, HIV testing, delivery of care, and research activities that are necessary to the formation of a comprehensive, community-based, culturally sensitive HIV infection prevention strategy.

(i) To promote education of health care practitioners concerning new clinical manifestations of HIV, particularly among women and children.

Added Stats 1995 ch 415 § 7 (SB 1360).

CHAPTER 7
Mandated Blood Testing and Confidentiality to Protect Public Health

§ 120975. Privacy rights of persons subject to AIDS blood tests

To protect the privacy of individuals who are the subject of testing for human immunodeficiency virus (HIV), the following shall apply:

Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual who is the subject of a blood test to detect antibodies to HIV an HIV test, as defined in subdivision (c) of Section 120775.

Added Stats 1995 ch 415 § 7 (SB 1360). Amended Stats 2006 ch 20 § 3 (SB 699), effective April 17, 2006; Stats 2013 ch 445 § 1 (SB 249), effective January 1, 2014.

§ 120980. Civil and criminal liability for wrongful disclosure of AIDS test results

(a) Any person who negligently discloses results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully or maliciously discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully, maliciously, or negligently discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars ($25,000), or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) Except as provided in Article 6.9 (commencing with Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the results of an HIV test, as defined in subdivision (c) of Section 120775, that identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in subdivision (c) of Section 120775, in accordance with any reporting requirement for a case of HIV infection, including AIDS by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

(j) The department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics that would identify individual donors.

(k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(*l*) When the results of an HIV test, as defined in subdivision (c) of Section 120775, are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

Added Stats 1995 ch 415 § 7 (SB 1360). Amended Stats 2006 ch 20 § 4 (SB 699), effective April 17, 2006.

§ 120985. Disclosure to health care providers

(a) Notwithstanding Section 120980, the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization of the subject of the test, or the subject's representative as set forth in Section 121020, to the test subject's providers of health care, as defined in Section 56.05 of the Civil Code, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section, "providers of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

Added Stats 1995 ch 415 § 7 (SB 1360). Amended Stats 2013 ch 444 § 14 (SB 138), effective January 1, 2014.

§ 120990. Written consent to test; Exceptions; Patient shall receive information and counseling

(a) Prior to ordering a test that identifies infection of a patient with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) does not apply when a person independently requests an HIV test from a medical care provider.

(c) Except as provided in subdivision (a), a person shall not administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020 has provided informed consent for the performance of the test. Informed consent may be provided orally or in writing, but the person administering the test shall maintain documentation of consent, whether obtained orally or in writing, in the client's medical record. This consent requirement does not apply to a test performed at an alternative site pursuant to Section 120890 or 120895. This section does not authorize a person to administer a test for HIV unless that person is otherwise lawfully permitted to administer an HIV test.

(d) Subdivision (c) shall not apply when a person independently requests an HIV test from an HIV counseling and testing site that employs a trained HIV counselor, pursuant to Section 120917, provided that the person is provided with information required pursuant to subdivision (a) and his or her independent request for an HIV test is documented by the person administering the test.

(e) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a test to detect HIV on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(f)(1) The requirements of subdivision (c) do not apply when blood is tested as part of a scientific investigation conducted either by a medical researcher operating under the approval of an institutional review board or by the department, in accordance with a protocol for unlinked testing.

(2) For purposes of this subdivision, "unlinked testing" means blood samples that are obtained anonymously, or that have the name or identifying information of the individual who provided the sample removed in a manner that prevents the test results from ever being linked to the particular individual who participated in the research or study.

(g) Nothing in this section permits a person to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, who test positive for HIV, or who are presumed to be HIV-positive.

(h) After the results of a test performed pursuant to this section have been received, the medical care provider or the person who administers the test shall ensure that the patient receives timely information and counseling, as appropriate, to explain the results and the implications for the patient's health. If the patient tests positive for HIV infection, the medical provider or the person who administers the test shall inform the patient that there are numerous treatment options available and identify followup testing and care that may be recommended, including contact information for medical and psychological services. If the patient tests negative for HIV infection and is determined to be at high risk for HIV infection by the medical provider or person administering the test, the medical provider or person who administers the test shall advise the patient of the need for periodic retesting, explain the limitations of current testing technology and the current window period for verification of results, and provide information about methods that prevent or reduce the risk of contracting HIV, including, but not limited to, preexposure prophylaxis and postexposure prophylaxis, consistent with guidance of the federal Centers for Disease Control and Prevention, and may offer prevention counseling or a referral to prevention counseling.

(i) This section shall not apply to a clinical laboratory.

Added Stats 2007 ch 550 § 2 (AB 682), effective January 1, 2008. Amended Stats 2013 ch 589 § 1 (AB 446), effective January 1, 2014; Stats 2016 ch 670 § 1 (AB 2640), effective January 1, 2017.

§ 120991. Primary care clinic shall offer HIV test

(a) Each patient who has blood drawn at a primary care clinic and who has consented to the HIV test pursuant to Section 120990 shall be offered an HIV test. The primary care clinician shall offer an HIV test consistent with the United States Preventive Services Task Force recommendation for screening HIV infection. This subdivision shall not apply if the primary care clinic has tested the patient for HIV or if the patient has been offered the HIV test and declined the test within the previous 12 months. Any subsequent testing of a patient who has been tested by the primary care clinic shall be consistent with the most recent guidelines issued by the United States Preventive Services Task Force.

(b) HIV testing of minors 12 years of age or older shall comply with Section 6926 of the Family Code.

(c) This section shall not prohibit a primary care clinic from charging a patient to cover the cost of HIV testing. The primary care clinic shall be deemed to have complied with this section if an HIV test is offered.

(d) A primary care clinic shall attempt to provide test results to the patient before he or she leaves the facility. If that is not possible, the facility may inform the patient who tests negative for HIV by letter or by telephone, and shall inform a patient with a positive test result in a manner consistent with state law. However, in any case, the primary care clinic shall comply with subdivision (g) of Section 120990.

(e) For purposes of this section, "primary care clinic" means a primary care clinic as defined in subdivision (a) of Section 1204 or subdivision (g), (h), or (j) of Section 1206.

Added Stats 2013 ch 589 § 2 (AB 446), effective January 1, 2014.

§ 120992. HIV testing pilot program

(a) There is hereby created a pilot project, to be administered by the department, in order to assess and make recommendations regarding the effectiveness of the routine offering of an HIV test in the emergency department of a hospital.

(b) The department shall select four hospitals that have emergency departments to voluntarily participate in the pilot project. The department may select fewer hospitals if an insufficient number of hospitals express willingness to voluntarily participate.

(1) Two of the hospitals shall be selected from large urban areas.

(2) One hospital shall be selected from a small urban or suburban area.

(3) One hospital shall be selected from a rural area.

(c) Each hospital in the pilot project shall offer an HIV test to any patient in the hospital emergency department who has consented to the HIV test pursuant to Section 120990. The emergency department shall comply with subdivision (h) of Section 120990 and may choose to comply either by using emergency department or other hospital personnel or engaging the services of an HIV organization that has experience in prevention counseling for persons at risk for HIV.

(d)(1) A hospital in the pilot project shall not offer a test to any person who is being treated for a life-threatening emergency or who lacks the capacity to consent to an HIV test.

(2) If an emergency department physician at a hospital in the pilot project determines that a patient is in significant pain or distress, including psychological distress, the hospital shall not offer an HIV test to the patient. Once an emergency department physician determines that the patient has stabilized and is no longer in significant pain or distress, including psychological distress, the hospital shall offer an HIV test to the patient.

(e) A hospital in the pilot project shall offer HIV tests to individuals 15 to 65 years of age, inclusive, pursuant to the United States Preventive Services Task Force recommendations. In order to protect the confidentiality and privacy interests of minors, the hospital shall not offer HIV tests to individuals 15 to 17 years of age, inclusive, in the presence of their parent or legal guardian.

(f) A hospital in the pilot project shall be authorized to charge a patient for the cost of the HIV testing.

(g) A hospital in the pilot project shall be directed by the department, in a form, manner, and timeframe determined by the department, to collect and report data on the following topics:

(1) The frequency of HIV test offers.

(2) The frequency of consent or nonconsent to an HIV test and any reasons given by the patient for the consent or the nonconsent.

(3) The time taken to offer an HIV test and secure consent from a patient and the time taken to provide information and counseling pursuant to subdivision (h) of Section 120990.

(4) The aggregate HIV positivity rate.

(5) The frequency with which patients agree to participate in a session to receive information and counseling pursuant to subdivision (h) of Section 120990 and the reasons that patients give for refusing to participate.

(6) The frequency of patients leaving the emergency department without receiving their test results.

(h) A hospital in the pilot project shall provide information to the department regarding its practices and protocols for implementing the offer of an HIV test and the required followup to the test, as well as an assessment of the effectiveness of those practices and protocols.

(i)(1) The pilot project shall commence on March 1, 2017, and end on February 28, 2019.

(2) By December 1, 2019, the department shall complete a report to the Legislature on the findings of the hospitals in the pilot project and make recommendations about routine HIV testing in hospital emergency departments. In preparing the report to the Legislature, the department shall solicit input from a broad range of HIV testing and hospital stakeholders.

(j)(1) The requirement for submitting a report imposed under paragraph (2) of subdivision (i) is inoperative on December 1, 2023, pursuant to Section 10231.5 of the Government Code.

(2) A report submitted pursuant to paragraph (2) of subdivision (i) shall be submitted in compliance with Section 9795 of the Government Code.

(k) For purposes of this section, "hospital" means a general acute care hospital as defined in subdivision (a) of Section 1250.

(*l*) This section shall be implemented only to the extent that the department identifies available funding for the purposes of this section. The department may seek or use private funding to cover the costs of administering the pilot project.

Added Stats 2016 ch 668 § 1 (AB 2439), effective January 1, 2017.

§ 121015. Liability for disclosure of AIDS test results; Confidentiality of identity of person tested and persons contacted

(a) Notwithstanding Section 120980 or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect HIV infection of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the local health officer or designated local public health agency staff for HIV partner services, that the patient has tested positive on a test to detect HIV infection, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected, except as required in Section 121022 or with the written consent of the individual pursuant to subdivision (g) of Section 120980.

(b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, that shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has attempted to obtain the patient's voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient's contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the

physician and surgeon shall refer that person for appropriate care, counseling, and followup. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.

(c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect HIV infection are limited to the provisions contained in this chapter, Chapter 10 (commencing with Section 121075) and Sections 1603.1 and 1603.3. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be infected with HIV, except as required by Section 121022.

(d) The local health officer or the designated local public health agency staff for HIV partner services may, without incurring civil or criminal liability, alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on an HIV test about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and followup. Upon completion of the efforts to contact, alert, and refer any person pursuant to this subdivision by a local health officer or the designated local public health agency staff for HIV partner services, all records regarding that person maintained by the local health officer pursuant to this subdivision, including, but not limited to, any individual identifying information, shall be expunged by the local health officer.

(e) The local health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.

(f) Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual reported or person contacted pursuant to this section.

Added Stats 1995 ch 415 § 7 (SB 1360). Amended Stats 2006 ch 20 § 5 (SB 699), effective April 17, 2006; Stats 2011 ch 151 § 1 (SB 422), effective January 1, 2012.

§ 121020. Requirement of written consent for incompetent subject; Consent for minor or infant; Disclosure of results; Positive test by infant

(a)(1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

(2) Notwithstanding paragraph (1), when the subject of the HIV test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.

(3)(A) Notwithstanding paragraphs (1) and (2), if the subject of the test is an infant who is less than 12 months of age who has been taken into temporary custody pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code or who has been, or has a petition filed with the court to be, adjudged a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, the social worker may provide written consent for an HIV test to be performed when the infant is receiving medical care pursuant to Section 369 of the Welfare and Institutions Code, if all of the following have occurred:

(i) The attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant and documents that determination. When deciding whether HIV testing is necessary, the physician and surgeon shall consider appropriate factors, either known to the attending physician and surgeon or provided to the attending physician and surgeon by the social worker, including, but not limited to, whether the infant has a parent with a history of behavior that places the parent at an increased risk of exposure to HIV, or whether the infant is a victim of sexual abuse, which has placed the child at risk of exposure to HIV.

(ii) The social worker provides known information concerning the infant's possible risk factors regarding exposure to HIV to the attending physician and surgeon.

(iii) The social worker has made reasonable efforts to contact the parent or guardian but was unable to do so, and the social worker has documented his or her efforts to contact that person.

(B) The attending physician and surgeon and the social worker shall comply with all applicable state and federal confidentiality and privacy laws, including Section 121025, to protect the confidentiality and privacy interests of both the infant and the biological mother.

(b) Written consent shall only be obtained for the subject pursuant to paragraphs (1) and (2) of subdivision (a) when necessary to render appropriate care or to practice preventative measures.

(c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:

(1) Notwithstanding Sections 120975 and 120980, receive the results of the test on behalf of the subject without written authorization.

(2) Disclose the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(d)(1) If an infant tested for HIV pursuant to paragraph (3) of subdivision (a) tests positive for HIV infection and the physician and surgeon determines that immediate HIV medical care is necessary to render appropriate care to that infant, the provision of HIV medical care shall be considered emergency medical care, pursuant to subdivision (d) of Section 369 of the Welfare and Institutions Code.

(2) If an infant tests positive for HIV in a test performed pursuant to this section, the social worker shall provide to the physician and surgeon any available contact information for the biological mother for purposes of reporting the HIV infection to the local health officer pursuant to Section 121022.

Cases reported to the local health officer under this subdivision are subject to the requirements of Section 120175.

Added Stats 1995 ch 415 § 7 (SB 1360). Amended Stats 2013 ch 153 § 1 (AB 506), effective January 1, 2014.

§ 121022. Manner of reporting cases; Access to anonymous testing; Breach of confidentiality of records; Investigation; Penalties

(a) To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names on a form developed by the department. Both the local health officer and the department shall be authorized to access reports of HIV infection that are electronically submitted by laboratories pursuant to subdivision (g) of Section 120130. Local health officers shall report unduplicated HIV cases by name to the department on a form developed by the department.

(b)(1) Health care providers and local health officers shall submit cases of HIV infection pursuant to subdivision (a) by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department.

(2) This subdivision shall be implemented using the existing resources of the department.

(c) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(d) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Subchapter 1 of Chapter 4 of Division 1 of Title 17 of the California Code of Regulations, consistent with this chapter, by April 17, 2007. Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), if the department revises the form used for reporting pursuant to subdivision (a) after consideration of the reporting guidelines published by the federal Centers for Disease Control and Prevention, the revised form shall be implemented without being adopted as a regulation, and shall be filed with the Secretary of State and printed in Title 17 of the California Code of Regulations.

(e) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(f) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(g) A person shall not disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency, employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(h)(1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency.

(i) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(j) This section does not limit other remedies and protections available under state or federal law.

Added Stats 2006 ch 20 § 6 (SB 699), effective April 17, 2006. Amended Stats 2010 ch 470 § 2 (AB 2541), effective January 1, 2011; Stats 2011 ch 650 § 3 (SB 946), effective January 1, 2012; Stats 2013 ch 445 § 3 (SB 249), effective January 1, 2014; Stats 2014 ch 71 § 92 (SB 1304), effective January 1, 2015.

DIVISION 106

Personal Health Care (Including Maternal, Child, and Adolescent)

PART 1

General Administration

CHAPTER 1

Patient Access to Health Records

§ 123105. Definitions

As used in this chapter:

(a) "Health care provider" means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).

(14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

(c) "Patient" means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative" or "representative" means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2002 ch 1013 § 89 (SB 2026), ch 1150 § 49 (SB 1955); Stats 2006 ch 249 § 1 (SB 1307), effective January 1, 2007; Stats 2009 ch 307 § 105 (SB 821), effective January 1, 2010; Stats 2011 ch 381 § 33 (SB 146), effective January 1, 2012.

§ 123110. Inspection of records; Copying of records; Violations; Construction of section

(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.

(b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty-five cents ($0.25) per page or fifty cents ($0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.

(c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

(d)(1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, "relevant portion of the

patient's records" means those records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.

(2) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.

(e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.

(f) If a patient or his or her representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

(g) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. Nothing in this chapter shall be deemed to supersede any rights that a patient or representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. Nothing in this chapter shall require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

(h) This chapter shall not be construed to render a health care provider liable for the quality of his or her records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section.

Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this

chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision (i).

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2001 ch 325 § 1 (AB 1311).

§ 123115. Representatives of minors; Risks of adverse consequences to patient in inspecting records

(a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection or copying under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2)(A) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor, designated by request of the patient.

(B) Any person registered as a marriage and family therapist intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (g) of Section 4980.03 of the Business and Professions Code. Prior to providing copies of mental health records to a registered marriage and family therapist intern, a receipt for those records shall be signed by the supervising licensed professional.

(C) Any person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code. Prior to providing copies of mental health records to a person registered as a clinical counselor intern, a receipt for those records shall be signed by the supervising licensed professional.

(D) A licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, registered marriage and family therapist intern, or person registered as a clinical counselor intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 1997 ch 388 § 1 (SB 1295); Stats 2000 ch 519 § 2 (AB 2161); Stats 2006 ch 100 § 1 (AB 1994), effective January 1, 2007; Stats 2009 ch 26 § 25 (SB 33), effective January 1, 2010; Stats 2011 ch 381 § 34 (SB 146), effective January 1, 2012.

§ 123116. Inspection or release of information on minor removed from physical custody of parent or guardian; Restrictions; Applicability

(a) Notwithstanding Section 3025 of the Family Code, paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, or any other provision of law, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) When the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of a minor patient under the circumstances described in subdivision (a), the parent or guardian requesting to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist

and shall comply with subdivisions (a) and (b) of Section 123110 before the records may be accessed by the parent or guardian.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the minor patient's mental health records. Liability for a psychotherapist's decision not to allow the parent or guardian to inspect or obtain copies of records pursuant to the authority of subdivision (a) of Section 123115 shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code when a parent or guardian presents the minor's psychotherapist with a written request to inspect or obtain copies of the minor's mental health records.

Added Stats 2012 ch 657 § 2 (SB 1407), effective January 1, 2013.

§ 123120. Action to enforce right to inspect or copy

Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123125. Exception for alcohol, drug abuse and communicable disease carrier records

(a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner, prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92–255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91–616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not prohibit disclosure of the records. All other alcohol and drug abuse records shall be fully subject to this chapter.

(b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123130. Preparation of summary of record; Conference with patient

(a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If

the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:

(1) Chief complaint or complaints including pertinent history.

(2) Findings from consultations and referrals to other health care providers.

(3) Diagnosis, where determined.

(4) Treatment plan and regimen including medications prescribed.

(5) Progress of the treatment.

(6) Prognosis including significant continuing problems or conditions.

(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.

(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law.

(d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.

(e) Subdivision (c) of Section 123110 shall be applicable whether or not the health care provider elects to prepare a summary of the record.

(f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient's representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123135. Construction of chapter

Except as otherwise provided by law, nothing in this chapter shall be construed to grant greater access to individual patient records by any person, firm, association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency. Therefore, this chapter does not do any of the following:

(a) Relieve employers of the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(b) Relieve any person subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) from the requirements of that act.

(c) Relieve government agencies of the requirements of the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123140. The Information Practices Act of 1977; Prevailing law respecting records

The Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) shall prevail over this chapter with respect to records maintained by a state agency.

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123145. Preservation of records after licensee ceases operation; Action for abandonment of records

(a) Providers of health services that are licensed pursuant to Sections 1205, 1253, 1575 and 1726 have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.

(b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.

(c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.

Added Stats 1995 ch 415 § 8 (SB 1360).

§ 123148. Report to patient of results of clinical laboratory test

(a) Notwithstanding any other law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be disclosed in plain language and in oral or written form, except the results may be disclosed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test. The telephone shall not be considered an electronic form of disclosing laboratory results subject to the limits on electronic disclosure of test results for the purpose of this section.

(b)(1) Consent of the patient to receive his or her laboratory results by Internet posting or other electronic means shall be obtained in a manner

consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be disclosed to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are disclosed to a patient by Internet posting or other electronic manner.

(2) Nothing in paragraph (1) shall prohibit direct communication by Internet posting or the use of other electronic means to disclose clinical laboratory test results by a treating health care professional who ordered the test for his or her patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests access to his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic disclosure of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivision (a), unless the patient requests the disclosure, the health care professional deems this disclosure as an appropriate means, and a health care professional has first discussed in person, by telephone, or by any other means of oral communication, the test results with the patient, in compliance with any other applicable laws, none of the following clinical laboratory test results and any other related results shall be disclosed to a patient by Internet posting or other electronic means:

(1) HIV antibody test, unless an HIV test subject is anonymously tested and the test result is posted on a secure Internet Web site and can only be viewed with the use of a secure code that can access only a single set of test results and that is provided to the patient at the time of testing. The test result shall be posted only if there is no link to any information that identifies or refers to the subject of the test and the information required pursuant to subdivision (h) of Section 120990 is provided.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose

without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code. In no event shall patient identifiable HIV-related test results and health information disclosed in this section be used in violation of subdivision (f) of Section 120980.

(h) A third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay a cost, or be charged a fee, for electing to receive his or her laboratory results in a manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

Added Stats 1995 ch 415 § 8 (SB 1360). Amended Stats 2001 ch 529 § 1 (AB 1490); Stats 2002 ch 128 § 1 (AB 2831); Stats 2012 ch 698 § 1 (AB 2253), effective January 1, 2013; Stats 2013 ch 589 § 3 (AB 446), effective January 1, 2014.

§ 123149. Requirements for providers of health services utilizing electronic recordkeeping systems only

(a) Providers of health services, licensed pursuant to Sections 1205, 1253, 1575, and 1726, that utilize electronic recordkeeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records are retained.

(b) Any use of electronic recordkeeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of all electronic media used to store patient records by employing an offsite backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.

(c) Original hard copies of patient records may be destroyed once the record has been electronically stored.

(d) The printout of the computerized version shall be considered the original as defined in Section 255 of the Evidence Code for purposes of providing copies to patients, the Division of Licensing and Certification, and for introduction into evidence in accordance with Sections 1550 and 1551 of the Evidence Code, in administrative or court proceedings.

(e) Access to electronically stored patient records shall be made available to the Division of Licensing and Certification staff promptly, upon request.

(f) This section does not exempt licensed clinics, health facilities, adult day health care centers, and home health agencies from the requirement of maintaining original copies of patient records that cannot be electronically stored.

(g) Any health care provider subject to this section, choosing to utilize an electronic recordkeeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.

(h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

(i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

Added Stats 1995 ch 415 § 8 (SB 1360).

CHAPTER 2

Destruction of Records and Exhibits of Human Health

§ 123150. Destruction or disposition of X-ray photographs taken in performance of duties regarding tuberculosis; Conditions

The board of supervisors may authorize the destruction or the disposition to a public or private medical library of any X-ray photographs and case records that are more than five years old and that were taken by the county health officer in the performance of his or her duties with regard to tuberculosis if any of the following conditions are complied with:

(a) The county health officer has determined that the X-ray photographs or a series of X-ray photographs in conjunction with case records do not show the existence of tuberculosis in the infectious stage.

(b) The individual of whom the X-ray photographs were taken has been deceased not less than two years or the 102nd anniversary of the individual's birthdate has occurred and the county health officer cannot reasonably ascertain whether the individual is still living.

(c) The place of residence of the individual of whom the X-ray photographs were taken has been unknown to the county health officer for 10 years.

Added Stats 1995 ch 415 § 8 (SB 1360).

Misc.

EXTRACTED FROM
PENAL CODE

PART 1

Of Crimes and Punishments

TITLE 9

Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

CHAPTER 1

Rape, Abduction, Carnal Abuse of Children, and Seduction

Misc.

§ 261.5. Unlawful sexual intercourse with a minor; Misdemeanor or felony violation; Civil penalties

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e)(1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty–five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

Added Stats 1970 ch 1301 § 2. Amended Stats 1993 ch 596 § 1 (SB 22); Stats 1996 ch 789 § 3 (AB 1490); Stats 1998 ch 925 § 1 (AB 1290); Stats 1999 ch 853 § 10 (SB 832); Stats 2011 ch 15 § 302 (AB 109), effective April 4, 2011, operative October 1, 2011.

CHAPTER 5

Bigamy, Incest, and the Crime Against Nature

§ 288. Lewd or lascivious acts involving children

(a) Except as provided in subdivision (i), any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

(i)(1) Any person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

(3) As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

Added Stats 1901 ch 204 § 1. Amended Stats 1933 ch 405 § 1; Stats 1937 ch 545 § 1; Stats 1976 ch 1139 § 177, operative July 1, 1977; Stats 1978 ch 579 § 17; Stats 1979 ch 944 § 6.5; Stats 1981 ch 1064 § 1. Amended Stats 1986 ch 1299 § 4; Stats 1987 ch 1068 § 3; Stats 1988 ch 1398 § 1; Stats 1989 ch 1402 § 3; Stats 1st Ex Sess 1993–94 ch 60 § 1 (AB 29 X), effective November 30, 1994; Stats 1995 ch 890 § 1 (SB 1161); Stats 1998 ch 925 § 2 (AB 1290); Stats 2004 ch 823 § 7 (AB 20); Stats 2010 ch 219 § 7 (AB 1844), effective September 9, 2010.

CHAPTER 5.5
Sex Offenders

§ 290. Sex Offender Registration Act; Persons required to register

(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

Added Stats 2007 ch 579 § 8 (SB 172), effective October 13, 2007. Amendment approved by voters, Prop. 35 § 9, effective November 7, 2012.

TITLE 15
Miscellaneous Crimes

CHAPTER 2
Of Other and Miscellaneous Offenses

§ 647. Disorderly conduct; Punishment for violation

Except as provided in paragraph (5) of subdivision (b) and subdivision (*l*), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) An individual who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b)(1) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitutionwith the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(3) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) If a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force that would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision does not apply to the following persons:

(1) A person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) A person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

(3) A person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j)(1) A person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision does not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify

the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

(3)(A) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

(B) Neither of the following is a defense to the crime specified in this paragraph:

(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.

(ii) The victim was not in a state of full or partial undress.

(4)(A) A person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

(B) A person intentionally distributes an image described in subparagraph (A) when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image.

(C) As used in this paragraph, "intimate body part" means any portion of the genitals, the anus and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing.

(D) It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:

(i) The distribution is made in the course of reporting an unlawful activity.

(ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding.

(iii) The distribution is made in the course of a lawful public proceeding.

(5) This subdivision does not preclude punishment under any section of law providing for greater punishment.

(k) In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the

person's employment, the court may also allow the person to drive in that person's scope of employment.

(*l*)(1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(m)(1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment.

(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.

Added Stats 1961 ch 560 § 2. Amended Stats 1965 ch 1959 § 1; Stats 1967 ch 1317 § 1; Stats 1969 ch 204 § 1, ch 1319 § 2; Stats 1970 ch 26 § 1, effective March 23, 1970; Stats 1971 ch 1581 § 1; Stats 1977 ch 426 § 1; Stats 1984 ch 1633 § 1, ch 1635 § 80; Stats 1986 ch 264 § 1, ch 1276 § 1; Stats 1987 ch 828 § 41; Stats 1988 ch 524 § 1; Stats 1st Ex Sess 1993–94 ch 21 § 1 (AB 116 X), effective November 30, 1994; Stats 1995 ch 91 § 126 (SB 975); Stats 1996 ch 1019 § 2 (AB 2949), ch 1020 § 2 (AB 2051); Stats 1998 ch 758 § 1 (AB 1788); Stats 1999 ch 231 § 1 (AB 182); Stats 2004 ch 666 § 1 (SB 1484); Stats 2007 ch 302 § 11 (SB 425), effective January 1, 2008; Stats 2011 ch 658 § 1 (AB 665), effective January 1, 2012; Stats 2013 ch 466 § 1 (SB 255), effective October 1, 2013; Stats 2014 ch 71 § 125 (SB 1304), effective January 1, 2015, ch 710 § 1 (AB 1791), effective January 1, 2015, ch 714 § 2 (SB 1388), effective January 1, 2015, ch 863 § 1.7 (SB 1255), effective January 1, 2015 (ch 863 prevails); Stats 2016 ch 654 § 1 (SB 1322), effective January 1, 2017, Stats 2016 ch 724 § 1 (SB 1129), effective January 1, 2017, Stats 2016 ch 734 § 1.4 (SB 420), effective January 1, 2017.

§ 647.6. Annoying or molesting children; Punishment; Probation

(a)(1) Every person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child under 18 years of age, which conduct, if directed toward a child under 18 years of age, would be a violation of this section, shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

(b) Every person who violates this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year, and by a fine not exceeding five thousand dollars ($5,000).

(c)(1) Every person who violates this section shall be punished upon the second and each subsequent conviction by imprisonment in the state prison.

(2) Every person who violates this section after a previous felony conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5, or 289, any of which involved a minor under 16 years of age, or a previous felony conviction under this section, a conviction under Section 288, or a felony conviction under Section 311.4 involving a minor under 14 years of age shall be punished by imprisonment in the state prison for two, four, or six years.

(d)(1) In any case in which a person is convicted of violating this section and probation is granted, the court shall require counseling as a condition of probation, unless the court makes a written statement in the court record, that counseling would be inappropriate or ineffective.

(2) In any case in which a person is convicted of violating this section, and as a condition of probation, the court prohibits the defendant from having contact with the victim, the court order prohibiting contact shall not be modified except upon the request of the victim and a finding by the court that the modification is in the best interest of the victim. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(e) Nothing in this section prohibits prosecution under any other provision of law.

Added Stats 1929 ch 376 § 1, as Pen C § 647a. Amended Stats 1947 ch 730 § 1; Stats 1st Ex Sess 1949 ch 14 § 1, effective January 6, 1950; Stats 1st Ex Sess 1950 ch 34 § 1; Stats 1951 ch 1200 § 1; Stats 1st Ex Sess 1952 ch 23 § 5; Stats 1955 ch 169 § 3; Stats 1957 ch 1735 § 1; Stats 1967 ch 154 § 1; Stats 1976 ch 1139 § 262, operative July 1, 1977; Stats 1982 ch 1113 § 3; Stats 1983 ch 1092 § 315, effective September 27, 1983, operative January 1, 1984; Stats 1986 ch 264 § 2; Stats 1987 ch 423 § 1, ch 1394 § 1. Amended and renumbered by Stats 1987 ch 1418 § 4.3. Amended Stats 1995 ch 48 § 1 (AB 1491); Stats 2000 ch 657 § 1 (SB 1784); Stats 2006 ch 337 § 26 (SB 1128), effective September 20, 2006; Stats 2011 ch 15 § 431 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2012 ch 43 § 20 (SB 1023), effective June 27, 2012.

PART 2
Of Criminal Procedure

TITLE 8
Of Judgment and Execution

CHAPTER 1
The Judgment

§ 1203.4. Change of plea and dismissal of charges after termination of probation; Release from penalties and disabilities; Subsequent prosecutions; Registration of sex offenders; Possession of firearm; Reimbursement to county or city; Notice to prosecuting attorney

(a)(1) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any

time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(4) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or 311.11, or any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c)(1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars ($150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars ($150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars ($150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e)(1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

Added Stats 1935 ch 604 § 5. Amended Stats 1941 ch 1112 § 1; Stats 1951 ch 183 § 1; Stats 1961 ch 1735 § 1; Stats 1967 ch 1271 § 1; Stats 1970 ch 539 § 1; Stats 1971 ch 333 § 1; Stats 1976 ch 434 § 1; Stats 1978 ch 911 § 1; Stats 1979 ch 199 § 6; Stats 1983 ch 1118 § 1; Stats 1985 ch 1472 § 1; Stats 1989 ch 917 § 11; Stats 1994 ch 882 § 1 (AB 1327); Stats 1997 ch 61 § 1 (AB 729); Stats 2000 ch 226 § 1 (AB 2320); Stats 2003 ch 49 § 1 (AB 580); Stats 2005 ch 704 § 3 (AB 439), ch 705 § 5 (SB 67), effective October 7, 2005; Stats 2007 ch 161 § 1 (AB 645), effective January 1, 2008; Stats 2008 ch 94 § 1 (AB 2092), effective January 1, 2009; Stats 2009 ch 606 § 7 (SB 676), effective January 1, 2010; Stats 2010 ch 178 § 76 (SB 1115) (ch 178 prevails), effective January 1, 2011, operative January 1, 2012, ch 328 § 166 (SB 1330), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 285, § 17 (AB 1402) (ch 285 prevails), effective January 1, 2012, ch 304 § 9 (SB 428), effective January 1, 2012; Stats 2013 ch 143 § 2 (AB 20), effective January 1, 2014.

PART 3
Of Imprisonment and the Death Penalty
TITLE 7
Administration of the State Correctional System
CHAPTER 2
The Secretary of the Department of Corrections and Rehabilitation

§ 5068.5. Licensure requirements for persons providing mental health services; Exemptions and waiver

(a) Notwithstanding any other law, except as provided in subdivisions (b) and (c), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

(b) Notwithstanding Section 5068 or Section 704 of the Welfare and Institutions Code, the following persons are exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the same department:

(1) Persons employed on January 1, 1985, as psychologists to provide diagnostic or treatment services including those persons on authorized leave but not including intermittent personnel.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment services including persons on authorized leave but not including intermittent personnel.

(c)(1) The requirements of subdivision (a) may be waived by the secretary solely for persons in the professions of psychology or clinical social work who are gaining qualifying experience for licensure in those professions in this state. Providers working in a licensed health care facility operated by the department must receive a waiver in accordance with Section 1277 of the Health and Safety Code.

(2) A waiver granted pursuant to this subdivision shall not exceed three years from the date the employment commences in this state in the case of psychologists, or four years from commencement of the employment in this state in the case of clinical social workers, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure for clinical social workers may be granted for one additional year, based on extenuating circumstances determined by the

department pursuant to subdivision (d). For persons employed as psychologists or clinical social workers less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers or five years in the case of psychologists. However, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in social work, social welfare, or social science who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of that training.

(3) A waiver pursuant to this subdivision shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensure examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure examination at the earliest possible date after the date of his or her employment, and if the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the next possible examination, subject to the one-year limit for clinical social workers, and subject to a two-year limit for psychologists.

(d) The department shall grant a request for an extension of a waiver of licensure for a clinical social worker pursuant to subdivision (c) based on extenuating circumstances if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event that may impair the person's ability to qualify for and pass the licensure examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster; serious and prolonged illness of the person; serious and prolonged illness or death of a child, spouse, or parent; or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist which substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship that the department, in its discretion, determines to warrant the extension.

Added Stats 1984 ch 1123 § 4. Amended Stats 1987 ch 828 § 153; Stats 1988 ch 473 § 1; Stats 1989 ch 1360 § 120; Stats 2000 ch 356 § 2 (AB 1975), effective September 8, 2000; Stats 2009 ch 135 § 1 (AB 1113), effective January 1, 2010; Stats 2010 ch 729 § 6 (AB 1628), effective October 19, 2010.

PART 4
Prevention of Crimes and Apprehension of Criminals
TITLE 1
Investigation and Control of Crimes and Criminals
CHAPTER 2
Control of Crimes and Criminals
ARTICLE 2
Reports of Injuries

§ 11160. Injuries required to be reported; Method of reporting; Team reports; Internal procedures

(a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the

evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Sexual penetration, in violation of Section 289.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a

single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

Added Stats 1993 ch 992 § 3 (AB 1652). Amended Stats 1st Ex Sess 1993–94 ch 19 § 2 (AB 74X), effective November 30, 1994; Stats 2000 ch 287 § 20 (SB 1955); Stats 2002 ch 249 § 2 (SB 580); Stats 2003 ch 229 § 15 (AB 1757); Stats 2010 ch 618 § 206 (AB 2791), effective January 1, 2011; Stats 2013 ch 352 § 418 (AB 1317), effective September 26, 2013, operative July 1, 2013.

§ 11161. Report by physician or surgeon; Medical records; Referrals

Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

(a) The physician or surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) It is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

Added Stats 1993 ch 992 § 5 (AB 1652).

§ 11161.9. Immunity from liability

(a) A health practitioner who makes a report in accordance with this article shall not incur civil or criminal liability as a result of any report required or authorized by this article.

(b)(1) No person required or authorized to report pursuant to this article, or designated by a person required or authorized to report pursuant to this article, who takes photographs of a person suspected of being a person described in this article about whom a report is required or authorized shall

incur any civil or criminal liability for taking the photographs, causing the photographs to be taken, or disseminating the photographs to local law enforcement with the reports required by this article in accordance with this article. However, this subdivision shall not be deemed to grant immunity from civil or criminal liability with respect to any other use of the photographs.

(2) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds that the suit is frivolous.

(c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse shall not incur civil or criminal liability as a result of providing that access.

(d) No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(e) This section does not apply to mandated reporting of child abuse, as provided for in Article 2.5 (commencing with Section 11164).

Added Stats 1993 ch 992 § 6 (AB 1652).

§ 11162. Violation of article; Punishment

A violation of this article is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

Added Stats 1953 ch 34 § 1. Amended Stats 1993 ch 992 § 7 (AB 1652).

§ 11162.5. Definitions

As used in this article, the following definitions shall apply:

(a) "Health practitioner" has the same meaning as provided in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7.

(b) "Clinic" is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.

(c) "Health facility" has the same meaning as provided in Section 1250 of the Health and Safety Code.

(d) "Reasonably suspects" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

Added Stats 1993 ch 992 § 8 (AB 1652). Amended Stats 2006 ch 701 § 1 (AB 525), effective January 1, 2007.

§ 11163. Claim for attorney's fees incurred in action based on reporting

(a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

(b)(1) Therefore, a health practitioner may present a claim to the Department of General Services for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The Department of General Services shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

Added Stats 1993 ch 992 § 10 (AB 1652). Amended Stats 2006 ch 538 § 524 (SB 1852), effective January 1, 2007; Stats 2016 ch 31 § 256 (SB 836), effective June 27, 2016.

§ 11163.2. Application of privileges; Confidentiality of reports

(a) In any court proceeding or administrative hearing, neither the physician–patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

Added Stats 1993 ch 992 § 11 (AB 1652).

ARTICLE 2.5
Child Abuse and Neglect Reporting Act

§ 11164. Citation of article; Intent

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

Added Stats 1987 ch 1444 § 1.5. Amended Stats 2000 ch 916 § 1 (AB 1241).

§ 11165. "Child"

As used in this article "child" means a person under the age of 18 years.

Added Stats 1987 ch 1459 § 2.

§ 11165.1. "Sexual abuse"; "Sexual assault"; "Sexual exploitation"; "Commercial sexual exploitation"

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide

in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(d) "Commercial sexual exploitation" refers to either of the following:

(1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.

(2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

Added Stats 1987 ch 1459 § 5. Amended Stats 1997 ch 83 § 1 (AB 327); Stats 2000 ch 287 § 21 (SB 1955); Stats 2014 ch 264 § 1 (AB 1775), effective January 1, 2015; Stats 2015 ch 425 § 3 (SB 794), effective January 1, 2016.

§ 11165.2. "Neglect"; "Severe neglect"; "General neglect"

As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

Added Stats 1987 ch 1459 § 7.

§ 11165.3. "Willful harming or injuring of a child or the endangering of the person or health of a child"

As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Added Stats 1987 ch 1459 § 9. Amended Stats 2004 ch 842 § 1 (SB 1313).

§ 11165.4. "Unlawful corporal punishment or injury"

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or

inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self–defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Added Stats 1987 ch 1459 § 10. Amended Stats 1988 ch 39 § 1; Stats 1993 ch 346 § 1 (AB 331).

§ 11165.5. "Abuse or neglect in out–of–home care"

As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Added Stats 1987 ch 1459 § 12. Amended Stats 1988 ch 39 § 2; Stats 1993 ch 346 § 2 (AB 331); Stats 2000 ch 916 § 2 (AB 1241); Stats 2001 ch 133 § 1 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 3 (SB 1313); Stats 2007 ch 393 § 1 (AB 673), effective January 1, 2008.

§ 11165.6. "Child abuse or neglect"

As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Added Stats 2000 ch 916 § 4 (AB 1241). Amended Stats 2001 ch 133 § 2 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 4 (SB 1313); Stats 2007 ch 393 § 2 (AB 673), effective January 1, 2008.

§ 11165.7. "Mandated reporter"; Training

(a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.

(9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) A clinical counselor intern registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties

bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43)(A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.

(45) An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.

(46) An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Except as provided in subdivision (d), employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child

abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) Pursuant to Section 44691 of the Education Code, school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools shall annually train their employees and persons working on their behalf specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(e)(1) On and after January 1, 2018, pursuant to Section 1596.8662 of the Health and Safety Code, a child care licensee applicant shall take training in the duties of mandated reporters under the child abuse reporting laws as a condition of licensure, and a child care administrator or an employee of a licensed child day care facility shall take training in the duties of mandated reporters during the first 90 days when he or she is employed by the facility.

(2) A person specified in paragraph (1) who becomes a licensee, administrator, or employee of a licensed child day care facility shall take renewal mandated reporter training every two years following the date on which he or she completed the initial mandated reporter training. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(f) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(g) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

Added Stats 1987 ch 1459 § 14. Amended Stats 1991 ch 132 § 1 (AB 1133); Stats 1992 ch 459 § 1 (SB 1695); Stats 2000 ch 916 § 5 (AB 1241); Stats 2001 ch 133 § 3 (AB 102), effective July 31, 2001, ch 754 § 4 (AB 1697); Stats 2002 ch 927 § 10.7 (AB 3032), ch 936 § 1 (AB 299), effective September 27, 2002; Stats 2003 ch 122 § 1 (SB 316); Stats 2004 ch 762 § 1 (AB 2531), ch 842 § 5.5 (SB 1313); Stats 2006 ch 901 § 9.5 (SB 1422), effective January 1, 2007; Stats 2008 ch 456 § 1 (AB 2337), effective January 1, 2009; Stats 2011 ch 381 § 41 (SB 146), effective January 1, 2012; Stats 2012 ch 162 § 136 (SB 1171), effective January 1, 2013, ch 517 § 1 (AB 1713), effective January 1, 2013, ch 518 § 1 (SB 1264), effective January 1, 2013, ch 519 § 1 (AB 1434), effective January 1, 2013, ch 520 § 1 (AB 1435), effective January 1, 2013, ch 521 § 1.15 (AB 1817), effective January 1, 2013 (ch 521 prevails); Stats 2013 ch 76 § 164 (AB 383), effective January 1, 2014; Stats 2014 ch 797 § 4 (AB 1432), effective January 1, 2015; Stats 2015 ch 414 § 3 (AB 1207), effective January 1, 2016; Stats 2016 ch 612 § 57 (AB 1997), effective January 1, 2017, Stats 2016 ch 850 § 4.5 (AB 1001), effective January 1, 2017.

§ 11165.9. Reports to authorities

Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks

subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

Added Stats 2000 ch 916 § 8 (AB 1241). Amended Stats 2001 ch 133 § 4 (AB 102), effective July 31, 2001; Stats 2005 ch 713 § 2 (AB 776), effective January 1, 2006; Stats 2006 ch 701 § 2 (AB 525), effective January 1, 2007.

§ 11165.11. "Licensing agency"

As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

Added Stats 1987 ch 1459 § 18.

§ 11165.12. Definitions relating to reports

As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect as defined in Section 11165.6.

(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

Added Stats 1987 ch 1459 § 19. Amended Stats 1990 ch 1330 § 1 (SB 2788); Stats 1997 ch 842 § 2 (SB 644); Stats 2000 ch 916 § 10 (AB 1241); Stats 2004 ch 842 § 6 (SB 1313); Stats 2011 ch 468 § 1 (AB 717), effective January 1, 2012.

§ 11165.13. Effect of positive toxicology screen at time of delivery of infant

For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child

abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

Added Stats 1990 ch 1603 § 2 (SB 2669), operative July 1, 1991. Amended Stats 1996 ch 1023 § 397.2 (SB 1497), effective September 29, 1996; Stats 2000 ch 916 § 11 (AB 1241).

§ 11165.15. Basis for reporting abuse or neglect

For the purposes of this article, the fact that a child is homeless or is classified as an unaccompanied youth, as defined in Section 11434a of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), is not, in and of itself, a sufficient basis for reporting child abuse or neglect. This section shall not limit a mandated reporter, as defined in Section 11165.7, from making a report pursuant to Section 11166 whenever the mandated reporter has knowledge of or observes an unaccompanied minor whom the mandated reporter knows or reasonably suspects to be the victim of abuse or neglect.

Added Stats 2013 ch 486 § 1 (AB 652), effective January 1, 2014. Amended Stats 2014 ch 71 § 132 (SB 1304), effective January 1, 2015.

§ 11166. Duty to report; Mandated reporters; Punishment for violation

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church,

denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3)(A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e)(1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or materials are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article. An internal policy shall not direct an employee to allow his or her supervisor to file or process a mandated report under any circumstances.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker,

or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j)(1) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(2) A county probation or welfare department shall immediately, and in no case in more than 24 hours, report to the law enforcement agency having jurisdiction over the case after receiving information that a child or youth who is receiving child welfare services has been identified as the victim of commercial sexual exploitation, as defined in subdivision (d) of Section 11165.1.

(3) When a child or youth who is receiving child welfare services and who is reasonably believed to be the victim of, or is at risk of being the victim of, commercial sexual exploitation, as defined in Section 11165.1, is missing or has been abducted, the county probation or welfare department shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 2, effective September 12, 1981; Stats 1982 ch 905 § 2; Stats 1984 ch 1423 § 9, effective September 26, 1984; Stats 1986 ch 1289 § 2; Stats

1987 ch 1459 § 20; Stats 1988 ch 269 § 1, ch 1580 § 2; Stats 1990 ch 1603 § 3 (SB 2669), operative July 1, 1991; Stats 1992 ch 459 § 3 (SB 1695); Stats 1993 ch 510 § 1.5 (SB 665); Stats 1996 ch 1080 § 10 (AB 295), ch 1081 § 3.5 (AB 3354); Stats 2000 ch 916 § 16 (AB 1241); Stats 2001 ch 133 § 5 (AB 102), effective July 31, 2001; Stats 2002 ch 936 § 2 (AB 299), effective September 27, 2002; Stats 2004 ch 823 § 17 (AB 20), ch 842 § 7.5 (SB 1313); Stats 2005 ch 42 § 1 (AB 299), ch 713 § 3 (AB 776), effective January 1, 2006; Stats 2006 ch 701 § 3 (AB 525), effective January 1, 2007; Stats 2007 ch 393 § 3 (AB 673), effective January 1, 2008; Stats 2010 ch 123 § 1 (AB 2380), effective January 1, 2011; Stats 2012 ch 517 § 2 (AB 1713), effective January 1, 2013, ch 521 § 2.5 (AB 1817), effective January 1, 2013 (ch 521 prevails), ch 728 § 131 (SB 71), effective January 1, 2013; Stats 2013 ch 76 § 165 (AB 383), effective January 1, 2014; Stats 2015 ch 425 § 4 (SB 794), effective January 1, 2016; Stats 2016 ch 850 § 5 (AB 1001), effective January 1, 2017.

§ 11166.02. (Repealed January 1, 2021) Pilot program for Internet-based reporting of child abuse and neglect

(a) A county welfare agency, as determined in Section 10612.5 of the Welfare and Institutions Code, may develop a pilot program for Internet-based reporting of child abuse and neglect. The pilot program may receive reports by mandated reporters, as specified in paragraph (5), of suspected child abuse or neglect and shall meet all of the following conditions:

(1) The suspected child abuse or neglect does not indicate that the child is subject to an immediate risk of abuse, neglect, or exploitation or that the child is in imminent danger of severe harm or death.

(2) The agency provides an Internet form that includes standardized safety assessment qualifying questions in order to obtain necessary information required to assess the need for child welfare services and a response. The State Department of Social Services shall provide guidance through written directives to counties participating in the pilot program to incorporate qualifying questions in the online report that would indicate the need to redirect the mandated reporter to perform a telephone report.

(3) The mandated reporter is required to complete all required fields, including identity and contact information of the mandated reporter, in order to submit the report.

(4) The agency provides an Internet-based reporting system that has appropriate security protocols to preserve the confidentiality of the reports and any documents or photographs submitted through the system.

(5) The system can only be used by mandated reporters who are any of the following:

(A) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(B) A probation officer or social worker, as defined in Section 215 of the Welfare and Institutions Code.

(C) A school teacher, counselor, or administrator.

(D) A physician and surgeon, psychologist, licensed nurse, or clinical social worker licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(E) A coroner.

(6) Nothing in this section shall be construed as changing current statutory or regulatory requirements regarding timely review, assessment, and response to reports of possible abuse or neglect.

(b)(1) In a county where the pilot program is active, a mandated reporter listed in paragraph (5) of subdivision (a) may use the Internet-based reporting tool in lieu of the required initial telephone report required by subdivision (a)

of Section 11166. A mandated reporter listed in paragraph (5) of subdivision (a) submitting an Internet-based report in accordance with this subdivision shall, as soon as practically possible, cooperate with the agency on any requests for additional information if needed to investigate the report, subject to applicable confidentiality requirements.

(2) In a county where the pilot program is active, a mandated reporter who submits the initial report through the Internet-based reporting tool in lieu of the required initial telephone report is not required to submit the written followup report required pursuant to subdivision (a) of Section 11166.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

Added Stats 2015 ch 490 § 1 (SB 478), effective January 1, 2016, repealed January 1, 2021.

§ 11166.05. Reporting child suffering serious emotional damage

Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

Added Stats 2001 ch 133 § 6 (AB 102), effective July 31, 2001. Amended Stats 2004 ch 842 § 9 (SB 1313).

§ 11166.1. Duty of agency

(a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

Added Stats 1985 ch 1593 § 3, effective October 2, 1985. Amended and renumbered Stats 1987 ch 56 § 141 (ch 531 prevails). Amended Stats 1987 ch 531 § 4; Stats 1992 ch 844 § 1 (AB 3633); Stats 1998 ch 900 § 1 (AB 2316); Stats 2000 ch 916 § 17 (AB 1241).

§ 11166.2. Additional duty of agency

In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report

by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

Added Stats 1985 ch 1598 § 4. Amended Stats 1987 ch 531 § 5; Stats 1988 ch 269 § 3; Stats 1990 ch 650 § 1, (SB 2423); Stats 2000 ch 916 § 18 (AB 1241); Stats 2001 ch 133 § 7 (AB 102), effective July 31, 2001.

§ 11166.3. Coordination of duties in connection with investigation of suspected child abuse or neglect cases

(a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

Added Stats 1985 ch 1262 § 2 as Pen C § 11166.1. Amended and renumbered Stats 1987 ch 531 § 3. Amended Stats 1988 ch 898 § 1; Stats 2000 ch 135 § 139 (AB 2539), ch 916 § 19 (AB 1241) (ch 916 prevails); Stats 2001 ch 133 § 8 (AB 102), effective July 31, 2001.

§ 11166.5. Statement acknowledging awareness of reporting duties and promising compliance; Exemptions; Distribution in connection with licensure or certification

(a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to

commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(e) Any person providing services to a minor child, as described in paragraph (37) of subdivision (a) of Section 11165.7, shall not be required to make a report pursuant to Section 11166 unless that person has received training, or

instructional materials in the appropriate language, on the duties imposed by this article, including identifying and reporting child abuse and neglect.

Added Stats 1984 ch 1718 § 1. Amended Stats 1985 ch 464 § 1; Stats 1985 ch 1598 § 5.1; Stats 1986 ch 248 § 168; Stats 1987 ch 1459 § 21; Stats 1990 ch 931 § 1 (AB 3521); Stats 1991 ch 132 § 2 (AB 1133); Stats 1992 ch 459 § 4 (SB 1695); Stats 1993 ch 510 § 2 (SB 665); Stats 1996 ch 1081 § 4 (AB 3354); Stats 2000 ch 916 § 20 (AB 1241); Stats 2001 ch 133 § 9 (AB 102), effective July 31, 2001; Stats 2004 ch 762 § 2 (AB 2531), ch 842 § 10.5 (SB 1313); Stats 2012 ch 518 § 2 (SB 1264), effective January 1, 2013.

§ 11167. Required information; Confidentiality of reporter's identity; Advising individual of complaint or allegations

(a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect and information relevant to a report made pursuant to Section 11166.05 may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, and information relevant to a report made pursuant to Section 11166.05 may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d)(1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made

pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 3, effective September 12, 1981; Stats 1982 ch 162 § 2, effective April 26, 1982; Stats 1984 ch 144 § 164; Stats 1985 ch 1598 § 6; Stats 1986 ch 1289 § 3; Stats 1987 ch 531 § 6; Stats 1992 ch 163 § 112 (AB 2641), operative January 1, 1994 (ch 316 prevails), ch 316 § 2 (AB 3491); Stats 1993 ch 219 § 221 (AB 1500); Stats 1997 ch 324 § 8 (SB 871); Stats 2000 ch 916 § 24 (AB 1241); Stats 2001 ch 133 § 13 (AB 102), effective July 31, 2001; Stats 2004 ch 292 § 1 (AB 2749), ch 842 § 15.5 (SB 1313); Stats 2005 ch 279 § 17 (SB 1107), effective January 1, 2006; Stats 2006 ch 701 § 4 (AB 525) (ch 701 prevails), effective January 1, 2007, ch 901 § 10.5 (SB 1422), effective January 1, 2007; Stats 2010 ch 95 § 1 (AB 2339), effective January 1, 2011.

§ 11167.5. Confidentiality and disclosure of reports

(a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170 or subdivision (a) of Section 11170.5.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (4) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a post mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings,

or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

Added Stats 1983 ch 1082 § 1. Amended Stats 1985 ch 1593 § 4, effective October 2, 1985, ch 1598 § 7.5; Stats 1987 ch 167 § 1, ch 1459 § 22; Stats 1988 ch 1580 § 5; Stats 1989 ch 153 § 1, ch 1169 § 2; Stats 1995 ch 391 § 1 (AB 1440); Stats 1997 ch 24 § 1 (AB 1536), ch 842 § 4 (SB 644), ch 844 § 1.5 (AB 1065); Stats 1998 ch 485 § 135 (AB 2803); Stats 2000 ch 916 § 25 (AB 1241); Stats 2002 ch 187 § 2 (SB 1745); Stats 2004 ch 842 § 16 (SB 1313); Stats 2006 ch 701 § 5 (AB 525), effective January 1, 2007; Stats 2007 ch 583 § 18 (SB 703), effective January 1, 2008; Stats 2008 ch 699 § 17 (SB 1241), effective January 1, 2009, ch 701 § 9 (AB 2651) (ch 701 prevails), effective September 30, 2008.

§ 11169. Forwarding of reports to Department of Justice

(a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.

(c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI). The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to

reports forwarded to the department on or after the date on which this subdivision becomes operative.

(d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) Any person listed in the CACI as of January 1, 2013, who was listed prior to reaching 18 years of age, and who is listed once in CACI with no subsequent listings, shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing.

(h) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

(i) Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(j) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 4, effective September 12, 1981; Stats 1985 ch 1598 § 8; Stats 1988 ch 269 § 4, ch 1497 § 1; Stats 1997 ch 842 § 5 (SB 644); Stats 2000 ch 916 § 27 (AB 1241); Stats 2001 ch 133 § 14 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 17 (SB 1313); Stats 2011 ch 468 § 2 (AB 717), effective January 1, 2012; Stats 2012 ch 848 § 1 (AB 1707), effective January 1, 2013.

§ 11170. Child Abuse Central Index; Notifications; Availability of information; Future deletion of information for persons under 18; Placement of child; Out of state law enforcement agencies; Fee; Request to determine presence in index; Removal of victims' names

(a)(1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index

shall be continually updated by the department and shall not contain any reports that are determined to be not substantiated. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index (CACI) pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the CACI accurately reflects the report it receives from the submitting agency.

(3) Only information from reports that are reported as substantiated shall be filed pursuant to paragraph (1), and all other determinations shall be removed from the central list. If a person listed in the CACI was under 18 years of age at the time of the report, the information shall be deleted from the CACI 10 years from the date of the incident resulting in the CACI listing, if no subsequent report concerning the same person is received during that time period.

(b) The provisions of subdivision (c) of Section 11169 apply to any information provided pursuant to this subdivision.

(1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, Child Abuse Prevention and Treatment Act guardian ad litem appointed under Rule 5.662 of the California Rules of Court, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make relevant information from the CACI available to a law enforcement agency, county welfare department, tribal agency pursuant to Section 10553.12 of the Welfare and Institutions Code, or county probation department that is conducting a child abuse investigation.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe, consortium of tribes, or tribal organization that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or approval, or any adult who resides or is employed in the home of an applicant for licensure

or approval, or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code, or Section 11403.2 of the Welfare and Institutions Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information for investigative purposes only that is maintained in the CACI pursuant to subdivision (a) relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, or Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the CACI from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the CACI that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) Pursuant to Section 10553.12 of the Welfare and Institutions Code, the department shall make available to a tribal agency information regarding a known or suspected child abuser maintained pursuant to this section or subdivision (a) of Section 11169 who is being considered as a prospective foster or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, any person who has a familial or intimate relationship with any person living in the home of an applicant, or an employee of the tribal agency who may have contact with children.

(9) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the

Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(10) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(11)(A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate (CASA) program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (9), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (10), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If CACI information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(12)(A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), (9), or (10), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than those described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c)(1) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the CACI that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

(2) If information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by

the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e)(1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subsection (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3)(A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (12) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f)(1) Any person may determine if he or she is listed in the CACI by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record

concerning himself or herself exists or does not exist, pursuant to paragraph (1).

(g) If a person is listed in the CACI only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 5, effective September 12, 1981; Stats 1982 ch 162 § 3, effective April 26, 1982; Stats 1984 ch 1613 § 3, effective September 30, 1984; Stats 1985 ch 1598 § 8.5; Stats 1986 ch 1496 § 3; Stats 1987 ch 82 § 4, effective June 30, 1987; Stats 1989 ch 153 § 2; Stats 1990 ch 1330 § 2 (SB 2788), ch 1363 § 15.7 (AB 3532), operative July 1, 1991; Stats 1992 ch 163 § 113 (AB 2641), operative January 1, 1994 (ch 1338 prevails), ch 1338 § 2 (SB 1184); Stats 1993 ch 219 § 221.1 (AB 1500); Stats 1996 ch 1081 § 5 (AB 3354); Stats 1997 ch 842 § 6 (SB 644), ch 843 § 5 (AB 753), ch 844 § 2.5 (AB 1065); Stats 1999 ch 475 § 8 (SB 654); Stats 2000 ch 916 § 28 (AB 1241); Stats 2001 ch 133 § 15 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 18 (SB 1313); Stats 2005 ch 279 § 18 (SB 1107), effective January 1, 2006; Stats 2006 ch 701 § 6 (AB 525), effective January 1, 2007; Stats 2007 ch 160 § 2 (AB 369), effective January 1, 2008, ch 583 § 19.5 (SB 703), effective January 1, 2008; Stats 2008 ch 553 § 1 (AB 2618), effective January 1, 2009, ch 701 § 10 (AB 2651), effective September 30, 2008, operative until January 1, 2009, § 10.2 (AB 2651), effective September 30, 2008, operative January 1, 2009; Stats 2009 ch 91 § 1 (AB 247), effective January 1, 2010; Stats 2010 ch 328 § 178 (SB 1330), effective January 1, 2011; Stats 2011 ch 459 § 4.3 (AB 212), effective October 4, 2011, ch 468 § 3.5 (AB 717), effective January 1, 2012; Stats 2012 ch 846 § 6 (AB 1712), effective January 1, 2013, ch 848 § 2.5 (AB 1707), effective January 1, 2013; Stats 2014 ch 772 § 7 (SB 1460), effective January 1, 2015; Stats 2015 ch 773 § 45 (AB 403), effective January 1, 2016.

§ 11171.5. Peace officer's application for order directing X–rays of suspected child abuse or neglect victim

(a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X–rayed without parental consent.

Any X–ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X–ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child–victim the costs incurred by the county for the X–ray.

(c) No person who administers an X–ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X–ray.

Added Stats 1985 ch 317 § 1. Amended Stats 2000 ch 916 § 30 (AB 1241).

§ 11172. Liability of person making report; Reimbursement by state of attorney fees incurred in defending action

(a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was

made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs, images, or material with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) Any commercial computer technician, and any employer of any commercial computer technician, who, pursuant to a warrant from a law enforcement agency investigating a report of suspected child abuse or neglect, provides the law enforcement agency with a computer or computer component which contains possible evidence of a known or suspected instance of child abuse or neglect, shall not incur civil or criminal liability as a result of providing that computer or computer component to the law enforcement agency.

(d)(1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the Department of General Services for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The Department of General Services shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(e) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 135 § 1, effective July 1, 1981, ch 435 § 6, effective September 12, 1981; Stats 1984 ch 1170 § 2, ch 1703 § 2, ch 1718 § 3; Stats 1985 ch 1598

§ 9; Stats 1986 ch 553 § 1; Stats 1987 ch 1459 § 23; Stats 1992 ch 459 § 5 (SB 1695); Stats 1993 ch 510 § 3 (SB 665); Stats 1996 ch 1081 § 6 (AB 3354); Stats 2000 ch 916 § 31 (AB 1241); Stats 2001 ch 133 § 16 (AB 102), effective July 31, 2001; Stats 2004 ch 842 § 21 (SB 1313); Stats 2006 ch 538 § 525 (SB 1852), effective January 1, 2007; Stats 2012 ch 521 § 3 (AB 1817), effective January 1, 2013; Stats 2016 ch 31 § 257 (SB 836), effective June 27, 2016.

§ 11174. Guidelines for investigation of abuse in out–of–home care

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out–of–home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

Added Stats 1980 ch 1071 § 4. Amended Stats 1981 ch 435 § 7, effective September 12, 1981; Stats 1982 ch 162 § 4, effective April 26, 1982; Stats 1985 ch 1528 § 3; Stats 1988 ch 269 § 5.

§ 11174.1. Guidelines for investigation of child abuse or neglect in day care facilities

(a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

Added Stats 1985 ch 1593 § 5, effective October 2, 1985. Amended Stats 1988 ch 269 § 6; Stats 1989 ch 1053 § 2, effective September 29, 1989; Stats 2000 ch 916 § 32 (AB 1241).

§ 11174.3. Interview with suspected victim of child abuse or neglect at school; Presence of school staff member at interview; Confidentiality; Notification of requirements

(a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out–of–home care

facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Added Stats 1987 ch 640 § 2. Amended Stats 1998 ch 311 § 51 (SB 933), effective August 19, 1998; Stats 2000 ch 916 § 33 (AB 1241).

ARTICLE 2.6
Child Death Review Teams

§ 11174.32. Interagency child death review teams; Autopsy protocols; Disclosure; Report

(a) Each county may establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death review teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death review team and an autopsy protocol, each county, working in consultation with local members of the

California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse or neglect reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

(d) Records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team.

(e) Written and oral information pertaining to the child's death as requested by a child death review team may be disclosed to a child death review team established pursuant to this section. The team may make a request, in writing, for the information sought and any person with information of the kind described in paragraph (2) may rely on the request in determining whether information may be disclosed to the team.

(1) An individual or agency that has information governed by this subdivision shall not be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information, unless disclosure is prohibited by federal law.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 11167.5, information from child abuse reports and investigations, except the identity of the person making the report, which shall not be disclosed.

(D) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11105, 11075, and 13300, respectively.

(E) Notwithstanding Section 11163.2, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct.

(F) Notwithstanding Section 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) Written or oral information disclosed to a child death review team pursuant to this subdivision shall remain confidential, and shall not be subject to disclosure or discovery by a third party unless otherwise required by law.

(f)(1) No less than once each year, each child death review team shall make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths.

(2) In its report, the child death review team shall withhold the last name of the child that is subject to a review or the name of the deceased child's siblings unless the name has been publicly disclosed or is required to be disclosed by state law, federal law, or court order.

Added Stats 1988 ch 1580 § 3, as Pen C § 11166.7. Amended Stats 2000 ch 916 § 21 (AB 1241); Stats 2001 ch 133 § 10 (AB 102), effective July 31, 2001. Amended and renumbered by Stats 2004 ch 842 § 11 (SB 1313). Amended Stats 2006 ch 813 § 1 (SB 1668), effective January 1, 2007; Stats 2016 ch 297 § 1 (AB 2083), effective January 1, 2017.

§ 11174.33. Protocol for development and implementation of interagency child death teams

Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

Added Stats 1988 ch 1580 § 4. Amended Stats 2000 ch 916 § 22 (AB 1241). Renumbered by Stats 2004 ch 842 § 12 (SB 1313).

EXTRACTED FROM
WELFARE AND INSTITUTIONS CODE

DIVISION 5
Community Mental Health Services

PART 1
The Lanterman-Petris-Short Act

CHAPTER 2
Involuntary Treatment

ARTICLE 1
Detention of Mentally Disordered Persons for Evaluation and Treatment

Misc.

§ 5150. Detention upon probable cause; Assessment; Alternative services; Application for admission; Personal property of person taken into custody; Advisement, record of advisement

(a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

(b) When determining if a person should be taken into custody pursuant to subdivision (a), the individual making that determination shall apply the provisions of Section 5150.05, and shall not be limited to consideration of the danger of imminent harm.

(c) The professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county shall assess the person to determine whether he or she can be properly served without being detained. If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional

person designated by the county, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis. Nothing in this subdivision shall be interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under this section. Furthermore, the assessment requirement of this subdivision shall not be interpreted to require peace officers to perform any additional duties other than those specified in Sections 5150.1 and 5150.2.

(d) Whenever a person is evaluated by a professional person in charge of a facility designated by the county for evaluation or treatment, member of the attending staff, or professional person designated by the county and is found to be in need of mental health services, but is not admitted to the facility, all available alternative services provided pursuant to subdivision (c) shall be offered as determined by the county mental health director.

(e) If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or the professional person designated by the county, the person cannot be properly served without being detained, the admitting facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, and stating that the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county has probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled. The application shall also record whether the historical course of the person's mental disorder was considered in the determination, pursuant to Section 5150.05. If the probable cause is based on the statement of a person other than the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, the person shall be liable in a civil action for intentionally giving a statement that he or she knows to be false.

(f) At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him or her into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him or her into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211, except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him or her into custody for that property shall terminate. As used in this section, "responsible relative" includes the spouse, parent, adult child,

domestic partner, grandparent, grandchild, or adult brother or sister of the person.

(g)(1) Each person, at the time he or she is first taken into custody under this section, shall be provided, by the person who takes him or her into custody, the following information orally in a language or modality accessible to the person. If the person cannot understand an oral advisement, the information shall be provided in writing. The information shall be in substantially the following form:

My name is _____.

I am a _____
(peace officer/mental health professional)

with _____
(name of agency)

You are not under criminal arrest, but I am taking you for an examination by mental health professionals at

_____.
(name of facility)

You will be told your rights by the mental health staff.

(2) If taken into custody at his or her own residence, the person shall also be provided the following information:

You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.

(h) The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (g) which shall include all of the following:

(1) The name of the person detained for evaluation.

(2) The name and position of the peace officer or mental health professional taking the person into custody.

(3) The date the advisement was completed.

(4) Whether the advisement was completed.

(5) The language or modality used to give the advisement.

(6) If the advisement was not completed, a statement of good cause, as defined by regulations of the State Department of Health Care Services.

(i)(1) Each person admitted to a facility designated by the county for evaluation and treatment shall be given the following information by admission staff of the facility. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available to the person in English and in the language that is the person's primary means of communication. Accommodations for other disabilities that may affect communication shall also be provided. The information shall be in substantially the following form:

My name is _____.

My position here is _____.

You are being placed into this psychiatric facility because it is our professional opinion that, as a result of a mental health disorder, you are likely to (check applicable):

☐ Harm yourself.

☐ Harm someone else.

☐ Be unable to take care of your own food, clothing, and housing needs.

We believe this is true because

_____

(list of the facts upon which the allegation of dangerous or gravely disabled due to mental health disorder is based, including pertinent facts arising from the admission interview).

You will be held for a period up to 72 hours. During the 72 hours you may also be transferred to another facility. You may request to be evaluated or treated at a facility of your choice. You may request to be evaluated or treated by a mental health professional of your choice. We cannot guarantee the facility or mental health professional you choose will be available, but we will honor your choice if we can.

During these 72 hours you will be evaluated by the facility staff, and you may be given treatment, including medications. It is possible for you to be released before the end of the 72 hours. But if the staff decides that you need continued treatment you can be held for a longer period of time. If you are held longer than 72 hours, you have the right to a lawyer and a qualified interpreter and a hearing before a judge. If you are unable to pay for the lawyer, then one will be provided to you free of charge.

If you have questions about your legal rights, you may contact the county Patients' Rights Advocate at

_____.

(phone number for the county Patients' Rights Advocacy office)

Your 72-hour period began _____.

(date/time)

(2) If the notice is given in a county where weekends and holidays are excluded from the 72-hour period, the patient shall be informed of this fact.

(j) For each patient admitted for evaluation and treatment, the facility shall keep with the patient's medical record a record of the advisement given pursuant to subdivision (i), which shall include all of the following:

(1) The name of the person performing the advisement.
(2) The date of the advisement.
(3) Whether the advisement was completed.
(4) The language or modality used to communicate the advisement.
(5) If the advisement was not completed, a statement of good cause.

Added Stats 1967 ch 1667 § 36, operative July 1, 1969. Amended Stats 1968 ch 1374 § 16, operative July 1, 1969; Stats 1970 ch 516 § 7; Stats 1971 ch 1593 § 368, operative July 1, 1973; Stats 1975 ch 960 § 2; Stats 1977 ch 1252 § 554, operative July 1, 1978; Stats 1980 ch 968 § 1; Stats 2012 ch 34 § 79 (SB 1009), effective June 27, 2012; Stats 2013 ch 23 § 31 (AB 82), effective June 27, 2013, ch 567 § 5 (SB 364), effective January 1, 2014; Stats 2015 ch 455 § 18 (SB 804), effective January 1, 2016, ch 570 § 1 (AB 1194), effective January 1, 2016.

ARTICLE 4

Certification for Intensive Treatment

§ 5250. Conditions for certification

If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental health disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of a mental health disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d)(1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist a person with a mental health disorder in providing for the person's basic needs for food, clothing, or shelter.

Added Stats 1982 ch 1598 § 4. Amended Stats 1989 ch 999 § 1; Stats 2014 ch 144 § 89 (AB 1847), effective January 1, 2015.

ARTICLE 7

Legal and Civil Rights of Persons Involuntarily Detained

§ 5325. Enumeration; Posting

Each person involuntarily detained for evaluation or treatment under provisions of this part, and each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing those services, and otherwise brought to his or her attention by any additional means as the Director of Health Care Services may designate by regulation. Each person committed to a state hospital shall also have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing those services and otherwise brought to his or her attention by any additional means as the Director of State Hospitals may designate by regulation:

(a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.

(e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Health Care Services and the Director of State Hospitals shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Health Care Services and the State Department of State Hospitals to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient, involuntarily detained for evaluation or treatment under provisions of this part, or as a voluntary patient for psychiatric evaluation or treatment to a health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall immediately be given a copy of a State Department of Health Care Services prepared patients' rights handbook. Each person committed to a state hospital, upon admission, shall immediately be given a copy of a State Department of State Hospitals prepared patients' rights handbook.

The State Department of Health Care Services and the State Department of State Hospitals shall prepare and provide the forms specified in this section. The State Department of Health Care Services shall prepare and provide the forms specified in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

Added Stats 1972 ch 1055 § 3, operative July 1, 1973. Amended Stats 1974 ch 1534 § 1; Stats 1976 ch 1109 § 1.5; Stats 1977 ch 1021 § 2; Stats 1978 ch 429 § 206, effective July 17, 1978, operative July 1, 1978; Stats 1981 ch 841 § 2; Stats 2012 ch 34 § 85 (SB 1009), effective June 27, 2012 (ch 34 prevails), ch 448 § 52 (AB 2370), effective January 1, 2013, ch 457 § 52 (SB 1381), effective January 1, 2013.

§ 5325.1. Protection of legal rights and responsibilities

Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

Added Stats 1978 ch 1320 § 1.

§ 5328. Confidentiality of records; Authorized disclosures

All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, or licensed professional clinical counselor, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist or licensed professional clinical counselor to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, dependent, or conservatee, and his or her parent, guardian, guardian ad litem, conservator, or authorized representative designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional

person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Health Care Services, the Director of State Hospitals, the Director of Social Services, or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her

conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*)(1) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the provision of child welfare services or the investigation, prevention, identification, management, or treatment of child abuse or neglect pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9. Information obtained pursuant to this subdivision shall not be used in any criminal or delinquency proceeding. Nothing in this subdivision shall prohibit evidence identical to that contained within the records from being admissible in a criminal or delinquency proceeding, if the evidence is derived solely from means other than this subdivision, as permitted by law.

(2) As used in this subdivision, "child welfare services" means those services that are directed at preventing child abuse or neglect.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 14725.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county behavioral health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Care Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to

that person or persons and to law enforcement agencies and county child welfare agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s)(1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t)(1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a person with mental illness subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for individuals with mental illness, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or

dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x)(1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were

requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

(y) To the person appointed as the developmental services decisionmaker for a minor, dependent, or ward pursuant to Section 319, 361, or 726.

Added Stats 1972 ch 1058 § 2, operative July 1, 1973. Amended Stats 1974 ch 486 § 2, effective July 11, 1974; Stats 1975 ch 1258 § 6; Stats 1977 ch 1252 § 570, operative July 1, 1978; Stats 1978 ch 432 § 12, effective July 17, 1978, operative July 1, 1978, ch 1345 § 1; Stats 1979 ch 373 § 364 (ch 244 prevails), ch 244 § 1; Stats 1980 ch 676 § 332; Stats 1981 ch 841 § 6; Stats 1982 ch 234 § 6, effective June 2, 1982, ch 1141 § 7, ch 1415 § 1, effective September 27, 1982; Stats 1983 ch 755 § 3, ch 1174 § 1.5; Stats 1985 ch 1121 § 3, ch 1194 § 1, ch 1324 § 1.7; Stats 1991 ch 534 § 6 (SB 1088); Stats 1996 ch 111 § 2 (SB 2082) (ch 111 prevails), ch 1023 § 464 (SB 1497), effective September 29, 1996; Stats 1998 ch 148 § 1 (AB 302); Stats 2001 ch 37 § 1 (AB 213), ch 506 § 8.5 (AB 1424)(ch 506 prevails); Stats 2002 ch 552 § 1 (AB 2735); Stats 2004 ch 406 § 2 (SB 1819); Stats 2010 ch 551 § 2 (AB 2322), effective September 29, 2010; Stats 2011 ch 381 § 44 (SB 146), effective January 1, 2012, ch 471 § 13.5 (SB 368), effective January 1, 2012; Stats 2012 ch 34 § 94 (SB 1009), effective June 27, 2012, operative July 1, 2012; Stats 2015 ch 455 § 27 (SB 804), effective January 1, 2016.

PART 2
The Bronzan-McCorquodale Act
CHAPTER 1
General Provisions

§ 5614. Establishing protocols relating to statutory requirements

(a) The department, in consultation with the Compliance Advisory Committee that shall have representatives from relevant stakeholders, including, but not limited to, local mental health departments, local mental health boards

and commissions, private and community-based providers, consumers and family members of consumers, and advocates, shall establish a protocol for ensuring that local mental health departments meet statutory and regulatory requirements for the provision of publicly funded community mental health services provided under this part.

(b) The protocol shall include a procedure for review and assurance of compliance for all of the following elements, and any other elements required in law or regulation:

(1) Financial maintenance of effort requirements provided for under Section 17608.05.

(2) Each local mental health board has approved procedures that ensure citizen and professional involvement in the local mental health planning process.

(3) Children's services are funded pursuant to the requirements of Sections 5704.5 and 5704.6.

(4) The local mental health department complies with reporting requirements developed by the department.

(5) To the extent resources are available, the local mental health department maintains the program principles and the array of treatment options required under Sections 5600.2 to 5600.9, inclusive.

(6) The local mental health department meets the reporting required by the performance outcome systems for adults and children.

(c) The protocol developed pursuant to subdivision (a) shall focus on law and regulations and shall include, but not be limited to, the items specified in subdivision (b). The protocol shall include data collection procedures so that state review and reporting may occur. The protocol shall also include a procedure for the provision of technical assistance, and formal decision rules and procedures for enforcement consequences when the requirements of law and regulations are not met. These standards and decision rules shall be established through the consensual stakeholder process established by the department.

Added Stats 2000 ch 93 § 51 (AB 2877), effective July 7, 2000. Amended Stats 2001 ch 159 § 191 (SB 662).

CHAPTER 4

Operation and Administration

§ 5751.2. Persons subject to licensing requirements; Waiver

(a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law regarding professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which a license is required, unless the person possesses a valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a).

(c) While registered with the licensing board of jurisdiction for the purpose of acquiring the experience required for licensure, persons employed or under contract to provide mental health services pursuant to this part as clinical social workers, marriage and family therapists, or professional clinical counselors shall be exempt from subdivision (a). Registration shall be subject to regulations adopted by the appropriate licensing board.

(d) The requirements of subdivision (a) shall be waived by the State Department of Health Care Services for persons employed or under contract to provide mental health services pursuant to this part as psychologists who are gaining the experience required for licensure. A waiver granted under this subdivision may not exceed five years from the date of employment by, or contract with, a local mental health program for persons in the profession of psychology.

(e) The requirements of subdivision (a) shall be waived by the State Department of Health Care Services for persons who have been recruited for employment from outside this state as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors and whose experience is sufficient to gain admission to a licensing examination. A waiver granted under this subdivision may not exceed three years from the date of employment by, or contract with, a local mental health program for persons in these four professions who are recruited from outside this state.

Added Stats 1981 ch 412 § 6, effective September 11, 1981, operative January 1, 1984, as W & I C § 5600.2. Amended Stats 1987 ch 227 § 1; Stats 1988 ch 509 § 1; Stats 1989 ch 503 § 1; Stats 1990 ch 962 § 2 (AB 3229). Amended and renumbered W & I C § 5751.2 by Stats 1991 ch 611 § 37 (AB 1491), effective October 6, 1991. Amended and renumbered W & I C § 5603 by Stats 1991 ch 612 § 2 (SB 1112). Renumbered by Stats 1992 ch 1374 § 19 (AB 14), effective October 27, 1992. Amended Stats 1995 ch 712 § 4 (SB 227); Stats 2002 ch 1013 § 99 (SB 2026); Stats 2011 ch 381 § 48 (SB 146), effective January 1, 2012; Stats 2012 ch 34 § 165 (SB 1009), effective June 27, 2012.

DIVISION 8
Miscellaneous
CHAPTER 3
Firearms

§ 8100. Possession of firearm by patient with mental disorder; Waiting period; Burden of proof

(a) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to the prohibition in this subdivision after he or she is discharged from the facility.

(b)(1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive,

any firearms whatsoever or any other deadly weapon for a period of five years if, on or after January 1, 2014, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or victims. The five-year period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person. The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, pursuant to paragraph (3) and upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner.

(2) Upon receipt of the report from the local law enforcement agency pursuant to subdivision (c) of Section 8105, the Department of Justice shall notify by certified mail, return receipt requested, a person subject to this subdivision of the following:

(A) That he or she is prohibited from possessing, having custody or control over, receiving, or purchasing any firearm or other deadly weapon for a period of five years commencing from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The notice shall state the date when the prohibition commences and ends.

(B) That he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(3)(A) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, have custody or control over, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or upon its own motion, the superior court may transfer the petition to the county in which the person resided at the time of the statements, or the county in which the person made the statements. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8105 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney is notified of the hearing date by the clerk of the court. The court, upon motion of the petitioner establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded

under Section 352 of the Evidence Code, shall be admissible at the hearing under this paragraph.

(B) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(C) If the court finds at the hearing that the people have not met their burden as set forth in subparagraph (B), the court shall order that the person shall not be subject to the five-year prohibition in this section on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(D) If the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(E) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of a person to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(c) "Discharge," for the purposes of this section, does not include a leave of absence from a facility.

(d) "Attending health care professional," as used in this section, means the licensed health care professional primarily responsible for the person's treatment who is qualified to make the decision that the person has a mental disorder and has probable cause to believe that the person is a danger to self or others.

(e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and 8103, means any weapon, the possession or concealed carrying of which is prohibited by any provision listed in Section 16590 of the Penal Code.

(f) "Danger to self," as used in subdivision (a), means a voluntary person who has made a serious threat of, or attempted, suicide with the use of a firearm or other deadly weapon.

(g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this section shall be a public offense, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(h) The prohibitions set forth in this section shall be in addition to those set forth in Section 8103.

(i) Any person admitted and receiving treatment prior to January 1, 1992, shall be governed by this section, as amended by Chapter 1090 of the Statutes of 1990, until discharged from the facility.

Added Stats 1967 ch 1667 § 42, operative July 1, 1969. Amended Stats 1985 ch 1324 § 2; Stats 1990 ch 9 § 15 (AB 497), ch 1090 § 4 (SB 2050); Stats 1991 ch 951 § 9 (AB 664), ch 952 § 5 (AB 1904); Stats 1992 ch 1326 § 16 (AB 3552); Stats 2010 ch 178 § 103 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 15 § 626 (AB 109), effective April 4, 2011, operative January 1, 2012; Stats 2013 ch 747 § 1 (AB 1131), effective January 1, 2014.

§ 8101. Giving deadly weapon to mental patient; Punishment

(a) Any person who shall knowingly supply, sell, give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(c) "Deadly weapon," as used in this section has the meaning prescribed by Section 8100.

Added Stats 1967 ch 1667 § 42, operative July 1, 1969. Amended Stats 1969 ch 1021 § 2; Stats 1970 ch 79 § 3; Stats 1976 ch 1139 § 348, operative July 1, 1977; Stats 1983 ch 1092 § 421, effective September 27, 1983, operative January 1, 1984; Stats 1984 ch 1562 § 13; Stats 1985 ch 1324 § 3; Stats 1994 ch 451 § 12 (AB 2470); Stats 1993–94 1st Ex Sess ch 33 § 12 (SBX1 36) effective November 30, 1994; Stats 2011 ch 15 § 627 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 8102. Confiscation of firearm in possession of mental patient; Procedure for return of firearm; Hearing; Destroying of firearm

(a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

"Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(b)(1) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall issue a receipt describing the deadly weapon or any firearm and listing any serial number or other identification on the firearm and shall notify the person of the procedure for the return, sale, transfer, or destruction of any firearm or other deadly weapon which has been confiscated. A peace officer or law enforcement agency that provides the receipt and notification described in Section 33800 of the Penal Code satisfies the receipt and notice requirements.

(2) If the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

(3) Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the

effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(4) For purposes of this subdivision, the procedure for the return, sale, or transfer of confiscated firearms includes the procedures described in this section and the procedures described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code.

(5) In lieu of destroying a firearm that has been confiscated pursuant to this section that is a nuisance, unclaimed, abandoned, or otherwise subject to destruction, a law enforcement agency may retain or transfer the firearm as provided in Section 34005 of the Penal Code.

(c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition shall be filed within 60 days of the release of the person from a health facility.

(d) If the law enforcement agency does not initiate proceedings within the 30-day period, or the period of time authorized by the court in an ex parte order issued pursuant to subdivision (c), it shall make the weapon available for return upon compliance with all applicable requirements, including the requirements specified in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code.

(e) The law enforcement agency shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For a confiscated firearm, the period of forfeiture is 180 days pursuant to Section 33875 of the Penal Code, unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Section 33870 of the Penal Code. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(f) If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request. The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing.

(g) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default, allowing the law enforcement agency to destroy the firearm in 180 days from the date the court enters default unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Section 33870 of the Penal Code.

(h) If, after a hearing, the court determines that the return of the firearm or other deadly weapon would likely endanger the person or others, the law enforcement agency may destroy the firearm within 180 days from the date that the court makes that determination, unless the person contacts the law

enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Section 33870 of the Penal Code.

Added Stats 1967 ch 1667 § 42, operative July 1, 1969. Amended Stats 1979 ch 250 § 1, ch 730 § 174.5, operative January 1, 1981; Stats 1985 ch 1324 § 3.5; Stats 1989 ch 921 § 1, effective September 26, 1989; Stats 1991 ch 866 § 8 (AB 363); Stats 1993 ch 606 § 22 (AB 166), effective September 29, 1993; Stats 1995 ch 328 § 1 (AB 633); Stats 2000 ch 254 § 2 (SB 2052); Stats 2001 ch 159 § 192 (SB 662); Stats 2013 ch 747 § 2 (AB 1131), effective January 1, 2014.

§ 8103. Certificate required for possession by specified persons; Prohibition against possession for specified persons; Restoration of privilege in specified cases; Punishment for violation

(a)(1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control a firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1) as soon as possible, but not later than one court day after issuing the certificate.

(b)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than, one court day after issuing the order.

(c)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity as soon as possible, but not later than one court day after making the finding.

(d)(1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence as soon as possible, but not later than one court day after making the finding.

(e)(1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing a person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1) as soon as possible, but not later than one court day after placing the person under conservatorship. The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a

danger to the safety of the person or others, the court shall notify the Department of Justice as soon as possible, but not later than one court day after terminating the conservatorship.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. A person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f)(1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

(2)(A) For each person subject to this subdivision, the facility shall, within 24 hours of the time of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in

paragraph (1) may make a single request for a hearing at any time during the five-year period. The request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) A person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 30 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 14 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county behavioral health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition in this section on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) Where the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year

prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms.

(9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g)(1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2)(A) For each person certified for intensive treatment under paragraph (1), the facility shall, within 24 hours of the certification, submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. A report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) A person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the

county behavioral health director of the petition, and the county behavioral health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h)(1) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

(2) Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(k) Any notice or report required to be submitted to the Department of Justice pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the Department of Justice.

Added Stats 1967 ch 1667 § 42, operative July 1, 1969. Amended Stats 1969 ch 722 § 62, effective August 8, 1969, operative July 1, 1969; Stats 1978 ch 187 § 1; Stats 1982 ch 1409 § 1; Stats 1984 ch 1562 § 14; Stats 1985 ch 1324 § 4; Stats 1990 ch 9 § 16 (AB 497), ch 177 § 8 (SB 830), effective June 26, 1990, operative January 1, 1991; Stats 1991 ch 955 § 10 (AB 242); Stats 1992 ch 1326 § 17 (AB 3552); Stats 1993 ch 610 § 34 (AB 6), effective September 30, 1993, ch 611 § 38 (SB 60), effective September 30, 1993; Stats 1994 ch 224 § 11 (SB 1436); Stats 1996 ch 1075 § 21 (SB 1444); Stats 1999 ch 578 § 1 (AB 1587), effective September 29, 1999; Stats 2010 ch 178 § 104 (SB 1115), effective January 1, 2011, operative January 1, 2012, ch 344 § 1 (AB 302) (ch 344 prevails), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 15 § 628 (AB 109) (ch 15 prevails), effective April 4, 2011, operative October 1, 2011, ch 285 § 28 (AB 1402), effective January 1, 2012; Stats 2012 ch 162 § 203 (SB 1171), effective January 1, 2013; Stats 2013 ch 747 § 3 (AB 1131), effective January

1, 2014; Stats 2014 ch 71 § 190 (SB 1304), effective January 1, 2015; Stats 2014 ch 141 § 1 (AB 1591), effective January 1, 2015 (ch 141 prevails); Stats 2015 ch 455 § 48 (SB 804), effective January 1, 2016.

§ 8104. Maintenance of identifying records; Availability to Justice Department

The State Department of State Hospitals shall maintain in a convenient central location and shall make available to the Department of Justice those records that the State Department of State Hospitals has in its possession that are necessary to identify persons who come within Section 8100 or 8103. Upon request of the Department of Justice, the State Department of State Hospitals shall make these records available to the Department of Justice in electronic format within 24 hours of receiving the request. The Department of Justice shall make these requests only with respect to its duties with regard to applications for permits for, or to carry, or the possession, purchase, or transfer of, explosives as defined in Section 12000 of the Health and Safety Code, devices defined in Section 16250, 16530, or 16640 of the Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code, or in subdivision (a) of Section 16840 of the Penal Code, machineguns as defined in Section 16880 of the Penal Code, short-barreled shotguns or short-barreled rifles as defined in Sections 17170 and 17180 of the Penal Code, assault weapons as defined in Section 30510 of the Penal Code, and destructive devices as defined in Section 16460 of the Penal Code, or to determine the eligibility of a person to acquire, carry, or possess a firearm, explosive, or destructive device by a person who is subject to a criminal investigation, a part of which involves the acquisition, carrying, or possession of a firearm by that person. These records shall not be furnished or made available to any person unless the department determines that disclosure of any information in the records is necessary to carry out its duties with respect to applications for permits for, or to carry, or the possession, purchase, or transfer of, explosives, destructive devices, devices as defined in Section 16250, 16530, or 16640 of the Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code, or in subdivision (a) of Section 16840 of the Penal Code, short-barreled shotguns, short-barreled rifles, assault weapons, and machineguns, or to determine the eligibility of a person to acquire, carry, or possess a firearm, explosive, or destructive device by a person who is subject to a criminal investigation, a part of which involves the acquisition, carrying, or possession of a firearm by that person.

Added Stats 1972 ch 1377 § 123, operative July 1, 1973. Amended Stats 1977 ch 1252 § 707, operative July 1, 1978; Stats 1982 ch 1409 § 2; Stats 1984 ch 1562 § 15; Stats 1988 ch 1269 § 6; Stats 1990 ch 1090 § 5 (SB 2050); Stats 1992 ch 1326 § 18 (AB 3552); Stats 2010 ch 178 § 105 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2012 ch 440 § 75 (AB 1488), effective September 22, 2012; Stats 2013 ch 747 § 4 (AB 1131), effective January 1, 2014.

§ 8105. Submission of patient's mental health information to Department of Justice

(a) The Department of Justice shall request each public and private mental hospital, sanitarium, and institution to submit to the department information the department deems necessary to identify those persons who are subject to the prohibition specified by subdivision (a) of Section 8100, in order to carry out its duties in relation to firearms, destructive devices, and explosives.

(b) Upon request of the Department of Justice pursuant to subdivision (a), each public and private mental hospital, sanitarium, and institution shall submit to the department information the department deems necessary to identify those persons who are subject to the prohibition specified by subdivision (a) of Section 8100, in order to carry out its duties in relation to firearms, destructive devices, and explosives.

(c) A licensed psychotherapist shall report to a local law enforcement agency, within 24 hours, in a manner prescribed by the Department of Justice, the identity of a person subject to the prohibition specified by subdivision (b) of Section 8100. Upon receipt of the report, the local law enforcement agency, on a form prescribed by the Department of Justice, shall notify the department electronically, within 24 hours, in a manner prescribed by the department, of the person who is subject to the prohibition specified by subdivision (b) of Section 8100.

(d) All information provided to the Department of Justice pursuant to this section shall be kept confidential, separate, and apart from all other records maintained by the department. The information provided to the Department of Justice pursuant to this section shall be used only for any of the following purposes:

(1) By the department to determine eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives.

(2) For the purposes of the court proceedings described in subdivision (b) of Section 8100, to determine the eligibility of the person who is bringing the petition pursuant to paragraph (3) of subdivision (b) of Section 8100.

(3) To determine the eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives who is the subject of a criminal investigation, or who is the subject of a petition for the issuance of a gun violence restraining order issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6 of the Penal Code, if a part of the investigation involves the acquisition, carrying, or possession of firearms, explosives, or destructive devices by that person.

(e) Reports shall not be required or requested under this section if the same person has been previously reported pursuant to Section 8103 or 8104.

(f) This section shall become operative on January 1, 2016.

Added Stats 2014 ch 872 § 7 (AB 1014), effective January 1, 2015, operative January 1, 2016.

§ 8107. [Section repealed 2005.]

Added Stats 1988 ch 801 § 1. Repealed Stats 2004 ch 602 § 7 (AB 2431). The repealed section related to disposition of unlawfully possessed weapons.

§ 8108. Civil immunity

Mental hospitals, health facilities, or other institutions, or treating health professionals or psychotherapists who provide reports subject to this chapter shall be civilly immune for making any report required or authorized by this chapter. This section is declaratory of existing law.

Added Stats 1991 ch 951 § 11 (AB 664).

DIVISION 9
Public Social Services
PART 3
Aid and Medical Assistance
CHAPTER 11
Elder Abuse and Dependent Adult Civil Protection Act
ARTICLE 2
Definitions

§ 15610.05. "Abandonment"

"Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Added Stats 1994 ch 594 § 3 (SB 1681).

§ 15610.06. "Abduction"

"Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

Added Stats 1997 ch 663 § 2 (SB 628).

§ 15610.07. "Abuse of an elder or a dependent adult"

(a) "Abuse of an elder or a dependent adult" means any of the following:

(1) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

(3) Financial abuse, as defined in Section 15610.30.

(b) This section shall become operative on July 1, 2016.

Added Stats 2015 ch 285 § 2 (SB 196), effective January 1, 2016, operative July 1, 2016.

§ 15610.17. "Care custodian"

"Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.
(c) Home health agencies.
(d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.
(e) Adult day health care centers and adult day care.
(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.
(g) Independent living centers.
(h) Camps.
(i) Alzheimer's Disease day care resource centers.
(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
(k) Respite care facilities.
(*l*) Foster homes.
(m) Vocational rehabilitation facilities and work activity centers.
(n) Designated area agencies on aging.
(o) Regional centers for persons with developmental disabilities.
(p) State Department of Social Services and State Department of Health Services licensing divisions.
(q) County welfare departments.
(r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.
(s) The office of the long-term care ombudsman.
(t) Offices of public conservators, public guardians, and court investigators.
(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:
(1) The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.
(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illness.
(v) Humane societies and animal control agencies.
(w) Fire departments.
(x) Offices of environmental health and building code enforcement.
(y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 1998 ch 946 § 4 (SB 2199); Stats 2002 ch 54 § 2 (AB 255).

§ 15610.23. "Dependent adult"

(a) "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or develop-

mental disabilities, or whose physical or mental abilities have diminished because of age.

(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 2002 ch 54 § 4 (AB 255).

§ 15610.27. "Elder"

"Elder" means any person residing in this state, 65 years of age or older.

Added Stats 1994 ch 594 § 3 (SB 1681).

§ 15610.30. "Financial abuse" of elder or dependent adult

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 1997 ch 724 § 37 (AB 1172); Stats 1998 ch 946 § 5 (SB 2199); Stats 2000 ch 442 § 5 (AB 2107) (ch 442 prevails), ch 813 § 2 (SB 1742); Stats 2008 ch 475 § 1 (SB 1140), effective January 1, 2009; Stats 2013 ch 668 § 2 (AB 140), effective January 1, 2014.

§ 15610.37. "Health practitioner"

"Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, registered nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage and family therapist, licensed professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical

technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, an unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code, a clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code, a clinical counselor intern registered under Section 4999.42 of the Business and Professions Code, a state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 2002 ch 54 § 5 (AB 255); Stats 2003 ch 62 § 334 (SB 600); Stats 2011 ch 381 § 49 (SB 146), effective January 1, 2012.

§ 15610.55. "Multidisciplinary personnel team"

(a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, management, or treatment of abuse of elderly or dependent adults and who are qualified to provide a broad range of services related to abuse of elderly or dependent adults.

(b) A multidisciplinary personnel team may include, but need not be limited to, any of the following:

(1) Psychiatrists, psychologists, or other trained counseling personnel.

(2) Police officers or other law enforcement agents.

(3) Medical personnel with sufficient training to provide health services.

(4) Social workers with experience or training in prevention of abuse of elderly or dependent adults.

(5) Public guardians.

(6) The local long-term care ombudsman.

(7) Child welfare services personnel.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 1998 ch 946 § 6 (SB 2199); Stats 2002 ch 54 § 7.5 (AB 255); Stats 2010 ch 551 § 4 (AB 2322), effective September 29, 2010; Stats 2014 ch 62 § 1 (AB 2379), effective January 1, 2015.

§ 15610.57. "Neglect"

(a) "Neglect" means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 1998 ch 946 § 7 (SB 2199); Stats 2002 ch 54 § 8 (AB 255).

§ 15610.63. "Physical abuse"

"Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Sexual penetration, as defined in Section 289 of the Penal Code.

(9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

Added Stats 1994 ch 594 § 3 (SB 1681). Amended Stats 1996 ch 1075 § 22 (SB 1444); Stats 2000 ch 287 § 29 (SB 1955); Stats 2004 ch 823 § 18 (AB 20).

§ 15610.67. "Serious bodily injury"

"Serious bodily injury" means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.

Added Stats 2012 ch 659 § 1 (AB 40), effective January 1, 2013.

ARTICLE 3

Mandatory and Nonmandatory Reports of Abuse

§ 15630. Duties of mandated reporter; Punishment for failure to report

(a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she

receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days.

(A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following shall occur:

(i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, but also no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(ii) If the suspected abuse does not result in serious bodily injury, a telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(iii) When the suspected abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter, drawing upon his or her training or experience, the reporter shall report to the local ombudsman or law enforcement agency by telephone, immediately or as soon as practicably possible, and by written report, within 24 hours.

(iv) When applicable, reports made pursuant to clauses (i) and (ii) shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91 of the Health and Safety Code, and Section 72541 of Title 22 of California Code of Regulations. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this subparagraph, the local law enforce-

ment agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

(B) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other law, the department may implement subparagraph (A), in whole or in part, by means of all-county letters, provider bulletins, or other similar instructions without taking regulatory action.

(C) If the suspected or alleged abuse is abuse other than physical abuse, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a telephone report and a written report shall be made to the local ombudsman or the local law enforcement agency.

(D) With regard to abuse reported pursuant to subparagraph (C), the local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day program, as defined in paragraph (2) of subdivision (a) of Section 1502 of the Health and Safety Code.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(E)(i) If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, and also to the local law enforcement agency:

(I) A death.

(II) A sexual assault, as defined in Section 15610.63.

(III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.

(IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.

(V) An injury to the genitals when the cause of the injury is undetermined.

(VI) A broken bone when the cause of the break is undetermined.

(ii) All other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

(iii) When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center pursuant to clause (i), the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop protocols to implement this clause.

(iv) Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(v) Notwithstanding any other law, a mandated reporter who is required to report pursuant to Section 4427.5 shall not be required to report under clause (i).

(F) If the abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental center, the report shall be made to the adult protective services agency or the local law enforcement agency.

(2)(A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) This subdivision shall not be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3)(A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code,

shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4)(A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c)(1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the

designated investigator of the State Department of State Hospitals or the State Department of Developmental Services or to a local law enforcement agency. Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g)(1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is

a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.

Added Stats 1994 ch 594 § 7 (SB 1681). Amended Stats 1995 ch 813 § 1 (AB 1836); Stats 1998 ch 946 § 8 (SB 2199), ch 980 § 1 (AB 1780); Stats 1999 ch 236 § 1 (AB 739); Stats 2002 ch 54 § 9 (AB 255); Stats 2004 ch 823 § 19 (AB 20); Stats 2005 ch 163 § 2 (AB 1188), effective January 1, 2006; Stats 2008 ch 481 § 1 (AB 2100), effective January 1, 2009; Stats 2011 ch 373 § 1 (SB 718), effective January 1, 2012; Stats 2012 ch 24 § 202 (AB 1470), effective June 27, 2012, ch 660 § 4 (SB 1051), effective September 27, 2012, operative until January 1, 2013, ch 660 § 4.5 (SB 1051), effective September 27, 2012, operative January 1, 2013; Stats 2013 ch 76 § 223 (AB 383), effective January 1, 2014, ch 673 § 3 (AB 602), effective January 1, 2014 (ch 673 prevails).

§ 15631. Other persons who may report abuse

(a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency, or both the long-term care ombudsman program and local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

Added Stats 1994 ch 594 § 9 (SB 1681). Amended Stats 2012 ch 659 § 3 (AB 40), effective January 1, 2013.

§ 15632. Application of physician-patient or psychotherapist-patient privilege

(a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

Added Stats 1994 ch 594 § 11 (SB 1681).

ARTICLE 4
Confidentiality

§ 15633. Disclosure; Penalties

(a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2)(A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

Added Stats 1994 ch 594 § 14 (SB 1681). Amended Stats 1998 ch 946 § 9 (SB 2199), ch 980 § 2 (AB 1780); Stats 2005 ch 140 § 5 (SB 1018), effective January 1, 2006, operative January 1, 2007, repealed January 1, 2013; Stats 2011 ch 372 § 2 (SB 33), effective January 1, 2012.

§ 15633.5. Other persons to whom disclosure may be made

(a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

(1) An adult protective services agency.

(2) A long-term care ombudsperson program.

(3) A licensing agency.

(4) A local law enforcement agency.

(5) The office of the district attorney.
(6) The office of the public guardian.
(7) The probate court.
(8) The bureau.
(9) The Department of Consumer Affairs, Division of Investigation.
(10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:
(1) To the district attorney in a criminal prosecution.
(2) When a person reporting waives confidentiality.
(3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

Added Stats 1994 ch 594 § 15 (SB 1681). Amended Stats 1998 ch 970 § 211 (AB 2802); Stats 2002 ch 54 § 10 (AB 255), ch 552 § 2 (AB 2735).

§ 15634. Immunity from liability of persons authorized to report abuse; Attorney fees

(a) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care

custodian, clergy member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the Department of General Services a claim for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The Department of General Services shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

Added Stats 1985 ch 1164 § 11, effective September 28, 1985. Amended Stats 1986 ch 769 § 14, effective September 15, 1986; Stats 1990 ch 241 § 2 (SB 1911); Stats 2002 ch 54 § 11 (AB 255); Stats 2005 ch 140 § 7 (SB 1018), effective January 1, 2006, repealed January 1, 2013; Stats 2011 ch 372 § 4 (SB 33), effective January 1, 2012; Stats 2016 ch 31 § 285 (SB 836), effective June 27, 2016.

§ 15637. Evidentiary privileges

In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported pursuant to this chapter. Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

Added Stats 1985 ch 1164 § 13, effective September 28, 1985.

ARTICLE 5

Local Agency Cross-Reporting

§ 15640. Cross-report to law enforcement agency and licensing agency; Report of long-term care ombudsman

(a)(1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 or 15630.1 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she

is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Public Health shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

Added Stats 1994 ch 594 § 20 (SB 1681). Amended Stats 1995 ch 91 § 188 (SB 975); Stats 1998 ch 946 § 9.5 (SB 2199); Stats 2005 ch 140 § 9 (SB 1018), effective January 1, 2006; Stats 2011 ch 372 § 6 (SB 33), effective January 1, 2012.

ARTICLE 6

Investigation of Reports

§ 15650. Designation of agency to receive reports; Inventory of service agencies to assist victims

(a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the bureau, the local law enforcement agency, and the long-term care ombudsman program.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency, unless another public agency is given responsibility for investigation in that jurisdiction, and the local law enforcement agency.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Public Health Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of State Hospitals and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs, and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive

reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

Added Stats 1994 ch 594 § 21 (SB 1681). Amended Stats 1998 ch 946 § 10 (SB 2199); Stats 2010 ch 617 § 13 (SB 110), effective January 1, 2011; Stats 2012 ch 440 § 80 (AB 1488), effective September 22, 2012; Stats 2013 ch 76 § 224 (AB 383), effective January 1, 2014.

ARTICLE 9

Reporting Forms

§ 15658. Forms for written abuse reports; Contents

(a) A written abuse report required by this chapter, shall be submitted in one of the following ways:

(1) On a form adopted by the State Department of Social Services after consultation with representatives of the various law enforcement agencies, the California Department of Aging, the State Department of Developmental Services, the State Department of State Hospitals, the bureau, professional medical and nursing agencies, hospital associations, and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.

(2) Through a confidential Internet reporting tool, if the county or long-term care ombudsman program chooses to implement such a system. This Internet reporting tool shall be developed and implemented in a manner that ensures the confidentiality and security of all information contained in the reports, pursuant to the confidentiality standards set forth in Sections 10850, 15633, and 15633.5.

(A) A county or long-term care ombudsman program that chooses to implement this system shall report to the Assembly Committee on Aging and Long-Term Care, the Assembly Committee on Human Services, the Senate Committee on Human Services, the Assembly Committee on Public Safety, and the Senate Committee on Public Safety one year after full implementation. The report shall include changes in the number of mandated reporters reporting through the confidential Internet reporting tool, changes in the number of abandoned calls, and any other quantitative or qualitative data that indicates the success, or lack thereof, in employing a confidential Internet reporting tool to better protect the safety and financial security of elder and dependent adults.

(B) Information sent and received through the confidential Internet reporting tool shall be used only for its intended purpose and shall be subject to the same confidentiality and privacy requirements that govern nonelectronic transmission of the same information, and that are set forth in Sections 10850, 15633, and 15633.5.

(b) The form required by this section and the confidential Internet reporting tool, if implemented, shall contain the following items:

(1) The name, address, telephone number, and occupation of the person reporting.

(2) The name and address of the victim.

(3) The date, time, and place of the incident.

(4) Other details, including the reporter's observations and beliefs concerning the incident.

(5) Any statement relating to the incident made by the victim.

(6) The name of any individuals believed to have knowledge of the incident.

(7) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(c)(1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(2) The county's report to the department shall not include reports it receives from the long-term care ombudsman program pursuant to subdivision (d).

(3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, abandonment, isolation, financial abuse, and other abuse it receives from county adult protective services agencies.

(d) Each long-term care ombudsman program shall report to the Office of the State Long-Term Care Ombudsman of the California Department of Aging monthly on the reports it receives pursuant to this chapter and shall send a copy to the county adult protective services agency. The Office of the State Long-Term Care Ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the Office of the State Long-Term Care Ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

Added Stats 1994 ch 594 § 24 (SB 1681). Amended Stats 1998 ch 946 § 11.5 (SB 2199); Stats 2011 ch 373 § 3 (SB 718), effective January 1, 2012; Stats 2012 ch 440 § 81 (AB 1488), effective September 22, 2012.

ARTICLE 10

Employee Statement

§ 15659. Statement as to knowledge of compliance with reporting requirements

(a) Any person who enters into employment on or after January 1, 1995, as a care custodian, clergy member, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment, shall sign a

statement on a form that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The employer shall provide a copy of Section 15630 to the employee. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 15630. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons who were employed prior to January 1, 1995, and who are required to make reports pursuant to Section 15630, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send to the person a statement substantially similar to the one contained in subdivision (a) at the same time that it transmits to the person the document indicating licensure or certification.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b), shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report abuse of elders or dependent adults pursuant to Section 15630 or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

Added Stats 1994 ch 594 § 25 (SB 1681). Amended Stats 1998 ch 946 § 12 (SB 2199); Stats 2002 ch 54 § 12.7 (AB 255).

CALIFORNIA RULES OF COURT

TITLE 5

Family and Juvenile Rules

DIVISION 1

Family Rules

CHAPTER 8

Child Custody and Visitation (Parenting Time) Proceedings

ARTICLE 2

Child Custody Investigations and Evaluations

Rule 5.220. Court-ordered child custody evaluations

(a) Authority

This rule of court is adopted under Family Code sections 211 and 3117.
(Subd (a) amended effective January 1, 2007.)

(b) Purpose

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues. This rule governs both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032.
(Subd (b) amended effective January 1, 2003.)

(c) Definitions

For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) The "best interest of the child" is as defined in Family Code section 3011.

(3) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues.

(4) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(5) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.

(6) "Evaluation," "investigation," and "assessment" are synonymous.

(Subd (c) amended effective January 1, 2003.)

(d) Responsibility for evaluation services

(1) Each court must:

(A) Adopt a local rule by January 1, 2000, to:

(i) Implement this rule of court;

(ii) Determine whether a peremptory challenge to a court-appointed evaluator is allowed and when the challenge must be exercised. The rules must specify whether a family court services staff member, other county employee, a mental health professional, or all of them may be challenged;

(iii) Allow evaluators to petition the court to withdraw from a case;

(iv) Provide for acceptance of and response to complaints about an evaluator's performance; and

(v) Address ex parte communications.

(B) Give the evaluator, before the evaluation begins, a copy of the court order that specifies:

(i) The appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; and

(ii) The purpose and scope of the evaluation.

(C) Require child custody evaluators to adhere to the requirements of this rule.

(D) Determine and allocate between the parties any fees or costs of the evaluation.

(2) The child custody evaluator must:

(A) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

(B) Strive to minimize the potential for psychological trauma to children during the evaluation process; and

(C) Include in the initial meeting with each child an age-appropriate explanation of the evaluation process, including limitations on the confidentiality of the process.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(e) Scope of evaluations

All evaluations must include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) History of involvement in caring for the child;

(iii) Methods for working toward resolution of the child custody conflict;

(iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) Psychological and social functioning;

(D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(E) Collecting relevant corroborating information or documents as permitted by law; and

(F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:

(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the

child if making any recommendations to the court regarding a parenting plan.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003, and July 1, 2003.)

(f) Cooperation with professionals in another jurisdiction

When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator must:

(1) Make a written request that includes, as appropriate:
  (A) A copy of all relevant court orders;
  (B) An outline of issues to be explored;
  (C) A list of the individuals who must or may be contacted;
  (D) A description of the necessary structure and setting for interviews;
  (E) A statement as to whether a home visit is required;
  (F) A request for relevant documents such as police records, school reports, or other document review; and
  (G) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys;

(2) Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan; and

(3) Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report.

(Subd (f) amended effective January 1, 2003.)

(g) Requirements for evaluator qualifications, training, continuing education, and experience

All child custody evaluators must meet the qualifications, training, and continuing education requirements specified in Family Code sections 1815, 1816, and 3111, and rules 5.225 and 5.230.

(Subd (g) amended effective January 1, 2004; previously amended effective July 1, 1999, and January 1, 2003.)

(h) Ethics

In performing an evaluation, the child custody evaluator must:

(1) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(2) Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(3) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(4) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(5) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;
(6) Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;
(7) Not pressure children to state a custodial preference;
(8) Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person;
(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;
(10) Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships; and not accept any appointment except by court order or the parties' stipulation; and
(11) Be sensitive to the socioeconomic status, gender, race, ethnicity, cultural values, religion, family structures, and developmental characteristics of the parties.

(Subd (h) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(i) Service of the evaluation report

A *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) must be attached as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(Subd (i) adopted effective January 1, 2010.)

(j) Cost-effective procedures for cross-examination of evaluators

Each local court must develop procedures for expeditious and cost-effective cross-examination of evaluators, including, but not limited to, consideration of the following:
(1) Videoconferences;
(2) Telephone conferences;
(3) Audio or video examination; and
(4) Scheduling of appearances.

(Subd (j) relettered effective January 1, 2010; adopted as subd (i) effective January 1, 1999; previously amended effective January 1, 2003.)

Rule 5.220 amended effective January 1, 2010; adopted as rule 1257.3 effective January 1, 1999; previously amended and renumbered effective January 1, 2003; previously amended effective July 1, 1999, July 1, 2003, January 1, 2004, and January 1, 2007.

Misc.

STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

BOARD OF PSYCHOLOGY

DISCIPLINARY GUIDELINES AND UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSING LICENSEES

**ADOPTED 11/92 - EFFECTIVE 1/1/93 –
AMENDED 7/1/96, AMENDED 4/1/99, AMENDED 9/1/02,
AMENDED 2/07, AMENDED 4/15**

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BOARD OF PSYCHOLOGY

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DISCIPLINARY GUIDELINES AND UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSING LICENSEES

Article 7. Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ 1395.2. Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider and apply the "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (4/15)," which is hereby incorporated by reference.

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

(c) Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

BOARD OF PSYCHOLOGY

I. INTRODUCTION

The Board of Psychology of the California Department of Consumer Affairs (hereinafter "the Board") is a consumer protection agency with the priority of protecting consumers of psychological services from unsafe, incompetent, or negligent practitioners in exercising its licensing, regulatory, and disciplinary functions. In keeping with its mandate to protect this particularly vulnerable population, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Psychology Licensing Law. This document, designed for use by administrative law judges, attorneys, psychologists, registered psychologists, psychological assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time.

For purposes of this document, in addition to licensure as a psychologist, the term "license" includes a psychological assistant registration and registered psychologist registration. The terms and conditions of probation are divided into two general categories:

(1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
(2) Optional Conditions are those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Board of Psychology's Uniform Standards Related to Substance Abusing Licensees, which are derived from the Department of Consumer Affairs' Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (4/11)" pursuant to section 315 of the Code, describe those terms or conditions that shall be applied to a substance abusing licensee, and are incorporated into the terms and conditions of probation.

The Board recognizes that an individual case may necessitate a departure from these guidelines for disciplinary orders. However, in such a case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact," which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the Board expects outright revocation or denial of the license. This is particularly true in any case of patient sexual abuse. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be appropriate.

II. DISCIPLINARY GUIDELINES

A. GENERAL CONSIDERATIONS

Factors to be considered - In determining whether revocation, suspension, or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the public.
3. Prior record of discipline or citations.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Pursuant to section 2960.1 of the Code (set out below in the Penalty Guidelines), any proposed decision or decision that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the Administrative Law Judge.

Pursuant to section 2964.3 of the Code, any person required to register as a sex offender pursuant to Section 290 of the Penal Code is not eligible for licensure or registration by the Board.

Except where an order is required by statute, deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board determines that the facts of the particular case warrant such a deviation.

B. PENALTY GUIDELINES FOR DISCIPLINARY ACTIONS

The general bases for discipline are listed by statute number in the Business & Professions Code. An accusation, statement of issues, or other charging document may also allege violations of other related statutes or regulations. The bases are followed by the Board-determined penalty, including the names and numbers for the optional terms and conditions. The standard terms of probation as stated shall be included in all decisions and orders. **Except where there is a finding that respondent is a substance-abusing licensee**, the Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations that take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision for final action.

Business and Professions Code § 2960

2960 GENERAL UNPROFESSIONAL CONDUCT

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, depending upon the circumstances, up to 5-year probation, psychological evaluation and/or therapy if appropriate (2) and (6), California Psychology Law and Ethics Examination (CPLEE) (7), and standard terms and conditions (14-31)

2960(a) CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE PRACTICE OF PSYCHOLOGY

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, billing monitor (if financial crime) (4), therapy (6), CPLEE (7), restitution (if appropriate) (8), and standard terms and conditions (14-31).

2960(b) USE OF CONTROLLED SUBSTANCE OR ALCOHOL IN A DANGEROUS MANNER

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, physical examination (if appropriate) (3), practice monitor (4), psychological evaluation and ongoing therapy (if appropriate) (2) and (6), clinical diagnostic evaluation (9), participation in an alcohol/drug abuse treatment program (10) and ongoing support group (11), abstain from all non-prescribed, controlled drugs and alcohol/biological fluid and specimen testing [required for substance-abusing licensees] (12), and standard terms and conditions (14-31).

2960(c) FRAUDULENTLY OR NEGLECTFULLY MISREPRESENTING THE TYPE OR STATUS OF LICENSE OR REGISTRATION ACTUALLY HELD

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, and standard terms and conditions (14-31).

2960(d) IMPERSONATING ANOTHER PERSON HOLDING A PSYCHOLOGY LICENSE OR ALLOWING ANOTHER PERSON TO USE HIS OR HER LICENSE OR REGISTRATION

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, psychological evaluation (2), CPLEE (7), and standard terms and conditions (14-31).

2960(e) PROCURING A LICENSE BY FRAUD OR DECEPTION

Penalty: Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

2960(f) ACCEPTING REMUNERATION OR PAYING FOR REFERRALS TO OTHER PROFESSIONALS

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, billing monitor (4), CPLEE (7), and standard terms and conditions (14-31).

2960(g) VIOLATING SECTION 17500 OF THE BUSINESS AND PROFESSIONS CODE REGARDING ADVERTISING

Penalty: Revocation stayed, 5-year probation, and standard terms and conditions (14-31).

2960(h) VIOLATION OF CONFIDENTIALITY

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, practice monitor (4), CPLEE (7), and standard terms and conditions (14-31).

2960(i) VIOLATION OF RULES OF PROFESSIONAL CONDUCT

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, depending upon the circumstances, up to 5 year probation, psychological evaluation and/or therapy if appropriate (2) and (6), CPLEE (7), and standard terms and conditions (14-31).

2960(j) GROSS NEGLIGENCE IN THE PRACTICE OF PSYCHOLOGY

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, psychological evaluation prior to resumption of practice (condition precedent) (2), practice monitor/billing monitor (4), patient population restriction (if appropriate) (5), therapy (6), CPLEE (7), and standard terms and conditions (14-31).

2960(k) VIOLATING ANY PROVISION OF THIS CHAPTER OR REGULATIONS DULY ADOPTED THEREUNDER

Refer to underlying statute or regulation.

2960(l) AIDING OR ABETTING UNLICENSED PRACTICE

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, CPLEE (7), and standard terms and conditions (14-31).

2960(m) DISCIPLINARY ACTION BY ANOTHER STATE AGAINST A LICENSE OR REGISTRATION

In evaluating the appropriate penalty, identify the comparable California statute(s) and corresponding penalty(s).

2960(n) DISHONEST, CORRUPT OR FRAUDULENT ACT

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, psychological evaluation and ongoing therapy if appropriate (2), billing monitor (4), CPLEE (7), full restitution (8), and standard terms and conditions (14-31).

2960(o); 726 ANY ACT OF SEXUAL ABUSE, OR SEXUAL RELATIONS WITH A PATIENT OR FORMER PATIENT WITHIN TWO YEARS FOLLOWING TERMINATION OF THERAPY, OR SEXUAL MISCONDUCT THAT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF A PSYCHOLOGIST OR PSYCHOLOGICAL ASSISTANT OR REGISTERED PSYCHOLOGIST.

Penalty: When a finding of sexual misconduct occurs, revocation or surrender of license/registration and/or denial of license or registration MUST be the penalty ordered by the Administrative Law Judge.

NO MINIMUM PENALTY.

NOTE: Business and Professions Code Section 2960.1 states: "Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any acts of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the Administrative Law Judge."

2960(p) FUNCTIONING OUTSIDE FIELD(S) OF COMPETENCE

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, 5-year probation, practice monitor (4), patient population restriction (5), CPLEE (7), and standard terms and conditions (14-31).

2960(q) WILLFUL FAILURE TO VERIFY AN APPLICANT'S SUPERVISED EXPERIENCE

Penalty: Revocation stayed, 5-year probation and standard terms and conditions (14-31).

2960(r) REPEATED NEGLIGENT ACTS

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, depending on the circumstances, up to 5-year probation, psychological evaluation prior to resumption of practice (condition precedent) (2), practice monitor (4), CPLEE (7), and standard terms and conditions (14-31).

III. TERMS AND CONDITIONS OF PROBATION

Terms and conditions of probation are divided into two categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions,** which must appear in all Proposed Decisions and Stipulated Settlements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-13) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (15-31).

A. OPTIONAL TERMS AND CONDITIONS

Listed below are optional conditions of probation that the Board would expect to be included in any Proposed Decision or Stipulation as appropriate.

1. Actual Suspension

As part of probation, respondent is suspended from the practice of psychology for _____ days beginning with the effective date of this Decision. During the suspension, any probation period is tolled and will not commence again until the suspension is completed.

RATIONALE: A suspension longer than 6 months is not effective, and a violation or violations warranting a longer suspension should result in revocation, not stayed.

2. Psychological Evaluation

Within ninety (90) days of the effective date of this Decision and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall sign a release that authorizes the evaluator to furnish the Board a current DSM V diagnosis and a written report regarding the respondent's judgment and/or ability to function independently as a psychologist with safety to the public, and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. The evaluation should not be disclosed to anyone not authorized by the Board or by court order.

If the Board concludes from the results of the evaluation that respondent is unable to practice independently and safely, upon written notice from the Board, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within thirty (30) days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice. The term of probation shall be extended by this period of time that he or she was ordered to cease practice.

If not otherwise ordered herein, if ongoing psychotherapy is recommended in the psychological evaluation, the Board will notify respondent in writing to submit to such therapy and to select a psychotherapist for approval by the Board or its designee within thirty (30) days of such notification. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal or other relationship with respondent; (3) not be the same person as respondent's practice or billing monitor. Frequency of psychotherapy shall be determined upon recommendation of the treating psychotherapist with approval by the Board or its designee.

Respondent shall continue psychotherapy until released by the approved psychologist and approved by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board any information the Board or its designee deems appropriate, including quarterly reports of respondent's therapeutic progress. Respondent shall furnish a copy of this Decision to the therapist. If the therapist determines that the respondent cannot continue to independently render psychological services, with safety to the public, he/she shall notify the Board immediately.

Respondent shall pay all costs associated with the psychological evaluation and ongoing psychotherapy. Failure to pay costs will be considered a violation of the probation order.

Option of Evaluation as a Condition Precedent:

In some cases, the psychological evaluation may be imposed as either a condition precedent to the continued practice of psychology, or to the issuance or reinstatement of a license, so that the respondent or petitioner is not entitled to begin or continue practice until found to be safe to do so. In such cases, the following language shall be used as the first sentence of the first paragraph of this term:

As a condition precedent to the [continued practice of psychology][issuance of a license] [reinstatement of a license], within ninety (90) days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. The term of probation shall be extended by the period of time during which respondent is not entitled to practice.

In addition, the following language shall also be used as the first sentence of the second paragraph of this term:

If the Board concludes from the results of the evaluation that [respondent][petitioner] is unable to practice independently and safely, upon written notice from the Board [respondent shall, in accordance with professional standards, appropriately refer/terminate existing patients within thirty (30) days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice][respondent or petitioner shall not be issued or have reinstated a license until a Board-appointed evaluator determines that respondent or petitioner is safe to practice].

RATIONALE: Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, respondent shall be barred from rendering psychological services under the terms of probation until he or she has undergone an

evaluation, the evaluator has recommended resumption of practice, and the Board has accepted and approved the evaluation.

3. Physical Examination

Within ninety (90) days of the effective date of this Decision, respondent shall undergo a physical examination by a physician and surgeon (physician) licensed in California and approved by the Board. Respondent shall sign a release authorizing the physician to furnish the Board a report that shall provide an assessment of respondent's physical condition and capability to safely provide psychological services to the public. If the evaluating physician determines that respondent's physical condition prevents safe practice, or that he or she can only practice with restrictions, the physician shall notify the Board, in writing, within five (5) working days.

The Board shall notify respondent in writing of the physician's determination of unfitness to practice, and shall order the respondent to cease practice or place restrictions on respondent's practice. Respondent shall comply with any order to cease practice or restriction of his or her practice, and shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within thirty (30) days. Respondent shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice, and the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice. If the evaluating physician determines it to be necessary, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the Board on a quarterly basis or as otherwise determined by the Board or its designee.

It shall be the respondent's responsibility to assure that the required quarterly progress reports are filed by the treating physician in a timely manner. Respondent shall pay all costs of such examination(s). Failure to pay these costs shall be considered a violation of probation.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment for physical problems/disabilities that could affect safe practice of psychology. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.

4. Practice Monitor/Billing Monitor/Worksite Monitor

Within ninety (90) days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a psychologist who has agreed to serve as a [practice monitor][billing monitor][worksite monitor]. The [practice monitor][billing monitor] shall (1) be a California-licensed psychologist with a clear and current license; (2) have no prior business, professional, personal or other relationship with respondent; and (3) not be the same person as respondent's therapist. The monitor's

education and experience shall be in the same field of practice as that of the respondent. The [practice monitor][billing monitor] may also serve as a worksite monitor, **if ordered for a substance-abusing licensee**, as long as he or she also meets the requirements for a worksite monitor.

Once approved, the monitor(s) shall submit to the Board or its designee a plan by which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per week of individual face to face meetings and shall continue during the entire probationary period unless modified or terminated by the Board or its designee. The respondent shall provide the [practice][billing] monitor with a copy of this Decision and access to respondent's fiscal and/or patient records. Respondent shall obtain any necessary patient releases to enable the [practice][billing] monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request. It shall be respondent's responsibility to assure that the monitor submits written reports to the Board or its designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential patients of any term or condition of probation that will affect their therapy or the confidentiality of their records (such as this condition, which requires a [practice monitor][billing monitor]). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

Add the language of the next 3 paragraphs regarding reporting by a worksite monitor if one is ordered for a substance-abusing licensee:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. All other requirements for a worksite monitor shall meet the requirements of a worksite monitor under Uniform Standards #7. Reporting by the worksite monitor to the Board shall be as follows:

> Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within forty-eight (48) hours of occurrence.
>
> The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed as applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

If the monitor(s) quit(s) or is otherwise no longer available, respondent shall notify the Board within ten (10) days and get approval from the Board for a new monitor within thirty (30) days. If no new monitor is approved within thirty (30) days, respondent shall not practice until a new monitor has been approved by the Board or its designee. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice. Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.

RATIONALE and APPLICATION OF UNIFORM STANDARD #7: Monitoring shall be utilized when respondent's ability to function independently is in doubt or when fiscal improprieties have occurred, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment. A worksite monitor may be ordered where the Uniform Standards Related to a Substance-Abusing Licensee apply, if necessary for the protection of the public.

5. Restriction of Patient Population

Respondent's practice shall be restricted to exclude patients who are _____. Within thirty (30) days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation.

RATIONALE: In cases wherein some factor of the patient population at large (e.g. age, gender, practice setting) may put a patient at risk if in therapy with the respondent, language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

6. Psychotherapy

Within ninety (90) days of the effective date of this Decision, a therapist shall be selected by the respondent for approval by the Board. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal, or other relationship with respondent; and (3) not be the same person as respondent's monitor. Respondent shall furnish a copy of this Decision to the therapist. Psychotherapy shall, at a minimum, consist of one hour per week over a period of fifty-two (52) consecutive weeks after which it may continue or terminate upon the written recommendation of the therapist with written approval by the Board or its designee. The Board or its designee may order a psychological evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board or its designee any information the Board deems appropriate, including quarterly reports of respondent's therapeutic progress. It shall be respondent's responsibility to assure that the required quarterly reports are filed by the therapist in a timely manner. If the therapist notifies the Board that the therapist believes the respondent cannot continue to safely render psychological services, upon notification from the Board respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within thirty (30) days and shall not resume practice until a Board-appointed evaluator determines that respondent is again safe to practice. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice.

If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of psychology without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the term of probation shall be extended until the Board or its designee determines that the respondent is mentally fit to resume the practice of psychology without restrictions.

Cost of psychotherapy is to be paid by the respondent.

RATIONALE: The need for psychotherapy may be determined pursuant to a psychological evaluation or as evident from the facts of the case. The frequency of psychotherapy shall be related to the offense involved and the extent to which the offense calls into question the judgment, motivation, and emotional and/or mental condition of the respondent.

7. Examination(s)

Examination for Professional Practice in Psychology (EPPP) or California Psychology Law and Ethics Examination (CPLEE) Term MUST INCLUDE either Option 1 or Option 2:

Option 1 (Condition Subsequent)

Within ninety (90) days of the effective date of the decision, respondent shall take and pass the [EPPP][CPLEE]. If respondent fails to take or fails such examination, the Board shall order respondent to cease practice and upon such order respondent shall immediately cease practice, refrain from accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within thirty (30) days and shall not resume practice until the re-examination has been successfully passed, as evidenced by written notice to respondent from the Board or its designee. The term of probation shall be extended by the period of time during which respondent's practice was ordered ceased. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination. Respondent shall pay the established examination fee(s). Reexamination after a failure shall be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

Option 2 (Condition Precedent to either continued practice, or to reinstatement of a license)

Respondent [is ordered to cease the practice of psychology][shall not be reinstated] until respondent has taken and passed the [EPPP][CPLEE]. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination(s). Respondent shall pay the established examination fee(s). Re-examination after a failure must be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

RATIONALE: In cases involving evidence of serious deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to take and pass the EPPP, the national examination for psychologists, because the Board no longer administers an examination that tests knowledge of the field, during the course of the probation period. In some instances, it may be appropriate to order that practice be ceased until the examination has been taken and passed (condition precedent). In cases involving deficiencies in knowledge of laws and ethics, the CPLEE may be ordered. Either one or both examinations may be appropriate, depending on the nature of the violation(s).

8. Restitution

Within ninety (90) days of the effective date of this Decision, respondent shall provide proof to the Board or its designee of restitution in the amount of $_____ paid to _____. Failure to pay restitution shall be considered a violation of probation. Restitution is to be paid regardless of the tolling of probation.

RATIONALE: In offenses involving economic exploitation, restitution is a necessary term of probation. For example, restitution would be a standard term in any case involving Medi-Cal or other insurance fraud. The amount of restitution shall be at a minimum the amount of money that was fraudulently obtained by the licensee. Evidence relating to the amount of restitution would have to be introduced at the Administrative hearing.

9. Clinical Diagnostic Evaluation

Within thirty (30) days of the effective date of the Decision and at any time upon order of the Board, respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

The evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, and has three (3) years' experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall not have or have ever had a financial, personal, business or other relationship with the licensee. Respondent shall cause the evaluator to submit to the Board a written clinical

diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board.

Respondent shall pay all costs associated with the clinical diagnostic evaluation. Failure to pay costs will be considered a violation of the probation order.

The following language for a cease practice order where the evaluation is ordered under the Uniform Standards Related to Substance Abusing Licensees is mandatory, and discretionary in other cases where it may be relevant:

Respondent is ordered to cease any practice of psychology, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of psychology for minimum of thirty (30) days pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, respondent shall not practice psychology until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least thirty (30) days of negative drug test results. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice. Respondent shall comply with any terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

RATIONALE and APPLICATION OF UNIFORM STANDARD #s 1, 2 and 3: This condition is to be considered in cases where the grounds for discipline involve drugs and/or alcohol, or where the Uniform Standards Related to a Substance-Abusing Licensee apply. The cease practice order pending the evaluation is mandatory where the evaluation is ordered for a substance-abusing licensee, and discretionary in other cases where ordered.

10. Alcohol and/or Drug Abuse Treatment Program

Within thirty (30) days from the effective date of the Decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent. If respondent so terminates or is expelled from the program, respondent shall be ordered by the Board to immediately cease any practice of psychology, and may not practice unless and until notified by the Board. The term of probation shall be extended by the period of time during which respondent is ordered to cease practice.

Respondent shall pay all costs associated with the program. Failure to pay costs will be considered a violation of the probation order.

However, if respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

RATIONALE and APPLICATION OF UNIFORM STANDARD # 6: This condition is to be considered in cases where the grounds for discipline involve drugs and/or alcohol, or where the Uniform Standards Related to a Substance-Abusing Licensee apply.

11. Ongoing Support Group Program

Within thirty (30) days of the effective date of the Decision, respondent shall begin and continue attendance at a support/recovery group (e.g., Twelve Step meetings or the equivalent, or a facilitated group with a psychologist trained in alcohol and drug abuse treatment) as ordered by the Board or its designee.

When determining the type and frequency of required support group meeting attendance, the Board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered for a substance-abusing licensee, add the following language regarding the facilitator:

The group facilitator shall meet the following qualifications and requirements:

a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
c. The meeting facilitator shall provide to the board a signed document showing the licensee's name, facilitator's qualifications, the group name, the date and location of

the meeting, the licensee's attendance, and the licensee's level of participation and progress.

d. The facilitator shall report any unexcused absence within twenty-four (24) hours.

RATIONALE and APPLICATION OF UNIFORM STANDARD # 5: Alcohol and/or other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by respondent has impaired respondent's ability to safely provide psychological services. This condition must be accompanied by condition #12. This term is to be considered in cases where the grounds for discipline involve drugs and/or alcohol, or where the Uniform Standards Related to a Substance-Abusing Licensee apply. If the Uniform Standards do not apply, where relevant, non-facilitated support group attendance, such as Twelve Step meetings, may be ordered instead of a facilitated group support meeting, or in addition to it.

12. Abstain from Drugs and Alcohol and Submit to Tests and Samples

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs requiring a prescription unless respondent provides the Board or its designee with documentation from the prescribing health professional that the prescription was legitimately issued and is a necessary part of the treatment of respondent.

Respondent shall abstain completely from the intake of alcohol.

Respondent shall undergo random and directed biological fluid or specimen testing as determined by the Board or its designee. Respondent shall be subject to [a minimum of fifty-two (52)] random tests [per year within the first year of probation, and a minimum of thirty-six (36) random tests per year thereafter,] for the duration of the probationary term.

Testing Frequency Schedule:

Level	Segments of Probation	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II	Year 2+	36-104 per year

After 5 years, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation.

Nothing precludes the Board from increasing the number of random tests for any reason.

Any confirmed positive finding will be considered a violation of probation. Respondent shall pay all costs associated with such testing. If respondent tests positive for a banned substance, respondent shall be ordered by the Board to immediately cease any practice of psychology, and may not practice unless and until notified by the Board. Respondent shall

make daily contact as directed by the Board to determine if he or she must submit to alcohol and/or drug testing. Respondent shall submit to his or her alcohol and/or drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Drugs - Exception for Personal Illness

Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a licensed health care professional. Respondent shall provide the Board or its designee with written documentation from the treating licensed health care professional who prescribed medication(s). The documentation shall identify the medication, dosage, number of refills, if any; the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

RATIONALE and APPLICATION OF UNIFORM STANDARD #s 4 and 8: This condition provides documentation that the probationer is substance or chemical free. It also provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. The Board will consider the following factors in making an exception to the testing frequency:

> **PREVIOUS TESTING/SOBRIETY: In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.**
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> **VIOLATION(S) OUTSIDE OF EMPLOYMENT: An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.**
>
> **SUBSTANCE USE DISORDER NOT DIAGNOSED: In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.**

The term is mandatory in cases where the Uniform Standards Related to a Substance-Abusing Licensee apply. Where the Uniform Standards do not apply, where relevant,

the respondent should be ordered to submit to random and directed testing, but need not be ordered to submit to the minimum of random tests.

13. Educational Review

Respondent shall submit to an educational review concerning the circumstances that resulted in this administrative action. The educational review shall be conducted by a board-appointed expert familiar with the case. Educational reviews are informational only and intended to benefit respondent's practice. Respondent shall pay all costs associated with this educational review.

RATIONALE: In cases involving evidence of deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to submit to an educational review during the course of the probation period.

B. STANDARD TERMS AND CONDITIONS
(To be included in ALL Proposed Decisions and Stipulations)

14. Notification to Employer

When currently employed, applying for employment or negotiating a contract, or contracted to provide psychological services, respondent shall provide to each employer~~s~~, supervisor, or contractor, or prospective employer or contractor where respondent is providing or would provide psychological services, a copy of this Decision and the Accusation or Statement of Issues before accepting or continuing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing psychological services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor, or contractor.

15. Coursework

Respondent shall take and successfully complete not less than _____ hours each year of probation in the following area(s) _____. Coursework must be pre-approved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by an approved continuing education provider. Classroom attendance is specifically required; correspondence or home study coursework

shall not count toward meeting this requirement. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within ninety (90) days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by the respondent.

16. Ethics Course

Within ninety (90) days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. This course must be in addition to any continuing education courses that may be required for license renewal. The cost associated with the law and ethics course shall be paid by the respondent.

17. Investigation/Enforcement Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $_____ within the first year of probation. Such costs shall be payable to the Board of Psychology and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than six (6) months prior to the scheduled termination of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

18. Probation Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (June 30). Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay probation monitoring costs.

19. Obey All Laws

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American

Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

20. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation. Quarterly reports attesting to non-practice status are to be submitted if probation is tolled.

Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

21. Probation Compliance

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned Board of Psychology probation monitor. Respondent shall contact the assigned probation monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) complainants associated with the case; (2) Board members or members of its staff; or (3) persons serving the Board as expert evaluators.

22. Interview with Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

23. Changes of Employment/Address

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Respondent shall notify the Board in writing, through the assigned probation monitor, of any and all changes of employment, location, and address within thirty (30) days of such change.

24. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State for any reason, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of departure and return to California. All provisions of probation other than the quarterly report requirements, restitution, cost recovery, and coursework requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the term of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of psychology while residing in California, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of cessation of practice and expected return to practice. Non-practice is defined as any period of time exceeding thirty (30) days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. All provisions of probation shall remain in effect, and the term of probation shall be extended for the period of time respondent was not engaged in the practice of psychology as required by other employment requirements of this order.

25. Employment and Supervision of Trainees

If respondent is licensed as a psychologist, he/she shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees. Any such supervisorial relationship in existence on the effective date of this Decision and Order shall be terminated by respondent and/or the Board.

26. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

27. Future Registration or Licensure

If respondent is registered as a psychological assistant or registered psychologist and subsequently obtains other psychological assistant or registered psychologist registrations or becomes licensed as a psychologist during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future registrations or licensure shall not be approved, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

28. Request for Modification

"Request" as used in this condition is a request made to the Board's designee, and not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board staff pursuant to the Uniform Standards:

a. Demonstrated sustained compliance with current recovery program.
b. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
c. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

RATIONALE *and APPLICATION OF UNIFORM STANDARD #11*: This term is a standard term for all substance abusing licensees. It applies to request for a notification of terms and conditions that are within the purview of the Board's Probation Monitor.

29. Violation of Probation

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the term of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

30. Completion of Probation

Upon successful completion of probation, respondent's license shall be fully restored.

31. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of his or her license or registration. The Board of Psychology or its designee reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within fifteen (15) calendar days, deliver respondent's pocket and/or wall certificate to the Board or its designee and respondent shall no longer practice psychology. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent reapplies for a psychology license or registration, the application shall be treated as a petition for reinstatement of a revoked license or registration.

C. STANDARD TERMS AND CONDITIONS
(To be included in ALL Stipulations for Surrender or Revocation)

32. Reinstatement and Investigation/Enforcement Cost Recovery

Respondent may not petition for reinstatement of a revoked or surrendered license/registration for three (3) years from the effective date of this Decision. If the Board grants future reinstatement, respondent agrees to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of $_____ payable to the Board upon the effective date of such reinstatement Decision.

33. Relinquish License

Respondent shall relinquish his/her wall and pocket certificate of licensure or registration to the Board or its designee once this Decision becomes effective and upon request.

IV. PROPOSED DECISIONS

A. Contents: The Board requests that Proposed Decisions include the following:

a. Specific code section(s) violated with the definition of the code(s) in the Determination of Issues.
b. Clear description of the acts or omissions which caused the violation.
c. Respondent's explanation of the violation(s) in the Findings of Fact if he/she was present at the hearing.
d. Description of all evidence of mitigation, rehabilitation and aggravation presented at the hearing.
e. Explanation of any deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the order first list any combination of the Optional Terms and Conditions (1-13) as they may pertain to the particular case followed by **all** of the Standard Terms and Conditions (14-31).

If the respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, **such inaction shall result in a default decision to revoke licensure or deny application**.

B. Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License

Disciplining of a License/Registration:

"IT IS HEREBY ORDERED that the [registration][license] issued to respondent is REVOKED. However, the order of revocation is STAYED and the [registration][license] is placed on probation for [#] years subject to the following terms and conditions":

Applicant Placed on Probation:

> "IT IS HEREBY ORDERED that the application for [licensure][registration] is GRANTED, and upon successful completion of all [licensing][registration] requirements a [license][registration] shall be issued, provided that all [licensing][registration] requirements are completed within two (2) years of the effective date of this decision. If a [license][registration] is not issued within two (2) years of the effective date of this decision, the application is ordered denied, and a new application will be required. Upon issuance, however, said [license][registration] shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the [license][registration] is placed on probation for [#] years subject to the following terms and conditions":

Reinstatement of a License:

> "The petition of [name], [Ph.D.][PsyD.], for reinstatement of licensure is hereby GRANTED. Psychologist license number [#] shall be reinstated provided that all licensing requirements are completed within two (2) years of the effective date of this decision. If the license is not reinstated within two (2) years of the effective date of this decision, the petition is ordered denied, and a new petition for reinstatement will be required. Upon reinstatement, however, the license shall be immediately revoked. However, the order of revocation shall be STAYED, and petitioner's license shall be placed on probation for a period of [#] years subject to the terms and following conditions:"

V. REHABILITATION CRITERIA FOR REINSTATEMENT/PENALTY RELIEF HEARINGS

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Denials and Reinstatements in California Code of Regulations, Title 16, section 1395; and (2) the evidence presented by the petitioner of his/her rehabilitation. The Board will not retry the original revocation or probation case.

The Board will consider, pursuant to Section 1395, the following criteria of rehabilitation:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.
(3) The time that has elapsed since commission of the act(s) of crime(s) referred to in subdivision (1) or (2).
(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
(5) Evidence, if any, of rehabilitation submitted by the applicant.

The Board requests that comprehensive information be elicited from the petitioner regarding his/her rehabilitation. The petitioner should provide details that include:

A. Why the penalty should be modified or why the license should be reinstated.
B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
C. Continuing education pertaining to the offense and its effect on his or her practice of psychology.
D. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
E. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
F. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Rehabilitation is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation for why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice psychology. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.

In the Petition Decision, the Board requests a summary of the offense and the specific codes violated that resulted in the revocation, surrender or probation of the license.

If the Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches that demonstrate rehabilitation. Petitioners for reinstatement must wait three (3) years from the effective date of their revocation decisions or one (1) year from the last petition for reinstatement decisions before filing for reinstatement.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such inaction shall result in a default decision to deny reinstatement of the license or registration or reduction of penalty.

VI. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSING LICENSEES

The following Uniform Standards describe the conditions that apply to a substance abusing applicant or licensee, and have been incorporated into the terms and conditions of probation. If the ground(s) for discipline involves drugs and/or alcohol, the applicant or licensee shall be presumed to be a substance-abusing applicant or licensee for purposes of section 315 of the Code. If the applicant or licensee does not rebut that presumption, there shall be a finding that he or she is a substance abusing applicant or licensee, and the Uniform Standards for a substance abusing applicant or licensee shall apply as written and be used in the order placing the license on probation.

Clinical Diagnostic Evaluations [Uniform Standard #1]:
(Reflected in Optional Term # 9)

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall be approved by the Board, and unless permitted by the Board or its designee, shall be a California-licensed psychologist or physician and surgeon. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Whether the clinical diagnostic evaluation is ordered is discretionary.

Clinical Diagnostic Evaluation/Cease Practice Order [Uniform Standard #2]:
(Reflected in Optional Term # 9)

Unless the presumption that the applicant or licensee is a substance-abusing applicant or licensee is rebutted, and the public can be adequately protected, the Board shall order the applicant or licensee to cease any practice of psychology pending the clinical diagnostic evaluation and a Board determination upon review of the diagnostic evaluation report that the applicant is safe to begin or the licensee is safe to return to practice.

If the evaluation is ordered, a cease practice order is mandatory.

Clinical Diagnostic Evaluation Report [Uniform Standard #3]:
(Reflected in Optional Term # 9)

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have or have ever had a financial, personal, business or other relationship with the licensee. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days.
The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or

recommendations should be imposed on the licensee based on the application of the following criteria:

> License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

If the evaluation is ordered, this standard is mandatory.

Communication with Employer [Uniform Standard # 4]:
(Reflected in Standard Term # 14)

If the licensee whose license is on probation has an employer, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

Facilitated Group Support Meetings [Uniform Standard #5]:
(Reflected in Optional Term # 11)

If the Board requires a licensee to participate in facilitated group support meetings, the following shall apply:

1. When determining the frequency of required group meeting attendance, the Board shall give consideration to the following:

   - the licensee's history;
   - the documented length of sobriety/time that has elapsed since substance use;
   - the recommendation of the clinical evaluator;
   - the scope and pattern of use;
   - the licensee's treatment history; and,
   - the nature, duration, and severity of substance abuse.

2. Group Meeting Facilitator Qualifications and Requirements:

   a. The meeting facilitator must have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by

the State or other nationally certified organizations.

b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years.
c. The meeting facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
d. The meeting facilitator shall report any unexcused absence within twenty-four (24) hours.

Whether facilitated support group meetings are ordered is discretionary. (Under the Disciplinary Guidelines, non-facilitated support group attendance, such as Twelve Step meetings, may also be ordered.)

Treatment Program – Inpatient, Outpatient, or Other [Uniform Standard #6]
(Reflected in Optional Term # 10)

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation (if any) pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

Whether a treatment program is ordered is discretionary.

Worksite Monitor Requirements [Uniform Standard # 7]:
(Reflected in Optional Term # 4)

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.

If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

(1) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.
(2) Interview other staff in the office regarding the licensee's behavior, if applicable.
(3) Review the licensee's work attendance and behavior.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within forty-eight (48) hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

Whether a worksite monitor is ordered is discretionary.

Major and Minor Violations [Uniform Standard # 8]:
(Reflected in Optional Term #s 10, 11, 13)

If a licensee commits a major violation, the Board may order the licensee to cease any practice of psychology, inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

DISCIPLINARY GUIDELINES

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused absence from required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate.

The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;

5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

DRUG TESTING STANDARDS [Uniform Standard # 9]:
(Reflected in Optional Term #12)

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice of psychology, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also notify the licensee's employer and worksite monitor, if any, that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or who has committed any Major Violation referenced in the Disciplinary Guidelines, the matter shall be referred for disciplinary action to revoke the probation.

The following minimum drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly alcohol or drug tested at least fifty-two (52) times per year for the first year of probation, and at any time as directed by the Board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least thirty-six (36) times per year, and at any time as directed by the Board.
2. Alcohol or drug testing may be required on any day, including weekends and holidays.
3. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.
4. Licensees shall be alcohol or drug tested on the date of notification as directed by the Board.
5. Collection of specimens shall be observed.
6. Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the Board.

The Board may reduce testing frequency to a minimum of 12 times per year for any licensee who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the licensee returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

Drug testing standards are mandatory and shall apply to a substance-abusing licensee, and the required testing frequency shall be ordered.

Petitioning for Modification to Return to Full Time Practice [Uniform Standard #10]:
(Reflected in Optional Term # 28)

"Petition" as used in this standard is an informal request for any term or condition *that is within the discretion of the Executive Officer or probation monitor to modify* as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

Petitioning for Modification for Reinstatement of a Full and Unrestricted License [Uniform Standard #11]:
(Reflected in Rehabilitation Criteria for Reinstatement/Penalty Relief)

"Petition for Reinstatement of a Full and Unrestricted License" as used in this standard can only be considered as a formal Petition for Early Termination of Probation under the Administrative Procedure Act.

In addition to the factors set out in section V, Rehabilitation Criteria for Reinstatement/ Penalty Relief Hearings, the licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

# # # # #

Section 3.04 of the Ethical Principles of Psychologists and Code of Conduct, starting on the following page, has been amended effective January 1, 2017. This page reflects the amended language.

REVISION OF ETHICS CODE STANDARD 3.04

Ethics code standard 3.04 (Avoiding harm) has been revised to include subsection (b):

STANDARD 3.04 AVOIDING HARM

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(A).

AMERICAN PSYCHOLOGICAL ASSOCIATION

ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

Adopted August 21, 2002
Effective June 1, 2003

With the 2010 Amendments
Adopted February 20, 2010
Effective June 1, 2010

ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

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2010 AMENDMENTS TO THE 2002 "ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT"

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ETHICS CODE PRINCIPLES

INTRODUCTION AND APPLICABILITY

The American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the Ethics Code) consists of an Introduction, a Preamble, five General Principles (A–E), and specific Ethical Standards. The Introduction discusses the intent, organization, procedural considerations, and scope of application of the Ethics Code. The Preamble and General Principles are aspirational goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action. The Ethical Standards set forth enforceable rules for conduct as psychologists. Most of the Ethical Standards are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive. The fact that a given conduct is not specifically addressed by an Ethical Standard does not mean that it is necessarily either ethical or unethical.

This Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists. Areas covered include but are not limited to the clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design and evaluation; and administration. This Ethics Code applies to these activities across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions. These activities shall be distinguished from the purely private conduct of psychologists, which is not within the purview of the Ethics Code.

Membership in the APA commits members and student affiliates to comply with the standards of the APA Ethics Code and to the rules and procedures used to enforce them. Lack of awareness or misunderstanding of an Ethical Standard is not itself a defense to a charge of unethical conduct.

The procedures for filing, investigating, and resolving complaints of unethical conduct are described in the current Rules and Procedures of the APA Ethics Committee. APA may impose sanctions on its members for violations of the standards of the Ethics Code, including termination of APA membership, and may notify other bodies and individuals of its actions. Actions that violate the standards of the Ethics Code may also lead to the imposition of sanctions on psychologists or students whether or not they are APA members by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services. In addition, APA may take action against a member after his or her conviction of a felony, expulsion or suspension from an affiliated state psychological association, or suspension or loss of licensure. When the sanction to be imposed by APA is less than expulsion, the 2001 Rules and Procedures do not guarantee an opportunity for an in-person hearing, but generally provide that complaints will be resolved only on the basis of a submitted record.

The Ethics Code is intended to provide guidance for psychologists and standards of professional conduct that can be applied by the APA and by other bodies that choose to adopt them. The Ethics Code is not intended to be a basis of civil liability. Whether a psychologist has violated the Ethics Code standards does not by itself determine whether the psychologist is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur.

The modifiers used in some of the standards of this Ethics Code (e.g., *reasonably, appropriate, potentially*) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term *reasonable* means the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.

The American Psychological Association's Council of Representatives adopted this version of the APA Ethics Code during its meeting on August 21, 2002. The Code became effective on June 1, 2003. The Council of Representatives amended this version of the Ethics Code on February 20, 2010. The amendments became effective on June 1, 2010 (see p. 15 of this pamphlet). Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Director, Office of Ethics, American Psychological Association, 750 First Street, NE, Washington, DC 20002-4242. The Ethics Code and information regarding the Code can be found on the APA website, http://www.apa.org/ethics. The standards in this Ethics Code will be used to adjudicate complaints brought concerning alleged conduct occurring on or after the effective date. Complaints will be adjudicated on the basis of the version of the Ethics Code that was in effect at the time the conduct occurred.

The APA has previously published its Ethics Code as follows:

American Psychological Association. (1953). *Ethical standards of psychologists.* Washington, DC: Author.
American Psychological Association. (1959). Ethical standards of psychologists. *American Psychologist, 14,* 279–282.
American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist, 18,* 56–60.
American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist, 23,* 357–361.
American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor,* 22–23.
American Psychological Association. (1979). *Ethical standards of psychologists.* Washington, DC: Author.
American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist, 36,* 633–638.
American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist, 45,* 390–395.
American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist, 47,* 1597–1611.
American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57,* 1060-1073.

Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First Street, NE, Washington, DC 20002-4242, or phone (202) 336-5510.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

PREAMBLE

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students, and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues; and to consult with others concerning ethical problems.

GENERAL PRINCIPLES

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

Principle A: Beneficence and Nonmaleficence

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

Principle B: Fidelity and Responsibility

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

Principle C: Integrity

Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.

Principle D: Justice

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of

their competence, and the limitations of their expertise do not lead to or condone unjust practices.

Principle E: Respect for People's Rights and Dignity

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

ETHICAL STANDARDS

1. Resolving Ethical Issues

1.01 Misuse of Psychologists' Work

If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.04 Informal Resolution of Ethical Violations

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority, and 1.03, Conflicts Between Ethics and Organizational Demands.)

1.05 Reporting Ethical Violations

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations, or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority.)

1.06 Cooperating With Ethics Committees

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they address any confidentiality issues. Failure to cooperate is itself an ethics violation. However, making a request for deferment of adjudication of an ethics complaint pending the outcome of litigation does not alone constitute noncooperation.

1.07 Improper Complaints

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

1.08 Unfair Discrimination Against Complainants and Respondents

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

2. Competence

2.01 Boundaries of Competence

(a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies.

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

(f) When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

2.02 Providing Services in Emergencies

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

2.03 Maintaining Competence

Psychologists undertake ongoing efforts to develop and maintain their competence.

2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence, and 10.01b, Informed Consent to Therapy.)

2.05 Delegation of Work to Others

Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards 2.02, Providing Services in Emergencies; 3.05, Multiple Relationships; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.02, Use of Assessments; 9.03, Informed Consent in Assessments; and 9.07, Assessment by Unqualified Persons.)

2.06 Personal Problems and Conflicts

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy.)

3. <u>Human Relations</u>

3.01 Unfair Discrimination

In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

3.02 Sexual Harassment

Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard 1.08, Unfair Discrimination Against Complainants and Respondents.)

3.03 Other Harassment

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national

origin, religion, sexual orientation, disability, language, or socioeconomic status.

3.04 Avoiding Harm

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm, and 3.07, Third-Party Requests for Services.)

3.06 Conflict of Interest

Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

3.07 Third-Party Requests for Services

When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards 3.05, Multiple Relationships, and 4.02, Discussing the Limits of Confidentiality.)

3.08 Exploitative Relationships

Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as clients/patients, students, supervisees, research participants, and employees. (See also Standards 3.05, Multiple Relationships; 6.04, Fees and Financial Arrangements; 6.05, Barter With Clients/Patients; 7.07, Sexual Relationships With Students and Supervisees; 10.05, Sexual Intimacies With Current Therapy Clients/Patients; 10.06, Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients; 10.07, Therapy With Former Sexual Partners; and 10.08, Sexual Intimacies With Former Therapy Clients/Patients.)

3.09 Cooperation With Other Professionals

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard 4.05, Disclosures.)

3.10 Informed Consent

(a) When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02,

Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

3.11 Psychological Services Delivered to or Through Organizations

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

3.12 Interruption of Psychological Services

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations. (See also Standard 6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work.)

4. Privacy and Confidentiality

4.01 Maintaining Confidentiality

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others.)

4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent.)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

4.03 Recording

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing With Informed Consent for Research; and 8.07, Deception in Research.)

4.04 Minimizing Intrusions on Privacy

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

4.05 Disclosures

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements.)

4.06 Consultations

When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 4.01, Maintaining Confidentiality.)

4.07 Use of Confidential Information for Didactic or Other Purposes

Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients, or other recipi-

ents of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

5. Advertising and Other Public Statements

5.01 Avoidance of False or Deceptive Statements

(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations, and published materials. Psychologists do not knowingly make public statements that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.

(b) Psychologists do not make false, deceptive, or fraudulent statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings.

(c) Psychologists claim degrees as credentials for their health services only if those degrees (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

5.02 Statements by Others

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item. (See also Standard 1.01, Misuse of Psychologists' Work.)

(c) A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

5.03 Descriptions of Workshops and Non-Degree-Granting Educational Programs

To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

5.04 Media Presentations

When psychologists provide public advice or comment via print, Internet, or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

5.05 Testimonials

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

5.06 In-Person Solicitation

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

6. Record Keeping and Fees

6.01 Documentation of Professional and Scientific Work and Maintenance of Records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.)

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality, and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records.)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services, and 10.09, Interruption of Therapy.)

6.03 Withholding Records for Nonpayment

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

6.04 Fees and Financial Arrangements

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy, and 10.10, Terminating Therapy.)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures; 6.03, Withholding Records for Nonpayment; and 10.01, Informed Consent to Therapy.)

6.05 Barter With Clients/Patients

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships, and 6.04, Fees and Financial Arrangements.)

6.06 Accuracy in Reports to Payors and Funding Sources

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality; 4.04, Minimizing Intrusions on Privacy; and 4.05, Disclosures.)

6.07 Referrals and Fees

When psychologists pay, receive payment from, or divide fees with another professional, other than in an employer–employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative, or other) and is not based on the referral itself. (See also Standard 3.09, Cooperation With Other Professionals.)

7. Education and Training

7.01 Design of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification, or other goals for which claims are made by the program. (See also Standard 5.03, Descriptions of Workshops and Non-Degree-Granting Educational Programs.)

7.02 Descriptions of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects, or community service), training goals and objectives, stipends and benefits, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

7.03 Accuracy in Teaching

(a) Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress, and the nature of course experiences. This standard does not preclude an instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements. (See also Standard 5.01, Avoidance of False or Deceptive Statements.)

(b) When engaged in teaching or training, psychologists present psychological information accurately. (See also Standard 2.03, Maintaining Competence.)

7.04 Student Disclosure of Personal Information

Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding sexual history, history of abuse and neglect, psychological treatment, and relationships with parents, peers, and spouses or significant others except if (1) the program or training facility has clearly identified this requirement in its admissions and program materials or (2) the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally related activities in a competent manner or posing a threat to the students or others.

7.05 Mandatory Individual or Group Therapy

(a) When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program. (See also Standard 7.02, Descriptions of Education and Training Programs.)

(b) Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy. (See also Standard 3.05, Multiple Relationships.)

7.06 Assessing Student and Supervisee Performance

(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

7.07 Sexual Relationships With Students and Supervisees

Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority. (See also Standard 3.05, Multiple Relationships.)

8. Research and Publication

8.01 Institutional Approval

When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

8.02 Informed Consent to Research

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing With Informed Consent for Research; and 8.07, Deception in Research.)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard 8.02a, Informed Consent to Research.)

8.03 Informed Consent for Recording Voices and Images in Research

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard 8.07, Deception in Research.)

8.04 Client/Patient, Student, and Subordinate Research Participants

(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

8.05 Dispensing With Informed Consent for Research

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

8.06 Offering Inducements for Research Participation

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 6.05, Barter With Clients/Patients.)

8.07 Deception in Research

(a) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard 8.08, Debriefing.)

8.08 Debriefing

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(c) When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

8.09 Humane Care and Use of Animals in Research

(a) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.

(b) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(c) Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role. (See also Standard 2.05, Delegation of Work to Others.)

(d) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(e) Psychologists use a procedure subjecting animals to pain, stress, or privation only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(f) Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

(g) When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

8.10 Reporting Research Results

(a) Psychologists do not fabricate data. (See also Standard 5.01a, Avoidance of False or Deceptive Statements.)

(b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

8.11 Plagiarism

Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

8.12 Publication Credit

(a) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have substantially contributed. (See also Standard 8.12b, Publication Credit.)

(b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

(c) Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate. (See also Standard 8.12b, Publication Credit.)

8.13 Duplicate Publication of Data

Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

8.14 Sharing Research Data for Verification

(a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

(b) Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

8.15 Reviewers

Psychologists who review material submitted for presentation, publication, grant, or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

9. Assessment

9.01 Bases for Assessments

(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

9.03 Informed Consent in Assessments

(a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional, or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained. (See also Standards 2.05, Delegation of Work to Others; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.06, Interpreting Assessment Results; and 9.07, Assessment by Unqualified Persons.)

9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security.)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence, and 3.01, Unfair Discrimination.)

9.07 Assessment by Unqualified Persons

Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision. (See also Standard 2.05, Delegation of Work to Others.)

9.08 Obsolete Tests and Outdated Test Results

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

9.09 Test Scoring and Interpretation Services

(a) Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations. (See also Standard 2.01b and c, Boundaries of Competence.)

(c) Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

9.10 Explaining Assessment Results

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

9.11 Maintaining Test Security

The term *test materials* refers to manuals, instruments, protocols, and test questions or stimuli and does not include *test data* as defined in Standard 9.04, Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

10. Therapy

10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent, psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards 4.02, Discussing the Limits of Confidentiality, and 6.04, Fees and Financial Arrangements.)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation. (See also Standards 2.01e, Boundaries of Competence, and 3.10, Informed Consent.)

(c) When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

10.02 Therapy Involving Couples or Families

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained. (See also Standard 4.02, Discussing the Limits of Confidentiality.)

(b) If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such

as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately. (See also Standard 3.05c, Multiple Relationships.)

10.03 Group Therapy

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

10.04 Providing Therapy to Those Served by Others

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

10.05 Sexual Intimacies With Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

10.06 Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

10.07 Therapy With Former Sexual Partners

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

10.08 Sexual Intimacies With Former Therapy Clients/Patients

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

10.09 Interruption of Therapy

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard 3.12, Interruption of Psychological Services.)

10.10 Terminating Therapy

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

2010 AMENDMENTS TO THE 2002 "ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT"

The American Psychological Association's Council of Representatives adopted the following amendments to the 2002 "Ethical Principles of Psychologists and Code of Conduct" at its February 2010 meeting. Changes are indicated by underlining for additions and striking through for deletions. A history of amending the Ethics Code is provided in the "Report of the Ethics Committee, 2009" in the July-August 2010 issue of the *American Psychologist* (Vol. 65, No. 5).

Original Language With Changes Marked

Introduction and Applicability

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner~~. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority~~ in keeping with basic principles of human rights.

1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.~~ Under no circumstances may this standard be used to justify or defend violating human rights.

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and ~~to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code.~~ take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

NOTES

Ethical Principles &
Code of Conduct

AMERICAN
PSYCHOLOGICAL
ASSOCIATION
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Inducing commission of violations, H&S §§11353, 11354, 11356.5.
Public parks, sales or distributions in, H&S §11353.7.
Punishment of adults for specified violations, H&S §§11353.1, 11371.
Schools or playgrounds, sales or distributions on, H&S §§11353.1, 11353.5, 11353.6.
Misdemeanor offenses.
Punishment where not otherwise specified, H&S §11374.
Money or negotiable instruments.
Obtained from transaction, possession of, H&S §11370.6.
Possession with intent to make purchase, H&S §11370.6.
Transactions involving proceeds, H&S §11370.9.
Mushrooms, criminal offenses involving, H&S §§11390 to 11392.
Narcotics offenses, H&S §§11350 to 11356.5.
Conspiracy enhancements, H&S §§11370.2, 11370.4.
Definition of narcotics and opiates, H&S §§11019, 11020.
Felony offense, definition of, H&S §11356.
Fine in addition to imprisonment, H&S §11372.
Inducement of another's violation, H&S §§11353, 11354, 11356.5.
Opening or maintaining place for narcotics trafficking, H&S §11366.
Possession and possession for sale, H&S §§11350, 11351.
Presence in place where substance used, H&S §11365.
Sale, transportation, or administration, unlawful, H&S §§11352, 11355.
Trafficking, providing place for, H&S §11366.5.
Overdoses.
Seeking medical assistance for another.
Immunity from arrest or prosecution, H&S §11376.5.
Parenting programs, required attendance for substance abuse offenders, H&S §11376.

CONTROLLED SUBSTANCES —Cont'd
Parks, sales or distributions to children in, H&S §11353.7.
Peyote, unlawful planting, harvesting, or processing, H&S §11363.
Pharmacists.
Definitions, H&S §§11023, 11024.
Recordkeeping requirements, H&S §§11205 to 11209.
Phencyclidine (PCP).
Inducement of another's violation, additional punishment, H&S §11356.5.
Possession with intent sell precursors for manufacture, H&S §11383.6.
Precursors of, restrictions on, H&S §§11383, 11384.
Sentence enhancements, H&S §§11379.9, 11380.1.
Possession and possession for sale.
Firearm possession, H&S §11370.1.
Narcotics, H&S §§11350, 11351.
Restricted dangerous drugs, H&S §§11375, 11377 to 11382.5.
Synthetic stimulants and derivatives, H&S §11375.5.
Probation.
Community service or fine as condition, H&S §11350.
Educational program as condition, H&S §11373.
Ineligibility, H&S §11370.
Protective custody, taking person under the influence into, Pen §647.
Repeat offenders, H&S §§11370, 11370.2.
Reports and records, H&S §§11100 to 11107.1.
Discrepancy between quantity shipped and quantity received, H&S §11103.
Failure to submit report or submission of false report, H&S §§11100, 11100.05, 11105.
False statements in records, punishment, H&S §11105.
Forms for reports, H&S §11101.
Out-of-state substances, reports of receipts of, H&S §11100.1.
Persons required to submit reports, H&S §11100.

CONTROLLED SUBSTANCES —Cont'd
Reports and records —Cont'd
Pharmacists' records, H&S §§11195, 11205 to 11209.
Prescribers other than pharmacists, transaction records, H&S §§11190 to 11192.
Prescription books and files, retention of, H&S §11179.
Punishment for reporting violations, H&S §11371.
Sales reports by manufacturers and wholesalers, H&S §11252.
Theft or loss of substance, reporting of, H&S §11103.
Restricted dangerous drug offenses, H&S §§11377 to 11382.5.
Felony offense, definition of, H&S §11381.
Inducing violation by minor, H&S §11380.
Manufacture by chemical extraction or synthesis, H&S §11379.6.
Minor, employment of or sales to, punishment, H&S §11380.
Possession and possession for sale, H&S §§11375, 11377 to 11382.5.
Sale, transportation, or distribution, unlawful, H&S §§11379, 11379.5, 11382.
Sentence enhancement based on amount of substance involved, H&S §11379.8.
Sales.
Identifying mark of manufacturer, H&S §11382.5.
Laboratory appliances, requirements for sales, H&S §§11107, 11107.1.
Manufacturers or wholesalers, furnishing substances for unlawful use, H&S §11104.
Narcotics, H&S §§11352, 11355.
Paraphernalia for drug preparation, H&S §11366.7.
Prescriptions, sales without, H&S §§11250 to 11256.
Public parks, sales in, H&S §11353.7.
Restricted dangerous drugs, H&S §§11379, 11379.2, 11379.5, 11382.
Schools or playgrounds, sales on, H&S §§11353.1, 11353.5, 11353.6.
Schedules, H&S §§11053 to 11058.
Seizure and forfeiture.
Drug paraphernalia, H&S §11364.7.

CONTROLLED SUBSTANCES —Cont'd
Standards and schedules, H&S §§11053 to 11058.
Schedule II, H&S §11055.
Steroids, H&S §11056.
Synthetic stimulants and derivatives.
Distribution or sale, H&S §11375.5.
Transportation.
Narcotics, H&S §§11352, 11355.
Restricted dangerous drugs, H&S §§11379, 11379.5, 11382.
Unlawful dispensation, H&S §11352.1.
Veterinarians.
Definition, H&S §11024.
Prescriptions by, H&S §§11240, 11241.

CONVICTIONS.
Reports to board.
Failure to make.
Unprofessional conduct, 16 CCR §1397.2.

COOPERATION.
Ethical standards, Ethics 3.09.

CORPORATIONS.
Applicability of law, professional corporations, Corp §13403.
Practice of psychology, B&P §2907.
Professional corporations, Corp §§13400 to 13410.
See PROFESSIONAL CORPORATIONS.
Psychological corporations, B&P §§2995 to 2999.
See PSYCHOLOGICAL CORPORATIONS.

CORRUPTION.
Denial, suspension or revocation of licenses, B&P §2960, DiscipPenGuide 2960(n).

COSTS AND EXPENSES.
Patient access to medical records, enforcement actions, H&S §123120.
Probation terms and conditions.
Investigation and enforcement, DiscipProbation 17.
Probation, DiscipProbation 18.
Reinstatement of licenses, DiscipProbation 32.

COUGH SYRUP.
Dextromethorphan, nonprescription drugs containing.
Minors, supplying, giving, etc dextromethorphan to minor without prescription, H&S §11110.
Age-verification reminders for cashiers, H&S §11111.

COUNSELORS.
See PROFESSIONAL CLINICAL COUNSELORS.

COUNTIES.
Medical cannabis/marijuana program.
Cultivation, licenses and permits, H&S §11362.777.

COURSEWORK.
Probation terms and conditions, DiscipProbation 15.

CRIMES AND OFFENSES.
Administration of drugs, excessive, B&P §725.
Child abuse or neglect, reports.
Confidentiality of information, violations, Pen §11167.5.
Failure to report, Pen §11166.
Communicable diseases, exposure notification, noncompliance, H&S §120263.
Denial, suspension or revocation of licenses, B&P §§490, 2960, 2963, DiscipPenGuide 2960(a).
Evidence of, B&P §493.
Felonies, B&P §2966.
Hearings, B&P §2966.
Incarceration, B&P §2966.
805 reports, B&P §805.5.
Elder and dependent adult abuse, failure to report, W&I §15630.
HIV/AIDS, blood tests, unauthorized disclosure, H&S §120980.
Lewd or lascivious acts, Pen §288.
Licenses, crimes and offenses regarding, B&P §119.
Mandated reporters of child abuse or neglect.
Failure to report, Pen §11166.
Mandated reporters of elder or dependent adult abuse.
Punishment for failure to report, W&I §15630.

CRIMES AND OFFENSES —Cont'd
Personal injuries, reports, Pen §11162.
Prescription drugs, excessive use of, B&P §725.
Psychotherapist-patient privilege, exception, Evid §1018.
Registration of sex offenders, Pen §290.
Reports.
Charges against licensees, B&P §803.5.
Felony preliminary hearing transcripts, B&P §803.6.
Probation reports, B&P §803.6.
Sexual exploitation, B&P §729.
Unlawful sexual intercourse with person under 18, Pen §261.5.
Unprofessional conduct, B&P §731.
Violations, B&P §2970.

CRIMINAL HISTORY RECORD CHECKS.
Child abuse.
Child death review teams, release of information to, Pen §11174.32.
Controlled substances.
Prescription blanks.
Security printers, H&S §11161.5.
Law enforcement officers.
Fingerprinted for purpose of criminal record search, Gov §1031.
Licensees, B&P §144.
Investigations, B&P §144.5.

CRIMINAL INTENT.
Controlled substance, intent to manufacture, H&S §11104.5.

D

DAMAGES.
Medical records, abandonment, H&S §123145.

DANGEROUS PERSONS.
Involuntary treatment, W&I §5150.
Psychotherapist-patient privilege, exception, Evid §1024.

DEATH.
Interagency child death review teams.
Autopsy protocol, Pen §11174.32.
Confidentiality of information, Pen §11174.32.
Protocols, Pen §11174.33.

DEATH —Cont'd
Interagency child death review teams —Cont'd
Recommendations, Pen §11174.32.
Reports, Pen §11174.32.
Psychotherapist-patient privilege, exception for deceased patients, Evid §1018.

DECEPTION.
Research, ethical standards, Ethics 8.07.

DECLARATORY DECISIONS, Gov §§11465.10 to 11465.70.
Agency action, Gov §11465.50.
Applicability of law, Gov §11465.40.
Applications, Gov §11465.20.
Authority, Gov §11465.10.
Board of psychology, 16 CCR §1380.7.
Contents, Gov §11465.60.
Effect, Gov §11465.60.
Issuance, Gov §11465.20.
Model regulations, Gov §11465.70.
Notice, Gov §11465.30.

DEFINED TERMS.
Abandonment.
Elder and dependent adult abuse, W&I §15610.05.
Abduction.
Elder and dependent adult abuse, W&I §15610.06.
Abuse of an elder or dependent adult.
Elder and dependent adult abuse, W&I §15610.07.
Abuse or neglect in out-of-home care.
Child abuse or neglect, Pen §11165.5.
Accreditation agency.
Continuing education, 16 CCR §1397.60.
Accredited.
Psychologists, B&P §2902.
Adult.
Unlawful sexual intercourse with person under 18, Pen §261.5.
Agency.
Reports, B&P §805.
Alcohol and drug abuse counselor.
Unprofessional conduct, B&P §729.
Alcohol and drug abuse records.
Patient access to medical records, H&S §123105.
Alcohol and drug counselor.
Child abuse or neglect, Pen §11165.7.

DEFINED TERMS —Cont'd
Animal control officer.
Child abuse or neglect, Pen §11165.7.
Any other person.
Child abuse or neglect, Pen §11166.
Apparatus.
Controlled substances, sales of laboratory equipment, H&S §11107.
Applicant.
Licenses, B&P §144.
Application.
Licenses, B&P §478.
Approved.
Psychologists, B&P §2902.
Assaultive or abusive conduct.
Crimes and offenses, Pen §11160.
Assessment.
Court-ordered child custody evaluation, CRC 5.220.
Asynchronous store and forward.
Health care providers, B&P §2290.5.
Attending health care professional.
Mental illness or competency, W&I §8100.
Attending physician.
Medical cannabis/marijuana program, H&S §11362.7.
Attending physician of the source patient.
Communicable diseases, H&S §120261.
Available blood or patient sample.
Communicable diseases, H&S §120261.
Best interest of child.
Court-ordered child custody evaluation, CRC 5.220.
Board.
Board of psychology, 16 CCR §1380.3.
Licenses, B&P §§118, 477, 494, 901.
Psychologists, B&P §2902.
Reports, B&P §683.
Board and care facilities.
Lewd or lascivious acts, Pen §288.
Board official.
Psychologists, 16 CCR §1397.50.
Board within the department of consumer affairs.
Advertising, B&P §17506.5.
Bodily harm.
Lewd or lascivious acts, Pen §288.
Care custodian.
Elder and dependent adult abuse, W&I §15610.17.
Caretaker.
Lewd or lascivious acts, Pen §288.

DEFINED TERMS —Cont'd
Certified list.
Licenses, B&P §494.5.
Certifying physician.
Communicable diseases, H&S §120261.
Change of location.
Private postsecondary educational institutions, Ed §94823.5.
Chemical reagent.
Controlled substances, sales of laboratory equipment, H&S §11107.
Chemical solvent.
Controlled substances, sales of laboratory equipment, H&S §11107.
Child.
Child abuse or neglect, Pen §11165.
Child abuse or neglect, Pen §11165.6.
Child custody evaluation.
Court-ordered child custody evaluation, CRC 5.220.
Child custody evaluators.
Court-ordered child custody evaluation, CRC 5.220.
Child visitation monitor.
Child abuse or neglect, Pen §11165.7.
Child welfare services.
Involuntary treatment, W&I §5328.
Clergy member.
Child abuse or neglect, Pen §11165.7.
Clinic.
Crimes and offenses, Pen §11162.5.
Code.
Board of psychology, 16 CCR §1380.3.
Commercial computer technician.
Child abuse or neglect, Pen §§11165.7, 11166.
Commercial film and photographic print or image processor.
Child abuse or neglect, Pen §11165.7.
Commercial sexual exploitation.
Child abuse and neglect, Pen §11165.1.
Communicable disease, H&S §120261.
Conference.
Continuing education, 16 CCR §1397.60.
Confidential communication between patient and psychotherapist.
Privileged communications, Evid §1012.
Continuing education, 16 CCR §1397.60.
Contractor, B&P §702.

DEFINED TERMS —Cont'd
Controlled substance.
Controlled Substance Utilization Review and Evaluation System, H&S §11165.5.
Counseling.
Children and minors, Fam §6929.
Course.
Continuing education, 16 CCR §1397.60.
Danger to self.
Mental illness or competency, W&I §8100.
Day care center.
Marijuana restrictions, H&S §11362.3.
Deadly weapon.
Mental illness or competency, W&I §8100.
Denial or termination of staff privileges, membership, or employment.
Reports, B&P §805.
Dependent adult.
Elder and dependent adult abuse, W&I §§15610.23, 15630.
Dependent person.
Lewd or lascivious acts, Pen §288.
Designated officer.
Involuntary treatment, W&I §5328.
Director.
Licenses, B&P §900.
Discharge.
Mental illness or competency, W&I §8100.
Disclosed.
HIV/AIDS, H&S §120980.
Disorderly conduct, Pen §647.
Disqualified person.
Professional corporations, Corp §13401.
Distant site.
Health care providers, B&P §2290.5.
Drug, H&S §11014.
Drug or alcohol.
Children and minors, Fam §6929.
Drug stores.
Controlled substances, reporting, H&S §11100.
805 report.
Reports, B&P §805.
Elder.
Elder and dependent adult abuse, W&I §15610.27.
Electronic medium.
Child abuse or neglect, Pen §11166.

DEFINED TERMS —Cont'd
Emergency response employee.
Involuntary treatment, W&I §5328.
Evaluation.
Court-ordered child custody evaluation, CRC 5.220.
Exposed individual.
Communicable diseases, H&S §120261.
Facility.
Involuntary treatment, W&I §5328.
Fee.
Psychologists, B&P §2903.
Financial abuse.
Elder and dependent adult abuse, W&I §15610.30.
First responder.
Communicable diseases, H&S §120261.
Foreign professional corporation.
Professional corporations, Corp §13401.
Full evaluation, investigation or assessment.
Court-ordered child custody evaluation, CRC 5.220.
Fully executed.
Inspection of records, Gov §6254.
General merchandise store.
Controlled substances, reporting, H&S §11100.
General neglect.
Child abuse or neglect, Pen §11165.2.
Grand rounds.
Continuing education, 16 CCR §1397.60.
Gravely disabled.
Involuntary treatment, W&I §5250.
Grocery store.
Controlled substances, reporting, H&S §11100.
Health care facility.
Denial, suspension or revocation of licenses, B&P §2969.
Health care practitioner, B&P §680.
Licenses, B&P §§900, 901.
Health care provider, B&P §2290.5.
Communicable diseases, H&S §120261.
Patient access to medical records, H&S §123105.
Health care service plans.
Controlled Substance Utilization Review and Evaluation System, H&S §11165.5.
Health facility.
Crimes and offenses, Pen §11162.5.
Health practitioner.
Crimes and offenses, Pen §11162.5.

DEFINED TERMS —Cont'd
Health practitioner —Cont'd
Elder and dependent adult abuse, W&I §15610.37.
Holder of the privilege.
Privileged communications, Evid §1013.
Hospital scan team.
Child abuse or neglect, Pen §11167.5.
Humane society officer.
Child abuse or neglect, Pen §11165.7.
Identification card.
Medical cannabis/marijuana program, H&S §11362.7.
Inconclusive report.
Child abuse or neglect, Pen §11165.12.
Independent learning.
Continuing education, 16 CCR §1397.60.
Industrial hemp, H&S §11018.5.
Injury.
Crimes and offenses, Pen §11160.
In-service training program.
Continuing education, 16 CCR §1397.60.
Insurer.
Controlled Substance Utilization Review and Evaluation System, H&S §11165.5.
Intimate body part.
Disorderly conduct, Pen §647.
Intimate part.
Unprofessional conduct, B&P §§728, 729.
Investigations.
Court-ordered child custody evaluation, CRC 5.220.
LAAM.
Children and minors, Fam §6929.
Laboratory glassware.
Controlled substances, sales of laboratory equipment, H&S §11107.
License.
Denial of license, B&P §477.
Discipline of licensees, B&P §§118, 477.
Certified list of tax delinquents, licensee on list, B&P §494.5.
Conviction relating to qualifications, B&P §493.
Misdemeanors relating to use of licenses, B&P §119.
Practice while renewal pending, B&P §121.

DEFINED TERMS —Cont'd
License —Cont'd
Withdrawal of application, B&P §118.
Licensed person.
Professional corporations, Corp §13401.
Licensed psychologist.
Psychologists, B&P §2902.
Licensee.
Licenses, B&P §494.5.
Licensing agency.
Child abuse or neglect, Pen §11165.11.
Licensing board.
Discrimination, Gov §12944.
Licentiate.
Reports, B&P §805.
Limited psychological functions.
Psychological assistants, 16 CCR §1391.4.
Local consumer affairs agency.
Advertising, B&P §17506.5.
Loiter, Pen §647.
Mandated reporter.
Child abuse or neglect, Pen §11165.7.
Elder or dependent adult abuse, W&I §15630.
Manufacturing.
Marijuana, H&S §11362.9.
Marijuana.
Controlled substances, H&S §11018.
Marijuana accessories.
Controlled substances, H&S §11018.2.
Marijuana products.
Controlled substances, H&S §11018.1.
Material.
Licenses, B&P §478.
Medical disciplinary cause or reason.
Reports, B&P §805.
Medical information.
Disclosure of medical information, Civ §56.103.
Mental health provider.
Sexual orientation change efforts, B&P §865.
Mental health records.
Patient access to medical records, H&S §§123105, 123116.
Mental health treatment or counseling services.
Children and minors, Fam §6924.
Minor.
Disclosure of medical information, Civ §56.103.
Unlawful sexual intercourse with person under 18, Pen §261.5.

DEFINED TERMS —Cont'd
Multidisciplinary personnel team.
Elder and dependent adult abuse, W&I §15610.55.
Neglect.
Child abuse or neglect, Pen §11165.2.
Elder and dependent adult abuse, W&I §15610.57.
Official information.
Discovery, Evid §1040.
Privileged communications, Evid §1040.
Originating site.
Health care providers, B&P §2290.5.
Other potentially infectious materials.
Communicable diseases, H&S §120261.
Owner, H&S §11013.
Partial evaluation, investigation or assessment.
Court-ordered child custody evaluation, CRC 5.220.
Patient.
Patient access to medical records, H&S §123105.
Privileged communications, Evid §1011.
Psychotherapist-patient privilege, Evid §1011.
Patient records.
Patient access to medical records, H&S §123105.
Patient's representative.
Patient access to medical records, H&S §123105.
Pediatric liquid.
Controlled substances, reporting, H&S §11100.
Peer review.
Reports, B&P §805.
Peer review body.
Reports, B&P §805.
Penitential communication.
Child abuse or neglect, Pen §11166.
Elder and dependent adult abuse, W&I §15630.
Permit.
Psychologists, 16 CCR §1381.6.
Person responsible for a child's welfare.
Child abuse or neglect, Pen §11165.1.
Person with an identification card.
Medical cannabis/marijuana program, H&S §11362.7.

DEFINED TERMS —Cont'd
Physical abuse.
Elder and dependent adult abuse, W&I §15610.63.
Physical handicap, B&P §125.6.
Postdoctorally.
Psychologists, 16 CCR §1387.
Prescription, H&S §§11007, 11027.
Presentation.
Continuing education, 16 CCR §1397.60.
Primacy care clinic.
HIV/AIDS, H&S §120991.
Primary caregiver.
Medical cannabis/marijuana program, H&S §11362.7.
Proceeding.
Privileged communications, Evid §901.
Professional corporation, Corp §13401.
Professional person.
Children and minors, Fam §§6924, 6929.
Professional services.
Professional corporations, Corp §§13401, 13401.3.
Proper purchaser identification.
Controlled substances, sales of laboratory equipment, H&S §11107.
Prostitution, Pen §647.
Provider.
Continuing education, 16 CCR §1397.60.
Providers of health care.
HIV/AIDS, H&S §120985.
Psychological assistant.
Psychologists, B&P §2913.
Psychology clinic.
Licenses, H&S §1204.1.
Psychotherapist.
Evidence code, Evid §1010.
Patient access to medical records, H&S §123116.
Personal rights, Civ §43.93.
Privileged communications, Evid §1010.
Psychotherapist-patient privilege, Evid §1010.
Unprofessional conduct, B&P §§728, 729.
Psychotherapy.
Personal rights, Civ §43.93.
Psychologists, B&P §2903.

DEFINED TERMS —Cont'd
Qualified manufacturer.
Controlled Substance Utilization Review and Evaluation System, H&S §11165.5.
Qualified patient.
Medical cannabis/marijuana program, H&S §11362.7.
Medical marijuana program, H&S §11362.7.
Reasonable suspicion.
Child abuse or neglect, Pen §11166.
Reasonably suspects.
Crimes and offenses, Pen §11162.5.
Representative.
Patient access to medical records, H&S §123105.
Residential shelter services.
Children and minors, Fam §6924.
Responsible relative.
Involuntary treatment, W&I §5150.
Retail distributor.
Controlled substances, reporting, H&S §11100.
Sale for personal use.
Controlled substances, reporting, H&S §11100.
School.
Medical cannabis/marijuana program, H&S §11362.768.
Security printer, H&S §11029.5.
Serious bodily injury.
Elder and dependent adult abuse, W&I §15610.67.
Serious medical condition.
Medical cannabis/marijuana program, H&S §11362.7.
Severe neglect.
Child abuse or neglect, Pen §11165.2.
Sexual abuse.
Child abuse or neglect, Pen §11165.1.
Sexual assault.
Child abuse or neglect, Pen §11165.1.
Ketamine, H&S §11377.5.
Lysergic acid (LSD), H&S §11350.5.
Sexual conduct.
Child abuse or neglect, Pen §11166.
Sexual contact.
Personal rights, Civ §43.93.
Unprofessional conduct, B&P §§728, 729.
Sexual exploitation.
Child abuse or neglect, Pen §11165.1.
Sexually assaulted.
Children and minors, Fam §6928.

DEFINED TERMS —Cont'd
Sexual orientation change efforts, B&P §865.
Significant exposure.
Communicable diseases, H&S §120261.
Smoke.
Marijuana restrictions, H&S §11362.3.
Source patient.
Communicable diseases, H&S §120261.
Sponsored event.
Licenses, B&P §901.
Sponsoring entities.
Licenses, B&P §901.
Staff privileges.
Reports, B&P §805.
State governmental licensing entity.
Licenses, B&P §494.5.
Substantiated report.
Child abuse or neglect, Pen §11165.12.
Synchronous interaction.
Health care providers, B&P §2290.5.
Synthetic cannabinoid compound.
Marijuana, H&S §11357.5.
Telehealth.
Health care providers, B&P §2290.5.
Terminally ill.
Controlled substances, prescriptions for terminal patients, H&S §11159.2.
The course of a prior treatment.
Unprofessional conduct, B&P §728.
Therapeutic deception.
Personal rights, Civ §43.93.
Therapeutic relationship.
Personal rights, Civ §43.93.
Touching.
Unprofessional conduct, B&P §§728, 729.
Trainee.
Psychologists, 16 CCR §1387.
Transport.
Controlled substances, H&S §§11352, 11379.
Marijuana, H&S §11360.
Mushrooms, H&S §11391.
Phencyclidine, H&S §11379.5.
Unfounded report.
Child abuse or neglect, Pen §11165.12.
Uninsured or underinsured person.
Licenses, B&P §901.
Unlawful corporal punishment or injury.
Child abuse or neglect, Pen §11165.4.
Unlinked testing.
HIV/AIDS, H&S §120990.

DEFINED TERMS —Cont'd
Unprofessional conduct, B&P §2960.
Rules of professional conduct, 16 CCR §1397.2.
Valid identifying information.
Controlled substances, sales of laboratory equipment, H&S §11107.
Volatile solvents.
Marijuana restrictions, H&S §11362.3.
Willful.
Reports, B&P §805.
Willful harming or injuring of a child or the endangering of the person or health of a child.
Child abuse or neglect, Pen §11165.3.
Written authorization.
HIV/AIDS, H&S §120980.
Written documentation.
Medical cannabis/marijuana program, H&S §11362.7.
Youth center.
Marijuana restrictions, H&S §11362.3.

DELEGATION OF AUTHORITY.
Board of psychology, 16 CCR §1380.4.
Competence, ethical standards, Ethics 2.05.

DELINQUENCY FEES, B&P §2984.

DENIAL, SUSPENSION OR REVOCATION OF LICENSES, B&P §§2960 to 2969.
Chemical dependency, B&P §2960.5.
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