

**Vice-Chair**  
Flora, Heath

# California State Assembly

## BUSINESS AND PROFESSIONS



**MARC BERMAN**  
CHAIR

**Chief Consultant**  
Robert Sumner

**Deputy Chief Consultant**  
Vincent Chee

**Consultant**  
Kaitlin Curry  
Annabel Smith

**Committee Secretary**  
Christina Rocha

1020 N Street, Room 379  
(916) 319-3301  
FAX: (916) 319-3306

**Members**  
Alanis, Juan  
Alvarez, David  
Bonta, Mia  
Chen, Phillip  
Dixon, Diane  
Gipson, Mike A.  
Grayson, Timothy S.  
Irwin, Jacqui  
Jackson, Corey A.  
Lee, Alex  
Lowenthal, Josh  
McCarty, Kevin  
McKinnor, Tina  
Nguyen, Stephanie  
Patterson, Joe  
Ting, Philip Y.

## AGENDA

Tuesday, April 25, 2023  
9 a.m. -- 1021 O Street, Room 1100  
(Please note time change)

## BILLS HEARD IN FILE ORDER

- |     |          |                          |   |
|-----|----------|--------------------------|---|
| 1.  | AB 481   | Wendy Carrillo           | Dentistry: dental assistants.   |
| 2.  | AB 528*  | Irwin                    | Regulation of cemeteries: pet burial.   |
| 3.  | AB 796   | Weber                    | Athletic trainers.  |
| 4.  | AB 814   | Lowenthal                | Veterinary medicine: animal physical rehabilitation.  |
| 5.  | AB 996   | Low                      | Department of Consumer Affairs: continuing education: conflict-of-interest policy.            |
| 6.  | AB 1130* | Berman                   | Substance use disorder.   |
| 7.  | AB 1204  | Holden                   | Contractors: contracts: restrictions.   |
| 8.  | AB 1257* | Business and Professions | Dentistry: Dental Hygiene Board of California: Dental hygienists: Examinations and licensure. |
| 9.  | AB 1262* | Business and Professions | Professional fiduciaries.   |
| 10. | AB 1263* | Business and Professions | Vehicles: Bureau of Automotive Repair: smog check program.                                    |
| 11. | AB 1264* | Business and Professions | Acupuncture.  |
| 12. | AB 1292  | Flora                    | Nursing: distance education nursing program students.   |
| 13. | AB 1328  | Gipson                   | Cosmetology Licensure Compact.  |
| 14. | AB 1396  | Garcia                   | Licensed Physicians and Dentists from Mexico Pilot Program: requirements.                     |
| 15. | AB 1518  | Friedman                 | Service dogs.   |
| 16. | AB 1560* | Flora                    | Crematories: change in ownership.   |
| 17. | AB 1646  | Stephanie Nguyen         | Physicians and surgeons: postgraduate training: guest rotations.                              |
| 18. | AB 1741  | Waldron                  | Healing arts: clinical laboratories: personnel.   |

\* **Consent**

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 481 Wendy Carrillo – As Amended April 20, 2023

**SUBJECT:** Dentistry: dental assistants.

**SUMMARY:** Makes numerous changes to the education, scope of practice, and regulation of dental auxiliaries, including dental assistants, orthodontic assistants, and registered dental assistants.

**EXISTING LAW:**

- 1) Regulates the practice of dentistry under the Dental Practice Act and establishes the Dental Board of California (DBC) within the Department of Consumer Affairs (DCA) to administer and enforce the act. (Business and Professions Code (BPC) §§ 1600-1976)
- 2) Establishes a Dental Assisting Council within the DBC to consider all matters relating to dental assistants and make appropriate recommendations to the DBC and the standing committees of the DBC. (BPC § 1742)
- 3) Defines “direct supervision” to mean the supervision of dental procedures based on instructions given by a licensed dentist, who must be physically present in the treatment facility during the performance of those procedures. (BPC § 1741(b))
- 4) Defines “general supervision” as supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures. (BPC § 1741(c))
- 5) Authorizes the DBC, in addition to any other examination required for dental auxiliaries, may require applicants for licensure under this article to successfully complete the Registered Dental Assistant Combined Written and Law and Ethics Examination.1749.1
- 6) Defines a “dental assistant” as an individual who, without a license, may perform basic supportive dental procedures, as defined, under the supervision of a licensed dentist and defines “basic supportive dental procedures” as procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated. (BPC § 1750(a))
- 7) Specifies that the supervising licensed dentist is responsible for determining the competency of a dental assistant to perform any basic supportive dental procedures. (BPC § 1750(b))
- 8) Specifies that the employer of a dental assistant is responsible for ensuring that a dental assistant who has been in continuous employment for 120 days or more, has already completed, or completes, all of the following within a year of the date of employment. (BPC § 1750(c))

- 1) Authorizes a dental assistant to perform the following duties under the general supervision of a supervising dentist:
  - a) Extra-oral duties or procedures specified by the supervising licensed dentist, provided that these duties or procedures meet the definition of a basic supportive procedure. (BPC § 1750.1(a)(1))
  - b) Operate dental radiography equipment for the purpose of oral radiography if the dental assistant has complied with the requirements of Section 1656. (BPC § 1750.1(a)(1)) (BPC § 1750.1(a)(2))
  - c) Perform intraoral and extraoral photography. (BPC § 1750.1(a)(3))
- 9) Authorizes a dental assistant to perform various procedures under the direct supervision of a licensed dentist, including the application of specified topical agents, placing and removing orthodontic separators, examining and seating removable orthodontic appliances, removing post-extraction dressings, and removing sutures, among others. (BPC § 1750.1(b))
- 10) Authorizes the DBC to issue an orthodontic assistant permit to a person who files a completed application including a fee and provides evidence, satisfactory to the DBC, of specified requirements. (BPC § 1750.2(a))

**THIS BILL:**

- 1) Adds and moves definitions related to dental auxiliaries:
  - a) Defines “alternative dental assisting program” as a program offered by an institution of secondary or postsecondary education which is accredited or approved by an agency recognized by the United States Department of Education and that offers career technical education programs, regional occupation programs, or apprenticeship programs in dental assisting, and whereby a certificate of completion from the program serves as a pathway component for licensure as a registered dental assistant.
  - b) Defines “apprenticeship dental assisting program” as a type of alternative dental assisting program where instructional design combines education and clinical work experience referred to as apprenticeship hours.
  - c) Moves the definition of “basic supportive dental procedures” into the section containing definitions for dental auxiliaries under the Dental Practice Act.
  - d) Defines “certified dental assistant” as an individual who has successfully passed the national board examination in clinical chairside assisting administered by the Dental Assisting National Board and has successfully maintained certification satisfactory to terms and conditions of the Dental Assisting National Board.
  - e) Defines “continuing education” as a course of study specific to the performance of dental-related procedures, where a license or permit issued pursuant to this article is impacted, and where the education is directly related to the clinical and supplemental practice of the licensee or permitholder and specifies that continuing education is used to

identify dental assisting education in the duties and functions of all aspects of dental assisting.

- f) Defines “coronal polishing” means a procedure limited to the removal of plaque and stain from exposed tooth surfaces, utilizing an appropriate mechanical instrument or device and may include the use of a polishing agent.
- g) Defines “council” as the Dental Assisting Council of the DBC.
- h) Defines “course” as an educational offering, class, presentation, meeting, or other similar event.
- i) Moves the definition of “dental assistant” into the section containing definitions for dental auxiliaries under the Dental Practice Act.
- j) Defines “good standing” to mean that a preceptor has not been disciplined, is not the subject of an unresolved complaint or review procedure, and is not the subject of any unresolved disciplinary proceeding.
- k) Moves the definition of “interim therapeutic restoration” into the section containing definitions for dental auxiliaries under the Dental Practice Act.
- l) Defines “preceptee” as an unlicensed dental assistant who is employed by a California-licensed dentist and is participating in a preceptorship in dental assisting to learn the clinical skills and acquire procedural knowledge through work experience and supplemental dental assisting coursework.
- m) Defines “preceptor” as a California-licensed dentist in good standing who directly supervises and provides on-the-job training to a preceptee in a preceptorship in dental assisting by evaluating clinical competence, documenting completion of clinical chairside work experience, learning, and clinical progress, teaching and promoting clinical reasoning, and ensuring the preceptee has completed course requirements before performing dental assisting duties.
- n) Defines “preceptorship in dental assisting” as supervised on-the-job training of a preceptee by a preceptor in the performance of dental assistant duties in a competent manner as determined by the preceptor.
- o) Defines “registered dental assistant” as a person licensed by the DBC to perform all procedures a registered dental assistant is authorized to perform.
- p) Defines “registered dental assistant in extended functions” as a person licensed by the DBC to perform all procedures a registered dental assistant in extended fun.
- q) Defines “satisfactory work experience” means performance of the duties of a dental assistant in a competent manner as determined by the supervising dentist.
- r) Moves the definition of “satisfactory work experience” into the section containing definitions for dental auxiliaries under the Dental Practice Act.

- s) Duplicates the definition of “satisfactory work experience” in the new registered dental assistant requirement section established under this bill.
- 2) Moves the registered dental assistant requirements to a new section and establishes modified requirements as follows:
- a) Requires an individual seeking a registered dental assistant license to submit to the DBC the following:
    - i) A DBC-prescribed application and applicable fees.
    - ii) A full set of fingerprints for purposes of conducting a criminal history record check.
    - iii) Satisfactory evidence of successful completion within five years before application of DBC-approved courses in all of the following:
      - (1) The courses required for dental assistants and individuals performing infection control procedures and sterilization tasks, or any procedure or task requiring the use of personal protective equipment.
      - (2) Radiation safety.
      - (3) Coronal polishing.
    - iv) Satisfactory evidence of one of the following:
      - (1) Graduation from a DBC-approved registered dental assisting program evidenced by an affidavit signed by the program officer or instructional administrator, or a certificate of completion of that program.
      - (2) Completion of a dental assisting preceptorship in dental assisting and satisfactory evidence of all of the following:
        - (a) An affidavit signed under penalty of perjury by the preceptor verifying the applicant’s completion of at least 500 hours of documented and verifiable clinical chairside work experience that was directly supervised and evaluated by the preceptor and involved skills consistent with dental assistant duties. The documented and verifiable clinical work experience hours performed as a dental assistant within the two years immediately preceding the effective date of this bill may be used to satisfy this requirement.
        - (b) Completion of at least 300 hours of courses in dental assisting-related topics, including all aspects of clinical chairside assisting, medical dental emergencies, first aid and safety precautions, protocols and armamentaria associated with dental assisting chairside procedures, dental materials, and skill development associated with operative and specialty dentistry, that may be obtained concurrent with the clinical chairside work experience. Courses must be obtained through a DBC-approved dental assistant educational program or course, a DBC-registered provider of continuing education

courses, the American Dental Association's Education Recognition Program, or a provider approved by the Academy of General Dentistry Program Approval for Continuing Education. Eight units shall be the maximum number of credits granted in one day.

- (3) Completion of satisfactory work experience of at least 1,280 hours during 15 months as a dental assistant in California or another state as evidenced by an affidavit signed under penalty of perjury by the supervising dentist verifying the applicant's completion of at least 1,280 hours during 15 months as a dental assistant in California or another state.
- (4) Graduation from an alternative dental assisting program and satisfactory evidence of all of the following:
  - (a) An official transcript or affidavit signed by the program officer or instructional administrator verifying the applicant completed didactic and laboratory coursework totaling no less than 500 hours.
  - (b) Completion of all mandatory education required for dental assistants and individuals performing infection control procedures and sterilization tasks, or any procedure or task requiring the use of personal protective equipment.
  - (c) Completion of a DBC-approved course in radiation safety.
  - (d) Completion of a DBC-approved course in coronal polishing which shall not be performed on a patient until licensure as a registered dental assistant is obtained.
  - (e) An affidavit signed under penalty of perjury by the dentist who supervised the applicant's clinical work experience, verifying the applicant's completion of 300 hours of clinical work experience under supervision of the dentist.
- (5) Current, valid certificate as a certified dental assistant issued by the Dental Assisting National Board.
  - v) Satisfactory evidence of successful completion of the Registered Dental Assistant Combined Written and Law and Ethics Examination administered by the DBC.
  - vi) Satisfactory documentation of completion of the application and fees, fingerprints, the completion of board approved fees, and evidence of required education to receive board authorization to take the examination.
- b) Requires the licensee to be responsible for complying with all applicable licensure renewal requirements, including continuing education.
- c) Requires the original or a copy of the current, valid registered dental assistant license issued by the DBC to be publicly displayed at the treatment facility where the licensee performs dental services.

- 3) Moves the registered dental assistant in extended functions requirements to a new section and establishes modified requirements as follows:
  - a) Requires an applicant for a registered dental assistant in extended functions license to submit to the DBC all of the following:
    - i) A DBC-prescribed application and applicable fees.
    - ii) A full set of fingerprints for purposes of conducting a criminal history record check.
    - iii) A valid, active, and current registered dental assistant license issued by the DBC.
    - iv) Graduation from a DBC-approved registered dental assistant in extended functions program. For enrollment in a DBC-approved registered dental program, the DBC-approved program provider must ensure that the student is a registered dental assistant with basic life support training and completion of DBC-approved coursework in pit and fissure sealant.
    - v) Satisfactory evidence of completion within two years of the date of application in a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the DBC as equivalent.
    - vi) Satisfactory evidence of successful completion of a board-approved pit and fissure sealant course.
  - b) Specifies that successful completion of the Registered Dental Assistant in Extended Functions Written Exam administered by the DBC shall encompass the knowledge, skills, and abilities necessary to competently perform the duties the license allows.
  - c) Requires the applicant to submit satisfactory documentation of completion of the application requirements to receive board authorization.
  - d) Specifies that the licensee is responsible for complying with all applicable licensure renewal requirements, including continuing education.
  - e) Requires the original or a copy of the current, valid registered dental assistant in extended functions license issued by the DBC to be publicly displayed at the treatment facility where the licensee performs dental services.
- 4) Makes a supervising dentist directly responsible for the following, as it relates to the initial and ongoing employment of an unlicensed dental assistant:
  - a) Adequately informing a dental assistant of the course and recertification requirements under the dental practice act to maintain employment as an unlicensed dental assistant.
  - b) Determining the competency of the dental assistant to perform dental assistant duties.

- c) Maintaining evidence for the length of the individual's employment as a dental assistant at the supervising dentist's treatment facility to verify the dental assistant has met and maintained all certification requirements as dictated by statute and regulation.
- 5) Requires an individual, except as otherwise stated, within one year of initial employment, performing (1) the duties of an unlicensed dental assistant, (2) infection control procedures and sterilization tasks, or (3) any procedure or task requiring the use of personal protective equipment to obtain and provide evidence to the dentist-employer of having completed the following courses:
- a) A DBC-approved eight-hour infection control course, as specified. The course must be completed prior to performing any basic supportive dental procedures involving potential exposure to blood, saliva, or other potentially infectious materials.
  - b) A DBC-approved two-hour course in the Dental Practice Act.
  - c) A course satisfying the requirements of the Division of Occupational Safety and Health's bloodborne pathogens training.
  - d) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the DBC as equivalent. The course must be completed before performing duties involving patients. The dental assistant is responsible for obtaining recertification in basic life support to perform duties involving patients.
- 6) Specifies that the dental assistant shall be responsible for providing evidence of having met the requirements of this section to a dentist-employer.
- 7) Requires a dental assistant, to perform radiographic procedures, to obtain a radiation safety certificate of completion from a DBC-approved radiation safety course provider, as specified.
- 8) Requires a dental assistant, to enroll in a DBC-approved radiation safety course, to provide evidence to the radiation safety course provider of having completed a DBC-approved eight-hour course in infection control and a current, valid certification in basic life support.
- 9) Requires a copy of the radiation safety certificate of completion to be displayed in the treatment facility where the dental assistant is performing dental radiographic procedures.
- 10) Requires the DBC to provide a 90-day notice of compliance for radiation safety course providers.
- 11) Establishes a new radiographic procedure requirement:
- a) To perform radiographic procedures, a dental assistant shall obtain a radiation safety certificate of completion from a DBC-approved radiation safety course provider, as specified.
  - b) To enroll in a BRC-approved radiation safety course, a dental assistant must provide evidence to the radiation safety course provider of having completed a DBC-approved



eight-hour course in infection control and a current, valid certification in basic life support.

- c) Requires a copy of the radiation safety certificate of completion to be displayed in the treatment facility where the dental assistant is performing dental radiographic procedures.
- d) Requires the DBC to provide a 90-day notice of compliance for radiation safety course providers.

12) Makes various clarifications to the duties a dental assistant may perform.

13) Authorizes a person who holds an orthodontic assistant permit issued on or after January 1, 2026, to perform the following additional duties under direct supervision and pursuant to the order, control, and full professional responsibility of a current, valid licensed dentist:

- a) Isolate, condition, etch, and prepare teeth for bonded attachments, aligner buttons, orthodontic brackets, and appliances only after their position has been approved by the supervising licensed dentist and before curing.
- b) Size, fit, and secure orthodontic bands using appropriate dental materials.
- c) Place and ligate archwires as prescribed by the dentist.
- d) Perform digital scans intended for fabrication of orthodontic appliances used for retention, and for mouth guards, whitening trays, or aligners used for correction.
- e) Placement of indirect bonded or cemented provisional attachments and brackets when delivered by transfer tray, composite buttons, or aligner connections when placement is confirmed by the supervising dentist.

14) Authorizes a registered dental assistant or registered dental assistant in extended functions who holds an orthodontic assistant permit may perform a placement of direct bonded or cemented lab-fabricated permanent, semipermanent or provisional attachments, composite buttons, or aligner connections under direct supervision and pursuant to the order, control, and full professional responsibility of a current, valid licensed dentist.

15) Makes the changes to the orthodontic provisions operative on January 1, 2026.

16) Makes the following changes to the dental sedation permit:

- a) Requires an unlicensed individual to obtain a dental sedation permit to perform the duties of a dental sedation assistant and to submit to the DBC all of the following:
  - i) DBC-prescribed application and applicable fees.
  - ii) A full set of fingerprints for purposes of conducting a criminal history record check.
  - iii) Satisfactory evidence of completion of a DBC-approved dental sedation assistant permit course totaling 110 hours of education. For course enrollment, the course

- provider shall ensure the student's prior completion of course requirements under for unlicensed individuals.
- iv) Satisfactory evidence of completion within two years of the date of application of a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.
  - v) Successful passage of a written examination administered by the DBC.
- b) Requires a dental sedation assistant permit applicant to submit to the DBC all of the following:
- i) A DBC-prescribed application and applicable fees.
  - ii) A full set of fingerprints for purposes of conducting a criminal history record check.
  - iii) Satisfactory evidence of completion of a board-approved dental sedation assistant permit course.
  - iv) Satisfactory evidence of completion within two years of the date of application of a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the DBC as equivalent.
  - v) Successful passage of a written examination administered by the DBC, as specified.
- c) Specifies that a person who holds a sedation permit is responsible for obtaining recertification in basic life support as part of permit renewal and completing the same continuing education requirements for registered dental assistants.
- d) Requires the original or a copy of the current, valid permit issued by the DBC to be publicly displayed at the treatment facility where the permitholder performs dental services.
- 17) Specifies that a registered dental assistant performs duties under the direction and pursuant to the order, control, and full professional responsibility of a current, valid licensed dentist.
- 18) Authorizes a registered dental assistant to perform a digital scan using imaging technology when used specifically as a final impression and after inspection by the licensed dentist to confirm accuracy before initiating mill-fabricated, 3-D printed, or lab-fabricated restorative, corrective, or prosthodontic devices.
- 19) Makes various other adjustments to the scope of a registered dental assistant and dental assistant in extended functions.
- 20) Requires on or after January 1, 2026, a provider of a course for instruction in interim therapeutic restorations (ITR) and radiographic decisionmaking (RDM) for a registered

dental assistant in extended functions to apply for DBC approval to offer the course and submit all of the following to the DBC, as specified.

- 21) Requires a radiation safety course to have the primary purpose of providing theory, laboratory, and clinical application in radiographic techniques. The DBC may approve only those courses which adhere to the minimum requirements specified.
- 22) Establishes the following regarding infection control courses:
  - a) Defines a “course in infection control” as one that primarily provides theory and clinical application in infection control practices and principles where the protection of the public is its primary focus.
  - b) Requires an unlicensed dental assistant not enrolled in a DBC-approved program for registered dental assisting or an alternative dental assisting program to complete one of the following infection control certification courses:
    - i) A DBC-approved eight-hour course, with six hours being didactic instruction and two hours being laboratory instruction.
    - ii) A DBC-approved eight-hour course, with six hours of didactic instruction and no more than two hours of laboratory instruction using video or a series of video training tools, all of which may be delivered using live, interactive, or online learning mechanisms or a combination thereof.
  - c) Requires a course to establish specific instructional objectives and provide the content necessary for students to make safe and ethical judgments regarding infection control and asepsis.
  - d) Requires objective evaluation criteria to be used for measuring student progress. Students shall be provided with specific performance objectives and the evaluation criteria that will be used for didactic testing.
  - e) To maintain approval, course providers approved prior to the effective date of this section, shall submit to the DBC a completed “Notice of Compliance with New Requirements for Infection Control Courses” by April 1, 2024.
  - f) Didactic instruction shall include, at a minimum, all of the following as they relate to Cal/OSHA regulations, as set forth in Sections 300 to 344.85, inclusive, of Title 8 of the California Code of Regulations, and the DBC’s Minimum Standards for Infection Control, as set forth in Section 1005 of Title 16 of the California Code of Regulations.
  - g) Requires students to receive a certificate of completion upon successful completion of the course.
  - h) Requires the DBC to provide a 90-day notice of compliance for infection control course providers.
- 23) Makes other technical, conforming, or nonsubstantive changes.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *California Dental Association*. According to the author, “[This bill] is a holistic proposal to streamline the Dental Assisting career ladder by removing barriers to licensing and advancement, while preserving high standards of patient care. Responding to existing workforce shortages, [this bill] will make the dental assisting career pipeline attractive, bringing in new entrants to the unlicensed Dental Assistant line of work and provided a greater incentive for those entrants to train to become Registered Dental Assistants (RDAs), Registered Dental Assistants in Extended Function (RDAEFs), and Hygienists.

**Background.** Dental assistants are unlicensed individuals who work in dental practices under the supervision of a licensed dentist and perform specified “basic supportive dental procedures,” which are defined as “procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated.”

**Prior Related Legislation.** AB 2276 (Carrillo) of 2022 would have authorized unlicensed dental assistants to polish teeth and apply dental sealants.

**ARGUMENTS IN SUPPORT:**

The *California Dental Association* (sponsor) writes in support,

Dentistry, like much of health care, is facing an ongoing workforce shortage exacerbated by the pandemic, particularly among dental assistants. The duties and responsibilities of a dental assistant are vital to the dental team and are often referred to as the “right hand” of the dentist. Unfortunately, recent data from the Dental Board of California show that half of the state’s 58 counties are experiencing a shortage of dental assistants. In 2021, an American Dental Association survey found that 44% of dentists identified that difficulty filling vacant staff positions had limited their practice’s ability to treat more patients. While addressing this workforce shortage will take multiple tactics and solutions, this bill will help alleviate the financial and time barriers that may dissuade individuals from pursuing a career in dental assisting.

California has set precedent with some of the most expansive scopes of practices for dental assistants in the country with three classifications for dental assistants: unlicensed dental assistant (DA), registered dental assistant (RDA) and RDA in Extended Function (RDAEF). This spectrum of dental assisting categories creates a unique career ladder that allows individuals to advance their skills, responsibility and compensation as their career progresses. Currently, two pathways exist to become an RDA: education programs, which can be cost prohibitive, and on-the-job training, which can be lengthy to complete. AB 481 will create additional new pathways to RDA licensure that will meet people where they are in life, in turn helping to further diversify the dental team workforce and make licensure more accessible. The new licensure pathways will include a preceptorship that allows dental assistants to receive pay while training for RDA licensure; an alternative education pathway for Regional Occupation Programs (ROP) and adult education

programs; and a pathway to streamline the process for out-of-state dental assistants moving to California by recognizing the Dental Assistant National Board (DANB) certification. Furthermore, AB 481 also will clarify the scope of duties and update duties to reflect new technologies used in the dental profession for all levels of dental assistants.

[This bill] is essential to ensure dental offices can continue providing access to quality dental care to Californians. The bill will ensure dental assistants are able to be fully trained and licensed quickly and safely to meet workforce demands while reinforcing the growth opportunities in the dental assistant career ladder and diversifying the profession.

#### **ARGUMENTS IN OPPOSITION:**

The *California Dental Assistants Association* and *California Extended Functions Association* are opposed to this bill unless amended, stating:

Though we support many of the changes in the current language and can accept other changes we aren't necessarily in agreement with, there is one issue of great concern to us:

Requirement of the 8-Hour Board approved course in infection control training and certification PRIOR to potential exposure to blood and OPIM that has two parts: BOTH a didactic requirement and a live hands-on lab requirement

The Dental Assisting Council and the Dental Board of California have already voted UNANIMOUSLY to mandate that any employee in a dental office obtain a

(1) certificate of completion of a Board approved 8-hour infection control course which

(2) must be completed prior to the potential exposure of blood and other potentially infectious materials (OPIM).

Though changes have been made to the current version of the bill that includes the requirement prior to the potential exposure of blood and other potentially infectious materials (OPIM), the course requirement format has now been changed from 4 hours of didactic education and 4 hours of live hands-on lab experience to 6 hours didactic education and 2 hours of "laboratory instruction using video or a series of video training tools, all of which may be delivered using live, interactive, or online learning mechanisms or a combination thereof . . ."

This change removes the requirement for any hands-on training/experience and essentially makes it an 8-hour lecture class only. Though we sincerely appreciate the changes made to require the course prior to potential exposure instead of after a full year of employment, we stand firm in the conviction that the live hands-on lab requirement of the course is a critical component to ensuring that dental auxiliaries know and can perform the serious issues of infection control in order to keep the citizens of California safe. Video training is not the same as hands-on in-person learning.

## **POLICY ISSUES FOR CONSIDERATION:**

*Infection Control Course.* The opposition argues that “live hands-on lab requirement of the course is a critical component to ensuring that dental auxiliaries know and can perform the serious issues of infection control in order to keep the citizens of California safe. Video training is not the same as hands-on in-person learning” The sponsors argue that the course format of the infection course is not a patient safety issue. The hands-on components of the course as it is taught today are already handled in each dental office as a part of onboarding. An example from the sponsors: a student will learn about the importance of sterilizers in the course but will learn about the workflow and instructions for the specific brand of sterilizer in the dental office they work in. The DBC will meet in May to discuss this bill. If this bill passes this committee, the author may wish to incorporate the DBC’s recommendations on this topic.

## **IMPLEMENTATION ISSUES:**

- 1) *Diagnostic Scans.* According to the sponsor, the proposed changes to scanning duties are intended to clarify that scans are done to create appliances, such as corrective trays. According to the DBC staff, the language of the bill, which specifies that the scans may only be performed for records, does not allow the use that the sponsors intend. If this bill passes this committee, the author may wish to incorporate the DBC’s recommendations on this topic.
- 2) *Unintended Overinclusion:* Dental assistants must provide evidence to the dentist-employer of having completed the following courses:
  - a) A DBC-approved eight-hour infection control course.
  - b) A DBC-approved two-hour course in the Dental Practice Act.
  - c) A course satisfying the requirements of the Division of Occupational Safety and Health’s bloodborne pathogens training.
  - d) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent. This course shall be completed before performing duties involving patients. The dental assistant shall be responsible for obtaining recertification in basic life support to perform duties involving patients.

Under this bill, anyone who also performs “infection control procedures and sterilization tasks” or “any procedure or task requiring the use of personal protective equipment” in a dental office, even if they are not a dental assistant would have to meet the dental assistant requirements above. If this bill passes this committee, the author may wish to amend the bill to exclude non-dental assistants from the dental assistant training requirements.

## **REGISTERED SUPPORT:**

California Academy of General Dentistry  
California Association of Orthodontists

California Dental Association  
California Health+Advocates, Subsidiary of The California Primary Care Association  
California Society of Pediatric Dentistry  
California Society of Periodontists  
Community Clinic Association of Los Angeles County  
Via Care Community Health Center  
Western Dental Services, INC.  
One Individual

**REGISTERED OPPOSITION:**

California Dental Assistants Association (unless amended)  
California Extended Functions Association (unless amended)

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 528 (Irwin) – As Amended March 16, 2023

**SUBJECT:** Regulation of cemeteries: pet burial.

**SUMMARY:** Authorizes a public or private cemetery to designate a separate, clearly marked section of the cemetery where deceased pets could be buried with their deceased owners.

**EXISTING LAW:**

- 1) Establishes the Funeral and Directors and Embalmers Law (Funeral Law) which provides for the licensure and regulation of funeral directors and embalmers, within the Department of Consumer Affairs (DCA), and requires the director of the DCA to administer and enforce the Funeral Law. (Business and Professions Code (BPC) § 7600-7746)
- 2) Authorizes the Bureau to establish necessary rules and regulations for the administration and enforcement of this act and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this act. (BPC § 7606)
- 3) Allows the Bureau to inspect the premises in which the business of a funeral establishment, cemetery, or crematory is conducted, where embalming is practiced, or where human remains are stored. (BPC § 7607)
- 4) Defines a “cremated remains disposer” as an individual who for their own account or for another, disposes of, or offers to, dispose of cremated human remains or hydrolyzed human remains by scattering over or on land and sea. (BPC § 7611.9)
- 5) Exempts from the Cemetery and Funeral Act does not apply to the following: (1) a religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them; (2) a public cemetery; (3) Any private or fraternal burial park not exceeding 10 acres in area, established prior to September 19, 1939. (BPC § 7612.2)
- 6) Authorizes the Bureau to inspect the books, records, and premises of any hydrolysis facility, as specified, and no prior notification of the inspection is required to be given to the licensee, and requires the Bureau to conduct at least one unannounced inspection annually. (BPC §§ 7653.35, 7653.36)
- 7) Prohibits an individual from disposing or offering to dispose of human remains unless registered as a cremated or hydrolyzed human remains disposer by the Bureau. (BPC § 7672)
- 8) Requires every cremated remains disposer to dispose of cremated remains within 60 days of the receipt of those remains, unless a written reason for the delay is presented to the person with the right to disposition of the remains and provide the Bureau with the address and



telephone number of any storage facility being used by a registrant to store cremated remains. (BPC § 7672.6(a))

- 9) Prohibits cremated or hydrolyzed human remains from being removed from the place of cremation or hydrolysis, nor any charge for the cremation or hydrolysis, unless the cremated remains or hydrolyzed human remains have been processed so that they are suitable for inurnment within a cremated remains container, hydrolyzed human remains container, or an urn. (Health and Safety Code (HSC) § 7054.1)
- 10) Declares no person is permitted to cremate the remains of more than one person at the same time in the same cremation chamber, or introduce the remains of a second person into a cremation chamber until incineration of any preceding remains has been terminated and reasonable efforts have been employed to remove all fragments of the preceding remains, dispose of or scatter cremated remains in a manner or in a location that the remains are commingled with those of another person, place cremated or un-cremated remains of more than one person, or place cremated or un-cremated remains of more than one person in the same container or the same interment space, except under certain circumstances. (HSC § 7054.7)
- 11) Defines rights to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided and the duty of disposition and liability for the cost of disposition of the remains upon a specified order of individuals. (HSC § 7100 (a))
- 12) Requires cremated remains be removed from their container before the remains are scattered at sea, unless a scattering urn is used, in which case the cremated remains may be transferred from their durable container into the scattering urn no more than seven days prior to scattering the cremated remains at sea from a boat. (HSC § 7117(a))
- 13) Prohibits the scattering of cremated remains at sea within 500 yards of the shoreline and includes the inland navigable waters of the state. Clarifies that scattering at sea does not include lakes and streams, nor does it include scattering from a bridge or pier. (HSC § 7117(c)).
- 14) Prohibits the scattering of cremated remains unless a Death Certificate and Permit for Disposition of Human Remains has been obtained from a local registrar of births and deaths. (HSC § 103050).
- 15) Permits an owner of property to dedicate a section of the property for pet cemetery purposes by a notarized dedication document recorded with the county recorder of the county in which the property is located on or after January 1, 1985. (HSC § 9700)
- 16) Requires the dedication document to specify the length of time for the dedication. Requires the pet cemetery dedicated property be held and used exclusively for pet cemetery purposes, unless the dedication is removed from all or any part of the property and certain requirements regarding the disposition of interments has been confirmed through court findings. Requires the pet cemetery owners have received written authorization from those persons whose pets have been buried in the cemetery, or their heirs or assignees, to remove the pet cemetery dedication from their respective plots or to disinter the pet for removal to another plot location. (HSC § 9700 (a)(b))

17) Allows the pet cemetery owners to charge an endowment maintenance fee to persons whose pets will be buried in the cemetery on and after the date of this act, in addition to any burial fee. This maintenance fee shall be charged only at the time of the burial and shall be not less than twenty-five dollars (\$25). Proceeds from these maintenance fees shall be placed by the pet cemetery owners into an endowment care or similar trust fund, the entirety of which shall be used for the perpetual maintenance of the pet cemetery. (HSC § 9702)

**THIS BILL:**

- 1) Authorizes a public or private cemetery the option to designate a separate, clearly marked section of the cemetery where deceased pets could be interred with their deceased owners.
- 2) Requires, if the cemetery chooses to designate such a space, that the pet and human remains be in separate remains containers, but authorizes them to be placed in the same plot, niche, crypt, or vault.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.**

According to the author, “for the majority of Californians who own pets, our furry friends are more than just friends – they are family. On average, humans spend over a decade of their lives with their pets, building strong and irreplaceable bonds. As such, it is natural for owners to want to keep their furry members close in the afterlife to celebrate and honor the joy they brought to them. AB 528 will allow deceased pets to be buried in the same plot as their deceased owners when their time by their owner’s side comes to a natural end. Through this bill, we are providing families with the opportunity to keep their furry family close to them in death, just as they were in life.”

**Background.**

*Regulatory Function of the Bureau.* The Cemetery and Funeral Bureau (Bureau) licenses, regulates, and investigates complaints against 13 different licensing categories in California, which is comprised of approximately 13,500 licensees. The 13 licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, cemetery managers, and private, nonreligious cemeteries established after September 1939, which are authorized to collect endowment care funds. The Bureau is the sole entity that regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau is also responsible for the oversight of both the fiduciary and the operational activities of the industries. It manages preneed funeral trust funds, cemetery endowment care trust funds, as well as cemetery special care trust funds. The California Department of Insurance regulates the sale of insurance policies that can be used to fund preneed funeral arrangements. However, the seller must meet the price disclosure and contract requirements under the Bureau’s jurisdiction. The Bureau is authorized to conduct financial examinations to ensure compliance with current law, verify accounting and investing practices, and identify funding shortages. Audits may be initiated based upon the review of an annual trust

report, failure to file a trust report, consumer complaints, or for any other reason if the funds appear to be at risk of possible abuse or noncompliance.

As mentioned earlier in this analysis, the Bureau oversees licenses, regulates, and investigates complaints within California's cemetery and funeral industries. Additionally, the Bureau is responsible to ensure consumer protection and empower California consumers to make informed end-of-life decisions in a fair and ethical marketplace. Through a variety of sources, the Bureau makes efforts to be well-informed on issues relating to industry changes and trends. One source the Bureau utilizes is its Advisory Committee, which is comprised of industry members and public members. According to the Bureau's 2018 Sunset Review, its Advisory Committee is a valuable resource that allows the Bureau to obtain input on developing issues in the profession as well as concerns from the public. The Bureau's field representatives conduct inspections in assigned regions of the state and have contact with licensees on a regular and on-going basis. This provides an opportunity for direct communication with licensees and a first-hand look at what may be new or upcoming changes in the industry. Every Bureau field representative had previously worked as licensees in the industry and are knowledgeable about the profession and what may be evolving in the future. Moreover, California has two colleges with a mortuary science program with staff who regularly communicate with the Bureau on a variety of topics related to the industry, and the Bureau routinely attends the Advisory Committee meetings of both mortuary science schools.

Although the Bureau is not required to establish committees by law or regulation, the Bureau voluntarily established an Advisory Committee for consumer protection while keeping a finger on the pulse of emerging issues within the industry. The Advisory Committee allows a forum for both consumers and licensees input on funeral-and cemetery-related issues and assists the Bureau in addressing its regulatory obligations in an open and transparent environment. The Advisory Committee consists of seven members. The bureau chief selects and appoints the members with approval from the director of DCA. The members volunteer their time and, at their own expense, solely serve in an advisory capacity and offers nonbinding recommendations directly to the bureau chief. The goal of the Advisory Committee is to offer counsel to the Bureau based on each member's diverse experience and education. Advisory Committee members offer professional and technical assistance to the Bureau pertaining to the Bureau's licensing, enforcement, and regulatory functions. Meetings are typically held twice a year and a notice and agenda of each meeting is distributed and posted on the Bureau's website at least 10 days prior to each meeting.

*Whole-Family Cemeteries & Our Pets:* According to a 2023 American Veterinary Medical Association (AMVA) state survey of pet ownership, nearly 16 million Californians own a pet. These pets are often considered part of the family and integrated into a families daily activities. A 2017 NPR opinion piece, "When 'Whole-Family' Cemeteries Include Our Pets," it is acknowledged that in the United States it is not common for humans and pets to be buried together. The Op-Ed includes comments from Green Pet-Burial Society, a national/international advocacy group working to increase awareness of "whole-family" cemeteries. Whole-family cemeteries would allow full-body burials of a pet's remains in the family cemetery plot in adjacent and/or tiered graves. According to Green Pet-Burial Society, although a considerable number of people view this practice to be unusual, there is evidence that these burials were not uncommon in various cultures throughout human history. Green Pet-Burial Society recognizes as it becomes increasingly acceptable to express one's love, spiritual, and emotional connection to an animal, there is a growing interest in such burial options. Green Pet-Burial Society

founder, Eric Greene, provided NPR with the following statement: "Conservation whole-family cemeteries bring together two concepts and practices, whole-family cemeteries and conservation burial grounds, into a singular experience that is beautiful in its simplicity, and exceedingly comforting to the bereaved. What is key is that the pet remains aren't buried as property or 'grave goods' but as family members and this relationship is recognized and honored. Earth burials are an unexpected strategy for protecting/restoring the land as a wildlife preserve. In addition to protecting the environment and keeping families together, something else occurs — we experience ourselves as part of the earth and our connections with all animals is strengthened."

*Recently Passed and Pending State Laws:* Currently, only a handful of states allow for co-burial of human and animal remains and animal remains. In some states, humans may be cremated and their ashes buried in a pet cemetery alongside their pets. Several states, including New York, Pennsylvania, Virginia, and Florida, have recognized the increasing desire for co-burial of humans and their pets through enacting legislation on this topic. Although these states offer a potential framework for other states to examine and possibly replicate components, the majority of states do not consistently regulate pet cemeteries to the same extent as human ones. Arguably, this inconsistency and lack of parity between human and pet burials may create uncertainty for families who would like the option of co-burial with their pets. It is also possible that without clear guidance from the state, families are left without an absolute guarantee that the pet's final resting place will remain in perpetuity.

California's current options to honor our pets through burials are ambiguous and limited for pet owners who wish to be buried alongside their beloved pet. In California, it is estimated that there are only a dozen established pet cemeteries, which limits pet owners with only two traditional options: burial separate from their owner(s) or cremation.

### **Current Related Legislation.**

*AB 1560 (Flora)*, which is pending in this committee, would authorize a crematory license to be assigned when a change of ownership-occurs if specified conditions are satisfied, including payment of a fee of \$750 to the Bureau. It would also require the fee to be deposited in the fund. The bill would require a new owner to submit to the bureau a copy of the final sales agreement within 10 days after a sale of a crematory is final, would require the new owner to submit to the bureau proof that any required permit to operate the crematory issued by a local air pollution control district has been assigned to the new owner within 60 days after a sale of a crematory is final, and would make a failure to comply with these provisions a ground for disciplinary action. *Status: This bill is set for hearing in the Assembly Business and Professions Committee on April 25, 2023.*

### **Prior Related Legislation.**

*SB 1443 (Roth), Chapter 625, Statutes of 2022*, extended the sunset dates from January 1, 2024 to January 1, 2025 for the Cemetery and Funeral Bureau (CFB). Addressed the CFB's current structural deficit by increasing licensing fees. To avoid insolvency of the Bureau, this bill increased licensing fees across the CFB's licensing population. These licensee fees have not been increased in approximately 20 years.

*AB 351 (Cristina Garcia) Chapter 399, Statutes of 2022*, requires the Bureau, beginning January 1, 2027, to license and regulate reduction facilities, which the bill defines as a location where

natural, organic reduction of a human body occurs, and reduction facility managers, and will enact requirements applicable to reduction facilities. Requires a local registrar of births or deaths to issue permits for the disposition of reduced human remains.

*AB 501 (Cristina Garcia) of 2021*, would have established new regulatory processes for the disposal of reduced human remains and imposes the same requirements and prohibitions on reduced remains as for cremated and hydrolyzed remains. *Status: This bill was held on suspense in the Senate Appropriations Committee.*

*AB 2592 (Cristina Garcia) of 2021*, would have established a new regulatory process for a Licensed Reductions Facility (LRF), required specified training for LRF employees, imposed the same requirements on reduced remains as for cremated and hydrolyzed remains, and required the Bureau and the Department of Public Health to implement regulations by July 1, 2023. *Status: This bill was held on suspense in the Senate Appropriations Committee.*

*AB 795 (Irwin) Chapter 309, Statutes of 2019*, enacted various measures, including setting appropriate limits on trustee compensation, to help ensure the long-term solvency of cemetery endowment care trust funds.

*AB 926 (Irwin) Chapter 750, Statutes of 2017*, awarded permission to a cemetery authority to convert its endowment care distribution method from a net-income distribution method to a unitrust distribution method, upon application to and approval by the Cemetery and Funeral Bureau after January 1, 2020.

*AB 967 (Gloria) Chapter 846, Statutes of 2017*, established the regulation process for hydrolysis facilities under the Cemetery and Funeral Bureau (Bureau) beginning January 1, 2020. The measure also imposed the same requirements on hydrolyzed remains as for cremated remains. Finally, this bill specified training standards for hydrolysis facility employees and specifies the requirements for disposal of hydrolysate.

*AB 1777 (Ma), Chapter 79, Statutes of 2012*, authorized cremated remains to be transferred from a durable container into a scattering urn for no more than seven days before scattering the cremated remains at sea from a boat.

*SB 15 (Robbins), Chapter 490, Statutes of 1991*, authorizes a pet cemetery owner to dispose of the remains of any pet which has been left for more than 7 days at the pet cemetery if arrangements have not been made with the pet cemetery owner for the disposition of the pet. Requires a pet cemetery owner to post a notice stating that the remains of any pet which has been left for more than 7 days may be disposed of, under certain circumstances. Imposed on an any individual who steals or maliciously takes or carries away any animal of another for purposes of sale, medical research, or other commercial uses, or who knowingly, by a false representation or pretense, defrauds another person of any animal, for purposes of medical research or slaughter, is guilty of a public offense punishable by imprisonment in a county jail not exceeding one year or in the state prison, thereby increasing the scope of an existing crime and creating a state-mandated local program.

**POLICY ISSUE(S) FOR CONSIDERATION:** The author may wish to consider including language requiring, by a specified date, Bureau to conduct industry surveys and engage its Advisory Committee on the topic of pet co-burial practices.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 796 Weber – As Amended April 17, 2023

**SUBJECT:** Athletic trainers.

**SUMMARY:** Establishes, until January 1, 2028, the Athletic Training Practice Act and the Athletic Trainer Licensing Committee under the California Board of Occupational Therapy (CBOT) for the licensure and regulation of athletic trainers.

**EXISTING LAW:**

- 1) Provides for the regulation and licensure of the practice of medicine under the Medical Practice Act and establishes the Medical Board of California to implement and enforce the Act. (Business and Professions Code (BPC) §§ 2000-2028.5)
- 2) Prohibits any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided under the Medical Practice Act or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law. (BPC § 2052)
- 3) Establishes requirements and procedures for legislative oversight of state board formation and licensed professional practice. (Government Code (GOV) §§ 9148-9148.8)
- 4) Requires, prior to consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional, that the author or sponsor of the legislation develop a plan for the establishment and operation of the proposed state board or new category of licensed professional. (GOV § 9148.4)
- 5) The plan must include, but not be limited to, all of the following:
  - a) A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the specific evidence of need for the state to address the problem. (GOV § 9148.4 (a))
  - b) The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. (GOV § 9148.4(b))
  - c) Alternatives that shall be considered include, but are not limited to, the following:
    - i) No action taken to establish a state board or create a new category of licensed professional. (GOV § 9148.4(b)(1))

- ii) The use of a current state board or agency or the existence of a current category of licensed professional to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency or current category of licensed professional. (GOV § 9148.4(b)(2))
  - iii) The various levels of regulation or administration available to address the problem. (GOV § 9148.4(b)(3))
  - iv) Addressing the problem by federal or local agencies. (GOV § 9148.4(b)(4))
  - d) The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional. (GOV § 9148.4(c))
  - e) The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate. (GOV § 9148.4(d))
  - f) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard. (GOV § 9148.4(e))
- 6) Authorizes the appropriate policy committee of the Legislature to evaluate the plan prepared in connection with a legislative proposal to create a new state board and provides that, if the appropriate policy committee does not evaluate a plan, then the Joint Sunset Review Committee shall evaluate the plan and provide recommendations to the Legislature. (GOV § 9148.8)

**THIS BILL:**

- 1) Establishes the Athletic Training Practice Act.
- 2) Defines for the purposes of this bill:
  - a) “Athletic trainer” means a person who meets the requirements of this chapter, is licensed by the committee, and practices under the direction of a licensed physician or surgeon.
  - b) The term “athletic trainer” shall not include any teacher, coach, or other individual for an institution or organization, either public or private, within this state, who does not hold themselves out to the public as athletic trainers.
  - c) Nothing in this chapter shall be construed to prevent any person from serving as an athletic training student, assistant athletic trainer, teacher athletic trainer, or any similar volunteer position if such service is not primarily for compensation and is carried out under the supervision of a physician or a licensed athletic trainer.
  - d) The term “athletic trainer” shall not include any person who serves as a first responder or other layman position providing basic first aid within this state but who does not perform



the duties of an athletic trainer or hold themselves out as an athletic trainer. For purposes of this chapter basic first aid includes the initial steps taken to stabilize an injury or illness situation until more advanced or professionally trained personnel can assume treatment measures. This care generally consists of simple, life-saving or injury-stabilizing techniques that a nonphysician or layperson can be easily trained to perform with minimal equipment, and is generally recognized as such by national organizations such as the American Red Cross, National Safety Council, American Heart Association, or other similar organization.

- e) “Athletic training” means the performance of those services that require the education, training, and experience required by this chapter for licensure as an athletic trainer pursuant to this chapter. “Athletic training” includes services appropriate for the prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an athlete:
  - i) Who is engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility; or
  - ii) That affect an athlete’s participation or performance in sports, games, recreation, or exercise as described.
- f) “Athletic training” includes:
  - i) Planning, administering, evaluating, and modifying methods for prevention and risk management of injuries and illnesses;
  - ii) Identifying an athlete’s medical conditions and disabilities and appropriately caring for or referring an athlete as appropriate;
  - iii) Recognizing, assessing, treating, managing, preventing, rehabilitating, reconditioning, and appropriately referring to another health care provider to treat injuries and illnesses;
  - iv) Using therapeutic modalities for which the athletic trainer has received appropriate training and education;
  - v) Using conditioning and rehabilitative exercise;
  - vi) Using topical pharmacological agents, in conjunction with the administration of therapeutic modalities and pursuant to prescriptions issued in accordance with the laws of this state, for which the athletic trainer has received appropriate training and education;
  - vii) Educating and counseling athletes concerning the prevention and care of injuries and illnesses;
  - viii) Educating and counseling the general public with respect to athletic training services;
  - ix) Referring an athlete receiving athletic training services to appropriate health care personnel as needed; and

- x) Planning, organizing, administering, and evaluating the practice of athletic training.
  - g) “Board” means the California Board of Occupational Therapy.
  - h) “Committee” means the Athletic Trainer Licensing Committee.
  - i) “Director” means the Director of Consumer Affairs.
  - j) “Supervising physician” or “supervising physician and surgeon” means a physician or surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more athletic trainers, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation prohibiting the employment or supervision of a physician assistant.
  - k) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by an athletic trainer. Supervision, as defined in this subdivision, shall not be construed to require the physical presence of the physician or surgeon, but does require the following:
    - i) Adherence to adequate supervision as agreed to in the practice agreement.
    - ii) The physician or surgeon being available by telephone or other electronic communication method.
  - l) Specifies that the committee may require the physical presence of a physician or surgeon as a term or condition of an Athletic Trainer’s reinstatement, probation, or imposing discipline.
  - m) “Regulations” means the rules and regulations as set forth in Division 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.
- 3) Specifies that only a person licensed as an athletic trainer may use the title “athletic trainer” or “licensed athletic trainer,” the letters “A.T.” or “A.T.C.” as a title, or any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.
  - 4) Specifies that nothing under this bill authorizes an athletic trainer to practice:
    - a) Medicine, as defined under Chapter 5 (commencing with Section 2000);
    - b) Physical therapy, as defined under Chapter 5.7 (commencing with Section 2600);
    - c) Chiropractic, as defined under Chapter 2 (commencing with Section 1000);
    - d) Occupational therapy, as defined under Chapter 5.6 (commencing with Section 2570); or
    - e) Any other regulated form of healing except as authorized by this chapter.
  - 5) Specifies that nothing under this bill authorizes an athletic trainer to treat a disease or condition that is not related to a person’s participation in sports, games, recreation, or exercise, but the athletic trainer shall take a person’s disease or condition into account in

providing athletic training services and shall consult with a physician as appropriate regarding the disease or condition.

- 6) Specifies that nothing under this bill prohibits a person from recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance to a person in normal health as long as the person recommending the weight management or exercise does not represent themselves as an athletic trainer and the person does not engage in athletic training as defined in this chapter.
- 7) Establishes the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy, as specified.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *California Athletic Training Association*. According to the author, “[This bill] will establish the California Board of Athletic Training within the Occupational Therapy Board at the California Department of Consumer Affairs. This bill would also explicitly prohibit an individual from practicing as an athletic trainer without being licensed by the board. Athletic trainers are an integral part of the health care team. As a parent of two young athletes, I want to ensure that the person caring for my injured child is educated in the proper techniques to minimize injury and work with physicians, physical therapists and other health professionals on follow up care. A formalized licensure for athletic trainers is necessary to ensure the safety of all California athletes.”

**Background.** This bill would establish a licensing program for athletic trainers. According to the *California Occupational Guides* published by the Labor Market Information Division within the Employment Development Department, athletic Trainers “[e]valuate, advise, and treat athletes to assist recovery from injury, avoid injury, or maintain peak physical fitness.” Athletic training educational programs prepare “individuals to work in consultation with, and under the supervision of physicians to prevent and treat sports injuries and associated conditions.”

*Sunrise Process.* The Legislature uses a process known as “Sunrise” to assess requests for new or expanded occupational regulation, pursuant to GOV § 9148 and policy Committee Rules. The process includes a questionnaire and a set of evaluative scales to be completed by the group supporting regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals.

*Sunrise Background.* New regulatory and licensing proposals are generally intended to assure the competence of specified practitioners in different occupations. However, these proposals have resulted in a proliferation of licensure and certification programs, which are often met with mixed reviews. Proponents argue that licensing benefits the public by assuring competence and an avenue for consumer redress. Critics disturbed by increased governmental intervention in the marketplace have cited shortages of practitioners and increased costs of service as indicators that regulation benefits a profession more than it benefits the public.

In recent years, studies have demonstrated that licensing can have negative or unintended economic impacts, suggesting that lower levels of regulation may be more appropriate.<sup>1</sup> In July of 2015, the White House issued a report, *Occupational Licensing: A Framework for Policymakers*, in response to increases in the number of workers holding a license. It noted that, while licensing offers important protections to consumers and can benefit workers, there are also substantial costs, and licensing requirements may not always align with the skills necessary for the profession being licensed. Specifically, the report found:

There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing. In some cases, alternative forms of occupational regulation, such as State certification, may offer a better balance between consumer protections and flexibility for workers.

State legislators and administrative officials are expected to weigh arguments regarding the necessity of the proposed regulation, determine the appropriate level of regulation (e.g., registration, certification, or licensure), and select a set of standards (education, experience, examinations) that will assure competency. Requests for regulatory decisions often result in sharp differences of opinion as supporters and critics of the proposed regulation present their arguments. As a result, accurate information is necessary.

The Sunrise process accomplishes the following: (1) places the burden of showing the necessity for new regulations on the requesting groups; (2) allows the systematic collection of opinions both pro and con; and (3) documents the criteria used to decide upon new regulatory proposals. This helps to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting public health, safety, and welfare.

If a review of the proponents' case indicates that regulation is appropriate, a determination must be made regarding the appropriate level of regulation. As noted above, often the public is best served by minimal government intervention. The definitions and guidelines below are intended to facilitate the selection of the least restrictive level of regulation that will adequately protect the public interest.

- Level I: Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.
- Level II: Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is

---

<sup>1</sup> Morris M. Kleiner, *Reforming Occupational Licensing Policies*, Discussion Paper 2015-01 (The Hamilton Project, Brookings Institution, March 2015); Michelle Natividad Rodriguez and Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* (National Employment Law Project, April 2016); *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, Report #234 (Little Hoover Commission, 2016); Dick M. Carpenter II, Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd Edition (Institute for Justice, November 2017); Adam Thierer and Trace Mitchell, *Occupational Licensing Reform and the Right to Earn a Living: A Blueprint for Action* (Mercatus Center/George Mason University April 2020).

provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions and should apply to the business or organization providing the service, rather than the individual employees.

- Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.
- Level IV: Provide an opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: non-certified persons may perform the same tasks but may not use “certified” in their titles. Usually, an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when the potential for harm exists and when consumers have a substantial need to rely on the services of practitioners.
- Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.

*Sunrise Criteria and Questions.* Central to the Sunrise process was the creation of nine Sunrise criteria developed in coordination with the DCA to provide a framework for evaluating the need for regulation. These criteria are:

- 1) Unregulated practice of the occupation in question will harm or endanger the public health, safety or welfare.
- 2) Existing protections available to the consumer are insufficient.
- 3) No alternatives to regulation will adequately protect the public.
- 4) Regulation will alleviate existing problems.
- 5) Practitioners operate independently, making decisions of consequence.
- 6) The functions and tasks of the occupation are clearly defined.
- 7) The occupation is clearly distinguishable from other occupations that are already regulated.
- 8) The occupation requires knowledge, skills, and abilities that are both teachable and testable.
- 9) The economic impact of regulation is justified.

The criteria were used to develop the Sunrise Questionnaire noted above and help legislators and administrators answer three policy questions:

- 1) Does the proposed regulation benefit the public health, safety, or welfare?
- 2) Will the proposed regulation be the most effective way to correct existing problems?
- 3) Is the level of the proposed regulation appropriate?

*Occupational Therapy and the CBOT.* This bill establishes the athletic trainer licensing program under the CBOT. The CBOT is a licensing board under the DCA. The purpose of the CBOT is to protect consumers through regulation of the practice of occupational therapy in California. Specifically, the CBOT administers the licensing and enforcement programs for occupational therapists (OTs), occupational therapy assistants (OTAs), and occupational therapy aides. The CBOT also establishes and clarifies state-specific process and practice standards through administrative rulemaking.

Under the OT Practice Act, it is a misdemeanor to practice occupational therapy or hold oneself out as being able to practice occupational therapy, via titles or other methods, unless licensed or otherwise authorized by law. The OT Practice Act provides, among others, the following definitions relating to the breadth and scope of occupational therapy as regulated in California:

- “Practice of occupational therapy” means the therapeutic use of occupations.
- “Occupations” are “purposeful and meaningful goal-directed activities... which engage the individual’s body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health.”
- “Occupational therapy services” include “occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).”
- “Occupational therapy assessment” is the identification of “performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities.”
- “Occupational therapy treatment” is defined as being “focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability.” Treatment “may involve modification of tasks or environments to allow an individual to achieve maximum independence.”
- “Occupational therapy techniques that are used for treatment” are defined as involving “teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training).”

- “Occupational therapy consultation” provides expert advice to enhance function and quality of life. Consultation, like treatment, may also “involve modification of tasks or environments to allow an individual to achieve maximum independence.”

The CBOT oversees over 12,000 OTs and 2,500 OTAs. During each of the last three fiscal years, the CBOT issued a combined average of 1,018 licenses and renewed a combined average of 6,849 licenses.

The CBOT’s mandates include:

- Administer, coordinate, and enforce the provisions of the Practice Act.
- Evaluate the qualifications of applicants.
- Approve the examinations for licensure.
- Adopt rules relating to professional conduct to carry out the purpose of the Practice Act, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy or to assist in the practice of occupational therapy in this state.

The CBOT mission statement, as stated in its *2016–2019 Strategic Plan*, is “[t]o protect California consumers of occupational therapy services through effective regulation, licensing and enforcement.”

The CBOT also interacts frequently with stakeholders, such as professional associations and consumers. The two professional associations cited in the CBOT’s 2016 *Sunset Review Report* are the local Occupational Therapy Association of California, Inc. (OTAC) and the national American Occupational Therapy Association, Inc. (AOTA). The CBOT also utilizes the examination provided by the National Board for Certification in Occupational Therapy (NBCOT), a voluntary certification organization.

**Prior Related Legislation.** AB 2410 (Cunningham) of 2020, which died pending hearing in the Senate Business, Professions and Economic Development Committee, would have established title protection for athletic trainers, as specified.

AB 3110 (Mullin) of 2018, which died in the Senate Appropriations Committee, would have a registration program under a new Athletic Training Board within the DCA and prohibited a person from practicing athletic training, as defined, or holding themselves out as an athletic trainer, unless they were registered with the board.

AB 1510 (Debabneh) of 2017, which died pending hearing in this committee, would have established the Athletic Training Practice Act and establishes the Athletic Trainer Licensing Committee under the California Board of Occupational Therapy for the licensure and regulation of ATs.

AB 161 (Chau) of 2015 would have established certification and training requirements for athletic trainers and prohibit individuals from calling themselves athletic trainers unless they meet those requirements. *AB 161 was vetoed by Governor Brown, noting that the requirements under the bill would “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”*

AB 1890 (Chau) of 2014 was substantially similar to AB 161 (Chau) of 2015, establishing title protection for ATs. *AB 1891 was vetoed by Governor Brown, noting that the requirements under the bill would “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”*

AB 864 (Skinner) of 2013, which died in the Assembly Appropriations Committee, would have established the licensure and regulation of athletic trainers through the creation of an Athletic Trainer Licensing Committee under the Physical Therapy Board of California.

SB 1273 (Lowenthal) of 2012, which died in the Senate Business, Professions, and Economic Development Committee, was substantially similar to AB 864.

AB 374 (Hayashi) of 2011, as introduced would have established the Athletic Trainer Licensing Committee within the Medical Board of California to license and regulate athletic trainers commencing January 1, 2013, with a sunset date of January 1, 2018, and was later amended to provide title protection for athletic trainers. *AB 374 was substantially amended to deal with funeral directors and embalmers)*

AB 1647 (Hayashi) of 2010 would have established certification and training requirements for athletic trainers and prohibited individuals from calling themselves athletic trainers unless they meet those requirements. *AB 1647 was vetoed by Governor Schwarzenegger.*

SB 284 (Lowenthal) of 2007 would have enacted the Athletic Trainers Registration Act prohibiting a person from representing himself or herself as a “certified athletic trainer,” unless he or she is registered by an athletic training organization. *SB 284 was vetoed by Governor Schwarzenegger.*

SB 1397 (Lowenthal) of 2006 would have enacted the Athletic Trainers Certification Act, prohibiting a person from representing him or herself as an athletic trainer unless he or she is certified as an athletic trainer by an athletic training organization, as defined. *SB 1397 was vetoed by Governor Schwarzenegger.*

AB 614 (Lowenthal) of 2003 would have required the DCA to submit a recommendation to the Legislature as to whether the state should license and regulate athletic trainers by January 1, 2006, if the DCA is provided with an occupational analysis of persons providing athletic trainer services by July 1, 2005. *As was held in Senate Committee on Business and Professions Committee to allow the Joint Committee on Boards, Commissions and Consumer Protections to examine whether athletic trainers should be licensed as part of the Sunrise process.*

AB 2789 (Lowenthal) of 2002, which died in the Assembly Appropriations Committee, would have required the Department of Consumer Affairs to review the need for licensing of athletic trainers and undertake an occupational analysis.

SB 2036 (McCorquodale), Chapter 908, Statutes of 1994, expanded existing law into the current Sunrise process, covering the creation of new categories of licensed professionals and the revision of the scope of practice of an existing category of licensed professional.

#### **ARGUMENTS IN SUPPORT:**

The *California Athletic Trainers’ Association (CATA)* writes in support:



The athletic training profession is regulated in 49 states and the District of Columbia, California remains the only state that does not regulate the profession. There is an urgent need to regulate the profession.

Athletic trainers are board certified health care professionals. The profession requires a master's level degree for entry. Athletic training encompasses the prevention, diagnosis, and intervention of emergency, acute and chronic medical conditions involving impairment, functional limitations, and disabilities. Athletic trainers work with a variety of patients in schools, colleges/universities, and professional sports, industrial, police and fire departments, performing arts, military, and healthcare facilities. Athletic training is classified under the allied health professions category, as defined by the U.S. Department of Health and Human Services (HHS) and are assigned National Provider Identifier numbers (NPIs). The American Medical Association also recognizes athletic training as an allied health care profession. Currently, there are more than 3,400 certified athletic trainers working in California.

In all other states and the District of Columbia, the athletic training profession has statutorily outlined education and training standards, a defined scope of practice, an oversight board, and a formal adjudication process. Because California does not regulate the profession, this framework does not exist in the state. There are at least 130 individuals claiming to be athletic trainers and performing athletic training services in high schools who are unqualified to practice. Tens of thousands of student athletes encounter these individuals daily, and there are documented cases of harm resulting from the care of these unqualified individuals.

Additionally, this lack of regulation many times impedes the ability of athletic trainers to fully execute their job duties. Due to their non-licensed health care provider status, in some institutions in California athletic trainers are barred from reviewing, or entering into, patient medical records, compromising the care that they and other members of the healthcare team provide.

#### **ARGUMENTS IN OPPOSITION:**

The *California Nurses Association (CNA)*, the *California Physical Therapy Association (CPTA)*, the *California Academy of PAs (CAPA)*, the *Occupational Therapy Association of California (OTAC)*, and the *United Nurses Association of California/United Health Care Professionals (UNAC/UHCP)* write in opposition: We have numerous concerns with this legislation, just as we have had with other similar unsuccessful legislative efforts over the last 20 years.

- 1) Lack of necessity.** The level of regulation proposed by the bill is unnecessary. While many other states have in place a title protection or licensing scheme for athletic trainers, there is NO current crisis in California due to not having a new bureaucracy in place for athletic trainers. We have heard repeatedly the argument that young athletes involved in high school and club sports do not have Athletic Trainers on the sidelines during their activities and, therefore, are at risk, but [this bill] doesn't address this concern in any way. Such a bill might mandate that Athletic Trainers be available at such events and would specify how this was to be funded. [This bill] does nothing to address this concern and, instead, calls for creation of a licensing scheme that allows athletic trainers to treat

patients. Another oft-repeated argument is that anyone in California can call themselves an “athletic trainer” without having appropriate credentials. This could be easily addressed through a title protection/certification requirement, exactly like that contained in AB 2410 (Cunningham) of 2020, which passed the Assembly by a 78-0 vote.

- 2) **The scope of practice defined in this bill is overly broad.** It allows one licensed under this act to work with nearly any person or patient for nearly any physical condition. Today, athletic trainers are specifically educated and trained to work with athletes who have undergone a preparticipation screening by a physician and are participating in an organized sports activity, with any restrictions or directions noted by the physician. The broadness of this legislation puts public safety at risk because it allows athletic trainers to work with all in our population, with no preparticipation screen, and to provide care to the generalized population instead of that for which they are known to treat---athletes participating in organized activities in athletic settings with an individualized protocol tailored to an athlete’s specific and personal needs.
- 3) **The supervision of an athletic trainer as outlined in the bill is insufficient.** AB 796 allows athletic trainers to assess and treat patients so long as they have an ill-defined relationship with a physician somewhere and with no limitations other than those defined by the athletic trainer himself or herself. Today, athletic trainers work under the supervision of a physician at his or his direction under a plan developed specifically for the individual athlete. [This bill] also concerningly allows physicians to supervise an unspecified number of athletic trainers and does not require physician supervision of athletic trainers to be in person or synchronous, which further endangers the patients receiving care from an athletic trainer. Lastly, as an example, when the Legislature changed the law to afford patients the clear right to access physical therapy directly, it placed a 45-day, 12-visit limit on any treatment provided before a required check-in by the patient with his or her physician---this, for a profession of masters’- and doctoral-level professionals for which such “direct access” was already allowed in an overwhelming majority of states across the country.
- 4) The conditions of this bill would allow the athletic trainer to assess and evaluate a patient’s condition, then offer treatment. Working under the direction of a protocol when no physician is present would effectively require the athletic trainer to, in essence, diagnose a patient’s condition to correctly apply the proper treatment protocol. **The ability to “diagnose” is well outside of the education and training of an athletic trainer.**
- 5) **The bill inappropriately places a committee for athletic trainers under the California Board of Occupational Therapy for regulation.** Licensing boards are supported through fees on the professionals regulated. In this case, there is no real nexus between athletic trainers and occupational therapists. Further, the bill specifies that physicians are responsible for supervising athletic trainers. Therefore, a committee dedicated to athletic trainers should be placed under the Medical Board of California, which regulates the physicians responsible in the bill for supervising athletic trainers.
- 6) The argument that other states prohibit California athletic trainers from traveling with their sports teams unless there is a licensing scheme in this state has not, to our knowledge, affected any single California sports team. If this were the case, however,

title protection and a requirement for athletic trainers to be certified would meet the requirements of other states, just as do the certification requirements used by other states currently. Instead, the language of this bill goes far beyond addressing this issue and instead would allow athletic trainers to work with all patients for conditions well beyond sports-related injuries, triage, and prevention.

#### **POLICY ISSUES FOR CONSIDERATION:**

*Burdens on the Profession.* As noted above, the purpose of the "Sunrise" process is to ensure that new regulatory schemes are necessary to protect consumers, taking into consideration the burdens on the profession to be regulated. For example, all licensing programs include initial licensing and renewal fees. While fees vary between license types, in general, the fewer the number of licensees, the greater the fees needed. In 2017, these would be in addition to the current costs for obtaining BOC certification (\$60 application fee for non-NATA members, \$330 examination fee, \$25 examination eligibility fee, \$25 certification verification fee), maintaining BOC certification (\$55 annually for non-NATA members), maintaining continuous certification in Emergency Cardiac Care, and completing continuing education (50 units annually).

According to the author's *2017 Sunrise Questionnaire*, the last survey of the ATs in support of licensure was performed in 2011. At the time, there were almost 2,500 BOC-certified ATs in California. Of the 2,500 ATs, 2,014 were surveyed. Of the 2,014 surveyed, 760 responded. Of the 760 respondents, 745 were in favor (30% of all BOC-certified ATs at the time), while 15 opposed. Currently, there are approximately 3,100 BOC-certified ATs, and CATA purports to represent 87% of the BOC-certified ATs and some uncertified ATs.

*Need for Licensure.* According to the author, "[t]here is urgent and compelling need to license the profession of athletic training to: (1) protect the public; (2) protect employers of athletic trainers; and (3) protect athletic trainers." However, as noted above, the primary focus of licensure is consumer protection. While protection of athletic trainers and their employers are a welcome collateral benefit, protection of the profession and employers are insufficient to support licensure if there is no consumer protection need that cannot be solved by a lower form of regulation.

According to the author's sunrise questionnaire, "[t]he state of California has demanded strict standards for medical professionals. This reduces the chance of incompetent persons making difficult and life threatening decisions. Athletic training is one of the last allied health professions to be regulated by California, thus increasing the likelihood that unqualified, unethical or sanctioned individuals may practice athletic training."

With regard to specific harms:

The national AT Board of Certification (BOC) has their own disciplinary process for the AT certificates. Given that AT's are pretty much licensed in every other state, license revocations and suspensions at the state level should result in BOC revocations or suspensions as well. Here's a breakdown of national BOC disciplinary actions PLUS actions from states that participate in the BOC's Disciplinary Action Exchange:

- 1) 2022: ~15.
- 2) 2021: ~47.

3) 2020: ~21.

For California, there have been a total of 125 BOC cases closed, mostly for regulatory violations:

- 1) 0 for harm.
- 2) 16 for alcohol related convictions.

Of the anecdotal stories provided:

- 1) Involving certified ATs:
  - a) Sexual assault/harassment: 2 convictions (SJSU and Riverside), 2 unverified complaints (1 resulted in short-term school suspension, 1 was “getting creepy” and quit before investigation).
  - b) Incompetence: 1 complaint.
- 2) 18 cases of uncertified ATs.
- 3) 5 cases of harm as the result of no ATs (not solved by licensure).

Of the 93 unverified complaints CATA received through its website between 2015-17:

- 1) Nine alleged patient harm.
- 2) Remainder were uncertified ATs, AT students, or other types of uncertified licensees acting as ATs.

One point of distinction is the difference between preventing harm from unqualified practitioners and incentivizing the use of qualified practitioners. Licensing necessarily limits the available pool of practitioners. Of the 3,100 current BOC-certified ATs, not all will qualify for licensure, and none of the uncertified ATs will be permitted to practice.

*Physician Direction.* This bill authorizes an athletic trainer to perform services under the direction of a physician and surgeon and authorizes the Athletic Training Committee to determine additional methods for direction. Direction is not currently a recognized form of supervision under California law.

*Relation of Occupational Therapy to Athletic Training.* Athletic training, as defined under this bill and elsewhere is closer to the practice of sports and emergency medicine than it is to occupational therapy. If this bill passes this Committee, the author may wish to consider placing the AT Licensing Committee under the MBC.

#### **IMPLEMENTATION ISSUES:**

*Determination of Sufficient Funds.* This bill requires the Director of Consumer Affairs to determine whether there are "sufficient funds" for the AT licensing program. It is unclear what constitutes "sufficient funds." Due to the low number of potential licensees, the application and renewal fees may need to be higher than expected to sustain the program.

**AMENDMENTS:**

To address the concerns raised during sunrise, amend the bill as follows:

- 1) Move the committee under the Medical Board of California.
- 2) Authorize committee to hire its own staff so the Med Board is not impacted.
- 3) Prohibit athletic trainer title and scope of practice unless ATs register.
- 4) Practice under physician supervision and practice agreement.
- 5) AT must have current BOC certification, provide contact info, and pay fee.
- 6) Renew every two years, need current BOC certification, provide contact info, and pay fee.
- 7) Committee can revoke registration for lack of BOC certification, providing contact info, or paying fee.
- 8) Applicant who is denied or revoked can reapply if current BOC certification, provide contact info, and pay fee.
- 9) The committee cannot investigate complaints, but can forward to BOC.
- 10) Participate in BOC Disciplinary Action Exchange and otherwise work with BOC for up to date info.
- 11) Require the committee to report to legislature on harm data.

**SECTION 1.** ~~Chapter 5.8 (commencing with Section 2697) is added to Division 2 of the Business and Professions Code, to read: Article 26 (commencing with Section 2530) is added to Chapter 5 (commencing with Section 2000) of the Business and Professions Code, to read:~~

~~CHAPTER 5.8. Article 1.~~ Athletic Trainers

~~Article 1. Administration~~

~~2697. 2530.~~ This ~~chapter~~ *article* shall be known, and may be cited, as the Athletic Training Practice Act.

~~2697.1.~~ For the purposes of this ~~chapter,~~ *article*, the following definitions apply:

*(X) "Athlete" means a person who is engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.*

(a) "Athletic trainer" means a person who meets the requirements of this ~~chapter,~~ *article*, is ~~licensed~~ *registered* by the committee, and practices under the ~~direction~~ *supervision* of a licensed physician or surgeon.

~~(1) The term “athletic trainer” shall not include any teacher, coach, or other individual for an institution or organization, either public or private, within this state, who does not hold themselves out to the public as athletic trainers.~~

~~(2) Nothing in this chapter shall be construed to prevent any person from serving as an athletic training student, assistant athletic trainer, teacher athletic trainer, or any similar volunteer position if such service is not primarily for compensation and is carried out under the supervision of a physician or a licensed athletic trainer.~~

~~(3) The term “athletic trainer” shall not include any person who serves as a first responder or other layman position providing basic first aid within this state but who does not perform the duties of an athletic trainer or hold themselves out as an athletic trainer. For purposes of this chapter basic first aid includes the initial steps taken to stabilize an injury or illness situation until more advanced or professionally trained personnel can assume treatment measures. This care generally consists of simple, life saving or injury stabilizing techniques that a nonphysician or layperson can be easily trained to perform with minimal equipment, and is generally recognized as such by national organizations such as the American Red Cross, National Safety Council, American Heart Association, or other similar organization.~~

(b) “Athletic training” means the performance of those services that require the education, training, and experience required by this ~~chapter for licensure~~ *article for registration* as an athletic ~~trainer pursuant to this chapter.~~ *trainer*. “Athletic training” includes services appropriate for the prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an ~~athlete:~~ *athlete that affect an athlete’s participation or performance in sports, games, recreation, or exercise as described in subdivision (a).*

~~(1) Who is engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility; or~~

~~(2) That affect an athlete’s participation or performance in sports, games, recreation, or exercise as described in paragraph (1).~~

(c) “Athletic training” ~~includes:~~ *includes the following:*

(1) Planning, administering, evaluating, and modifying methods for prevention and risk management of injuries and ~~illnesses;~~ *illnesses.*

(2) Identifying an athlete’s medical conditions and disabilities and appropriately caring for or referring an athlete as ~~appropriate;~~ *appropriate.*

(3) Recognizing, assessing, treating, managing, preventing, rehabilitating, reconditioning, and appropriately referring to another health care provider to treat injuries and ~~illnesses;~~ *illnesses.*

(4) Using therapeutic modalities for which the athletic trainer has received appropriate training and ~~education;~~ *education.*

(5) Using conditioning and rehabilitative ~~exercise;~~ *exercise.*

(6) Using topical pharmacological agents, in conjunction with the administration of therapeutic modalities and pursuant to prescriptions issued in accordance with the laws of this state, for which the athletic trainer has received appropriate training and ~~education;~~ *education.*

(7) Educating and counseling athletes concerning the prevention and care of injuries and ~~illnesses;~~ *illnesses.*

(8) Educating and counseling the general public with respect to athletic training ~~services;~~ *services.*

(9) Referring an athlete receiving athletic training services to appropriate health care personnel ~~as needed; and~~ *needed.*

(10) Planning, organizing, administering, and evaluating the practice of athletic training.

(d) “Board” means the ~~California Board of Occupational Therapy.~~ *Medical Board of California.*

*(X) “Certifying entity for athletic trainers” means the Board of Certification, Inc. or its successor entity, or any other certifying entity that is accredited by the National Commission for Certifying Agencies for entry-level athletic training.*

(e) “Committee” means the Athletic Trainer ~~Licensing~~ *Registration* Committee.

(f) “Director” means the Director of Consumer Affairs.

(g) “Supervising physician” or “supervising physician and surgeon” means a physician or surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more athletic trainers, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation prohibiting the employment or supervision of a physician ~~assistant.~~ *assistant, athletic trainer, or other supervisee.*

(h) (1) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by an athletic trainer. Supervision, as defined in this subdivision, shall not be construed to require the physical presence of the physician or surgeon, but does require the following:

(A) Adherence to adequate supervision as agreed to in the practice agreement.

(B) The physician or surgeon being available by telephone or other electronic communication method.

*(k) “Practice agreement” means the writing, developed through collaboration among one or more physicians and surgeons and one or more athletic trainers, that defines the athletic training services the athletic trainer is authorized to perform in the settings specified in the practice agreement.*

*XXXX. (a) (1) A practice agreement shall include provisions that address the following:*

*(A) The types of athletic training services an athletic trainer is authorized to perform.*

*(B) Policies and procedures to ensure adequate supervision of the athletic trainer, including, but not limited to, appropriate communication, availability, consultations, and referrals between a physician and surgeon and the athletic trainer in the provision of athletic training services.*

*(C) The methods for the continuing evaluation of the competency and qualifications of the athletic trainer.*

*(E) Any additional provisions agreed to by the athletic trainer and physician and surgeon.*

*(2) A practice agreement shall be signed by both of the following:*

*(A) The athletic trainer.*

*(B) One or more physicians and surgeons.*

~~(2) Nothing in this subdivision shall be construed as prohibiting the committee from requiring the physical presence of a physician or surgeon as a term or condition of an Athletic Trainer's reinstatement, probation, or imposing discipline.~~

~~(i) "Regulations" means the rules and regulations as set forth in Division 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.~~

~~2697.2. Only a person licensed as an athletic trainer may use the title "athletic trainer" or "licensed athletic trainer," the letters "A.T." or "A.T.C." as a title, or any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.~~

**2697.3.** (a) Nothing in this chapter authorizes an athletic trainer to ~~practice~~; *practice the following*:

(1) Medicine, as defined under Chapter 5 (commencing with Section ~~2000~~); *2000*).

(2) Physical therapy, as defined under Chapter 5.7 (commencing with Section ~~2600~~); *2600*).

(3) Chiropractic, as defined under Chapter 2 (commencing with Section ~~1000~~); *1000*).

(4) Occupational therapy, as defined under Chapter 5.6 (commencing with Section ~~2570~~); ~~or 2570~~).

(5) Any other regulated form of healing except as authorized by this ~~chapter~~; *article*.

(b) Nothing in this ~~chapter~~ *article* authorizes an athletic trainer to treat a disease or condition that is not related to a person's participation in sports, games, recreation, or exercise, but the athletic trainer shall take a person's disease or condition into account in providing athletic training services and shall consult with a physician as appropriate regarding the disease or condition.

~~(c) Nothing in this chapter prohibits a person from recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance to a person in normal health as long as the person recommending the weight management or exercise does not represent themselves as an athletic trainer and the person does not engage in athletic training as defined in this chapter.~~ =



*XXXX. (a) A person shall not hold themselves out to be an athletic trainer, use the title “athletic trainer,” “certified athletic trainer,” “licensed athletic trainer,” “registered athletic trainer,” or any other term such as “AT,” “ATC,” “LAT,” or “CAT” to imply or suggest that the person is an athletic trainer, unless the person is certified by a certifying entity for athletic trainers.*

*(b) It is an unfair business practice within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 for a person to use the title “athletic trainer,” “certified athletic trainer,” “licensed athletic trainer,” “registered athletic trainer,” or any other term such as “AT,” “ATC,” “LAT,” or “CAT,” that implies or suggests that the person is an athletic trainer, if the person does not meet the requirements of subdivision (a).*

*(c) A person who is currently using one of the titles listed under paragraph (a) and is covered under a collective bargaining agreement is not subject to the requirements of this section until the parties to that bargaining agreement renew that agreement. At that time, a person shall not use the titles listed subdivision (a) if the individual does not meet the requirements of this section. Those individuals may choose a different title to describe their positions under the new collective bargaining agreement.*

*(d) No employee whose title is changed in order to comply with this section shall suffer any loss of employment status as a result of the title change, including, but not limited to, layoff, demotion, termination, reclassification, or loss of pay, seniority, benefits, or any other status or compensation related to the position.*

**2697.4.** (a) There is established the Athletic Trainer ~~California Board of Occupational Therapy~~ **Licensing Registration** Committee within the ~~California Board of Occupational Therapy~~ **Medical Board of California**.

(b) The committee shall consist of seven members, as follows:

(1) Three ~~licensed registered~~ **licensed registered** athletic trainers, except that initially, the committee shall include three athletic trainers certified by *a certifying entity for athletic trainers*. ~~successors, who shall satisfy the remainder of the licensure requirements described in Section 2697.6 as soon as it is practically possible.~~

(2) Three public members.

(3) One physician or surgeon licensed by the Medical Board of California or one osteopathic physician or surgeon licensed by the Osteopathic Medical Board of California.

(c) Subject to confirmation by the Senate, the Governor shall appoint the licensed athletic trainers, one of the public members, and the physician or surgeon or osteopathic physician or surgeon. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(1) The athletic trainers shall be appointed from the following:

(A) Two members shall be actively practicing athletic training and engaged primarily in direct patient care as an athletic trainer with at least five continuous years of experience.

(B) One member shall be active primarily as an educator or administrator in a program to educate athletic trainers.

(2) The physician or surgeon or osteopathic physician or surgeon shall be appointed from persons who have supervised or are currently supervising athletic trainers.

*(X) All members of the committee shall be appointed for terms of four years. Vacancies shall immediately be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.*

*(X) Each member of the committee shall receive per diem and expenses as provided in Section 103.*

*(X) (1) The committee may convene as it deems necessary.*

*(2) Four members of the board constitute a quorum for the transaction of business at any meeting.*

*(3) The affirmative vote of a majority of those members present at a meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure.*

*(4) The committee shall elect from its members a chair, a vice chair, and a secretary who shall hold their respective positions at the pleasure of the committee. The chair may call meetings of the committee and any duly appointed committee at a specified time and place.*

*(X) Except as provided by Section 159.5, the committee may employ, within the limits of the funds received by the committee, all personnel necessary to carry out this chapter. The board shall not use staff that is not employed directly by the committee to carry out this chapter.*

*(X) This section shall remain in effect only until January 1, 20\_\_, and as of that date is repealed.*

*(X) No person who directly or indirectly owns any interest in any college, school, or other institution or certifying body engaged in athletic training instruction or certification shall be appointed to the committee, nor shall any incumbent member of the committee have or acquire any interest, direct or indirect, in any such college, school, or institution.*

*XXXX. Notwithstanding any other law, the repeal of section XXXX renders the committee subject to review by the appropriate policy committees of the Legislature.*

~~2697.5~~

~~2697.6~~

~~2697.7.~~

~~2697.8~~

~~2697.9~~

*XXXX. (a) On and after January 1, XXXX, a person shall not do any of the following unless currently certified by a certifying board for athletic trainers and registered with the committee:\*

*(1) Practice athletic training, except as specified under Section XXXX.*

*(2) Use the titles specified under Section XXXX.*

*XXXX. (a) The committee shall register an athletic training applicant if all of the following are met:*

*(1) The committee receives official verification of the applicant's current certification by a certifying board for athletic trainers.*

*(2) The applicant submits an application developed by the committee that includes the following:*

*(A) The name or names of the applicant.*

*(B) The applicant's contact information, including the applicant's phone number, email address, and mailing address. An applicant may provide an alternate address of record for purposes of the public registry. An alternate address of record is anywhere a registrant may receive service of process, including a current work address or a valid post office box. Nothing in this paragraph prohibits the committee from requiring a home address in addition to an alternate address of record for purposes of committee communications.*

*(b) The registration shall be valid for two years and subject to the renewal requirements in Section XXXX.*

*XXXX. The committee shall renew a registration if all of the following are met:*

*(a) The committee receives official verification of the applicant's current certification by a certifying board for athletic trainers.*

*(b) The registrant pays the renewal fee established by the committee.*

*XXXX. (a) The committee shall deny or revoke a registration for any of the following reasons:*

*(1) The applicant or registrant fails to provide the information required pursuant to Section XXXX.*

*(2) The applicant or registrant no longer has current athletic training certification by a certifying board for athletic trainers.*

*(b) The committee shall participate in a certifying board for athletic trainers' disciplinary action exchange, if one exists, or otherwise work with a certifying board for athletic trainers to receive disciplinary action reports.*

*(c) The committee shall approve a denied or revoked registration if the applicant meets the requirements of Section XXXX.*

*XXXX. (a) The committee shall accept complaints from the public regarding athletic training but shall not investigate the complaints.*

*(b) The committee shall refer complaints related to incompetent or unethical practice or patient harm to the relevant certifying board for athletic trainers.*

*(b) The committee shall include with a complaint referred pursuant to this section a statement disclosing the unverified nature of the complaint.*

*(c) The committee shall not make available to the public complaints that have not resulted in a final disciplinary action or criminal conviction.*

*(d) (1) The committee shall track and report data relating to complaints and registrants to the appropriate policy committees of the Legislature by January 1, XXXX. The information shall be aggregated in a manner that does not disclose personal or identifying information that is not otherwise publicly available.*

*(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on July 1, XXXX, pursuant to Section 10231.5 of the Government Code.*

*(3) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.*

**2691.10**

**2697.12.** Any person who violates this chapter shall be guilty of a misdemeanor.

*XXXX. The requirements of this article do not apply to the following:*

*(a) The practice of any person licensed or regulated under any other law.*

*(b) A teacher, coach, or other individual for an institution or organization, either public or private, within this state, who does not hold themselves out to the public as athletic trainers.*

*(c) An athletic trainer licensed, certified, or registered in another state or country who is in California temporarily, while traveling with a team or organization, to engage in the practice of athletic training for, among other things, an athletic or sporting event and only when the athletic trainer limits their scope of practice to the members of the team or organization or during an emergency.*

*(d) An athletic trainer licensed, certified, or registered in another state or country who is invited by a sponsoring organization, such as the United States Olympic Committee, to temporarily provide athletic training services under their state's scope of practice for athletic training.*

*(e) A student enrolled in an athletic training education program, while participating in educational activities during the course of their educational rotations under the supervision and guidance of an athletic trainer or physician and surgeon when the student's title clearly indicates student status.*

*(f) A member or employee of the United States Armed Forces, licensed, certified, or registered in another state as an athletic trainer, as part of his or her temporary federal deployment or employment in California for a limited time.*

*(g) A person performing personal training, including recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance.*

**2697.13.** The Athletic Trainers Fund is hereby established in the State Treasury. All fees collected pursuant to this chapter shall be paid into the fund. Moneys in the fund shall be available to the committee, upon appropriation by the Legislature, for expenditure by the committee to defray its expenses for administering this chapter.

**2697.14.** Notwithstanding any other law, including Section 11005 of the Government Code, the director may seek and receive funds from the California Athletic Trainers Association or any other private individual or entity for the initial costs of implementing this chapter. If private funds are unavailable to cover the startup costs of implementing this act, a General Fund or special fund loan may be used and shall be repaid with fee revenue.

**2697.15.** The director shall determine that sufficient funds for that purpose of administering this chapter have been obtained and shall provide notice to the Legislature, the Governor, and on the department's internet website of the determination.

~~**2697.16.** This chapter shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

*XXXX. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.*

**REGISTERED SUPPORT:**

California Athletic Trainers Association (sponsor)  
American Medical Society for Sports Medicine  
Arroyo Grande High School  
Azusa Pacific University  
Board of Certification, INC.  
Breg, INC.  
California Coaches Association  
California Community College Athletic Association  
California Community College Athletic Director's Association  
California Interscholastic Federation  
California Interscholastic Federation Los Angeles City Section  
California Orthopedic Association  
California State University - Fullerton  
California State University, Fullerton  
Citrus Community College District  
Coast Union High School  
Commission on Accreditation of Athletic Training Education  
Cypress College  
Eric Paredes Save a Life Foundation  
Far West Athletic Trainers Association  
Forty Niners Football Company Llc, a Delaware Limited Liability Company  
Fresno Unified School District  
Fullerton College Student Athletes  
Gavilan College  
Kelvi  
Korey Stringer Institute

Los Angeles Chargers  
Los Angeles Rams  
Los Angeles Unified School District  
Maine Athletic Trainers' Association  
National Athletic Trainers' Association  
National Basketball Athletic Trainers' Association  
National Football League  
Oakland Soul Sports Club  
Pride Sports Medicine  
Project 510  
Rhode Island Athletic Trainers Association  
San Joaquin Delta College Athletics  
San Jose State Athletics  
Santa Barbara City College  
Sierra College  
Southern California University of Health Sciences (SCUHS)  
Stanford Medicine Children's Health  
The Oakland Roots Soccer Club  
Turlock Unified School District  
University of California - San Francisco Orthotic and Prosthetic Centers  
University of California, San Francisco  
Venice High School  
West Coast Sports Medicine Foundation  
Westrock  
Numerous individuals and organizations

**REGISTERED OPPOSITION:**

California Academy of PAs  
California Physical Therapy Association  
California Nurses Association  
Occupational Therapy Association of California  
United Nurses Associations of California/Union of Health Care Professionals  
15 Individuals

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 814 (Lowenthal) – As Amended March 23, 2023

**SUBJECT:** Veterinary medicine: animal physical rehabilitation.

**SUMMARY:** Authorizes a licensed physical therapist (PT), who meets requirements determined by the Veterinary Medical Board (VMB) in collaboration with the Physical Therapy Board of California (PTBC), to provide animal physical rehabilitation (APR) to an animal patient if certain requirements are met, including that the APR is performed on premises registered with the VMB and that the PT works under the supervision of a licensed veterinarian who has an established veterinarian-client-patient relationship with the animal, among other requirements.

**EXISTING LAW:**

- 1) Provides for the regulation of veterinary medicine under the Veterinary Medicine Practice Act, and prohibits the unlicensed practice of veterinary medicine. (Business and Professions Code (BPC) §§ 4800-4917)
- 2) Establishes the VMB within the Department of Consumer Affairs (DCA) to implement and enforce the Act, including licensing and regulating veterinarians, registered veterinary technicians (RVTs), unlicensed veterinary assistants, and veterinary premises. (BPC § 4800-4811)
- 3) Defines the practice of "veterinary medicine, surgery, and dentistry, and the various branches thereof" as the following:
  - a) Representing engagement in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches. (BPC § 4826(a))
  - b) Diagnosing or prescribing a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals. (BPC § 4826(b))
  - c) Administering a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, as specified. (BPC § 4826(c))
  - d) Performing a surgical or dental operation upon an animal. (BPC § 4826(d))
  - e) Performing any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock or Equidae. (BPC § 4826(e))
  - f) Using words, letters, or titles that may induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry, as specified. (BPC § 4826(f))
- 4) Makes it unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish a drug, medicine, appliance, or treatment of whatever nature for the prevention, cure,

or relief of a wound, fracture or bodily injury or disease of an animal without having first established a veterinarian-client-patient relationship (VCPR) with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown. (California Code of Regulations (CCR), Title 16, § 2032.1)

- 5) Specifies that a VCPR must be established through all three of the following:
  - a) The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment. (CCR, tit. 16, § 2032.1(b)(1))
  - b) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian is personally acquainted with the care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept. (CCR, tit. 16, § 2032.1(b)(2))
  - c) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a course of treatment appropriate to the circumstance. (CCR, tit. 16, § 2032.1(b)(3))
- 6) Authorizes RVTs and veterinary assistants to perform specified animal health care services under the supervision of a veterinarian licensed or authorized to practice in this state. (BPC § 4840)
- 7) Requires the VMB to adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by an RVT or a licensed veterinarian; authorizes the VMB to adopt regulations for veterinary assistants; requires the VMB to establish an appropriate degree of supervision by an RVTs or a licensed veterinarian over a veterinary assistant for any tasks established; and requires the degree of supervision for any of those tasks to be higher than, or equal to, the degree of supervision required when an RVT performs the task. (BPC § 4836)
- 8) Defines “direct supervision” to mean: (1) the supervisor is physically present at the location where animal health care job tasks are to be performed and is quickly and easily available and (2) the animal has been examined by a veterinarian at such time as good veterinary medical practice requires consistent with the particular delegated animal health care job task. (CCR, tit. 16, § 2034(e))
- 9) Defines “indirect supervision” to mean: (1) that the supervisor is not physically present at the location where animal health care job tasks are to be performed, but has given either written or oral instructions (“direct orders”) for treatment of the animal patient; and (2) the animal has been examined by a veterinarian at such times as good veterinary medical practice requires, consistent with the particular delegated animal health care task and the animal is not anesthetized, as defined. (CCR, tit. 16, § 2034(f))
- 10) Lists specific animal health care tasks an RVT may or may not perform and the required level of supervision, provides that an RVT may perform health care tasks not listed under the direct or indirect supervision of a licensed veterinarian, and requires the degree of



supervision by the licensed veterinarian over the RVT to be consistent with standards of good veterinary medical practices. (CCR, tit. 16, § 2036)

- 11) Authorizes licensed chiropractors to perform musculoskeletal manipulation (MSM) under direct supervision by a veterinarian, as specified. (CCR, tit. 16, § 2038)
- 12) Provides for the licensure and regulation of physical therapy under the Physical Therapy Practice Act. (BPC §§2600-2696)
- 13) Establishes the PTBC within the DCA to administer and enforce the Physical Therapy Practice Act, including licensing PTs, physical therapist assistants, and physical therapy aides and technicians. (BPC § 2602)
- 14) Defines "physical therapy" as "the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise," which includes "physical therapy evaluation, treatment planning, instruction and consultative services" and "the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions," but excludes "use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization," and "the diagnosis of disease." (BPC § 2620)
- 15) Provides that a PT is not authorized to practice medicine, surgery, or any other form of healing except as described under the definition of "physical therapy." (BPC § 2621)
- 16) Authorizes the PTBC to take action against a PT license for unprofessional conduct through citation, discipline, denial of a license, or issuance of a probationary license. (BPC § 2660)
- 17) Specifies that unprofessional conduct includes, among other things:
  - a) Practicing or offering to practice beyond the scope of practice of physical therapy. (BPC § 2660(d))
  - b) Failure to maintain adequate and accurate records relating to the provision of services to his or her patients. (BPC § 2660(g))
  - c) Gross negligence or repeated acts of negligence in practice or in the delivery of physical therapy care. (BPC § 2660(h))
  - d) Aiding or abetting any person to engage in the unlawful practice of physical therapy. (BPC § 2660(i))
  - e) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a PT or physical therapist assistant. (BPC § 2660(j))
  - f) Permitting a physical therapist assistant or physical therapy aide under a PT's supervision or control to perform, or permitting the physical therapist assistant or physical therapy aide to advertise competence to perform, professional services beyond the level of

education, training, and experience of the physical therapist assistant or aide. (BPC § 2660(n))

- 18) The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice physical therapy issued by that state, or the revocation, suspension, or restriction of the authority to practice physical therapy by any agency of the federal government. (BPC § 2660(o))

**THIS BILL:**

- 1) Authorizes a licensed PT to perform APR.
- 2) Makes a violation of this bill by a PT unprofessional conduct with the PTBC.
- 3) Makes a report of a final disciplinary action against PT by the VMB under this bill conclusive evidence of unprofessional conduct.
- 4) Defines, for purposes of this bill:
  - a) “Animal physical rehabilitation” (APR) as the treatment of injury or illness to address pain and improve function using physical or corrective treatment, consistent with the VMB’s regulations, but excludes relaxation, recreational, or wellness modalities, including massage, athletic training, or exercise.
  - b) “Animal physical rehabilitation assistant” as an unlicensed person who is not a licensed veterinarian, registered veterinarian technician, or authorized animal PT, and who assists an authorized animal PT with delegated animal rehabilitation tasks.
  - c) “Animal physical rehabilitation facility” as a facility registered with the VMB where an authorized animal PT performs delegated animal rehabilitation tasks on an animal patient.
  - d) “Authorized animal physical therapist” as a PT who is registered with the VMB, and who performs APR under a supervising veterinarian.
  - e) “Delegated animal rehabilitation task” as APR treatments, functional assessment, or services delegated to an authorized animal PT or APR assistant by a supervising veterinarian providing an order for treatment.
  - f) “Direct supervision” as both of the following:
    - i) The supervising veterinarian is physically present at the location where delegated APR tasks are to be performed and is quickly and easily available.
    - ii) The animal has been examined by the supervising veterinarian within the period of time consistent with standards of good veterinary medical practice and the particular delegated APR task.
  - g) “Indirect supervision” as both of the following:

- i) The supervising veterinarian is not physically present at the location where delegated APR tasks are to be performed, but has given an order for treatment to an authorized animal PT to provide treatment to an animal patient.
  - ii) The animal has been examined by the supervising veterinarian within the period of time consistent with standards of good veterinary medical practice and the particular delegated APR task.
  - h) “Order for treatment” as oral or written instruction from a supervising veterinarian authorizing APR of an animal patient, including, but not limited to, communication and safety protocols or procedures specific to the animal patient, consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task.
  - i) “Supervising veterinarian” means a veterinarian who is responsible for all of the following:
    - i) Examining the animal patient before giving an order for treatment to an authorized animal PT or APR assistant to perform a delegated APR task. The examination of the animal patient shall establish a veterinary-patient-client-relationship and shall be conducted within the period of time consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task.
    - ii) Making all decisions relating to the diagnosis, treatment, management, and future disposition of the animal patient.
    - iii) Determining the appropriate degree of supervision of an authorized animal PT or an APR assistant necessary for the performance of the particular delegated animal physical rehabilitation task, consistent with standards of good veterinary medical practice.
  - j) “Supervision” or “degree of supervision” as veterinary oversight of the treatment plan performed by the authorized animal physical therapist and may be either direct supervision or indirect supervision.
- 5) Authorizes an authorized animal PT to provide APR to an animal if all of the following requirements are met:
- a) The authorized animal PT performs all delegated APR tasks under the supervision of a veterinarian who has an established veterinary-patient-client-relationship with the animal. This veterinary-patient-client-relationship need not be established on the same premises where the delegated APR tasks are performed.
  - b) The degree of supervision is consistent with standards of good veterinary medical practice and the particular delegated APR task, as determined by the supervising veterinarian.
  - c) The delegated APR task is performed on a veterinary premise registered with the VMB, in an APR facility registered with the VMB, or in a mobile or range setting.

- d) The authorized animal PT has registered to practice APR with the VMB and has paid the required fee.
- 6) An APR assistant may assist with delegated APR tasks if both of the following requirements are met:
  - a) The APR assistant performs the delegated APR tasks under the direct supervision of an authorized animal PT.
  - b) The APR assistant is working under the degree of supervision consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task, as determined by the authorized animal physical therapist's supervising veterinarian.
- 7) Prohibits, except as specified, an authorized animal PT or APR assistant from performing any activity that represents the practice of veterinary medicine or requires the knowledge, skill, and training of a licensed veterinarian or RVT, including the following:
  - a) Surgery.
  - b) Diagnosis and prognosis of animal diseases.
  - c) Prescription of drugs, medicines, or appliances.
  - d) Anesthesia.
  - e) Application of casts or splints, except temporary cast molding for purposes of fitting custom or prefabricated orthotics or prosthetics if ordered by a supervising veterinarian.
  - f) Dental extraction.
  - g) Suture.
  - h) Administration of controlled substances.
  - i) Any other veterinary medicine function, tasks, or activities not specifically authorized by a supervising veterinarian as a delegated APR task.
- 8) Requires an APR facility to be registered with the VMB and pay the registration fee.
- 9) Authorizes the VMB to inspect an animal rehabilitation facility for safety and compliance with this bill.
- 10) Requires the VMB and the PTBC, in cooperation, to determine the qualifications necessary for a PT to register with the VMB and receive authorization in APR and requires, when making this determination, the VMB and PTBC to ensure that the qualifications provide for safe and efficacious treatment of an animal and are consistent with the VMB's Animal Rehabilitation Task Force findings and approved motions.
- 11) Requires the VMB to create the registration form and determine the registration process for authorization.

- 12) Specifies that an authorization expires two years after the date of issuance and may be renewed in a manner approved by the VMB.
- 13) Specifies that an authorized animal PT shall be solely liable for any delegated animal rehabilitation tasks that they perform. The veterinarian who issues an order for treatment for APR shall not be liable for any animal physical rehabilitation provided by the authorized animal PT or the APR assistant.
- 14) Authorizes the VMB to discipline an authorized animal PT, including, but not limited to, revocation of the PT's authorization to perform APR.
- 15) Specifies that failure to comply with the supervision requirements under this bill shall be deemed unprofessional conduct and shall subject an authorized animal PT to revocation of the authorization issued by the VMB.
- 16) Requires the VMB to report final disciplinary actions against an authorized PT to the PTBC.
- 17) Specifies that the fee for the issuance and renewal of authorization in APR shall be set by the VMB in an amount not to exceed the reasonable regulatory costs to the VMB.
- 18) Specifies that the initial and annual renewal fees for registration of an APR facility shall be set by the VMB in an amount not to exceed the reasonable regulatory costs to the VMB.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Animal Physical Therapy Coalition*. According to the author, "California is facing a shortage of veterinarians that has resulted in challenges to accessing veterinary care for animal owners, including physical rehabilitation. [This bill] will help ease the burden on veterinarians by providing them with an additional option for physical rehabilitation care by authorizing a licensed veterinarian, after establishing a veterinary-patient-client-relationship, to refer an animal to an authorized animal physical therapist for treatment. Additionally, the bill authorizes the referring veterinarian to determine the appropriate degree of supervision for an authorized animal physical therapist to provide rehabilitation services on an animal. As the state and veterinary community continue to explore options to address the veterinary shortage and issues with access to care, [this bill] represents a piece of the puzzle that will help balance workload for overburdened veterinary practices and expand options and access to care for animal owners."

**Background.** In California, only licensed veterinarians may provide veterinary medicine to an animal for a wound, fracture, or bodily injury, which includes all treatment, including physical therapy, except that RVTs and unlicensed veterinary assistants may treat animals under a veterinarian's supervision.

Like other licensing requirements, practice restrictions on veterinary medicine serve to protect consumers of professional services and the public from practices that present a high risk of harm when performed by unqualified practitioners. As a result, those who wish to practice a licensed profession must demonstrate a minimum level of competency that reduces the risk of harm to an acceptable level. Licensing requirements vary by profession but usually include specific

education, examination, and experience. Specific training and education may also be supplemented with or substituted for additional supervision by a licensee with the proper level of training.

Currently, a licensed PT who wants to perform physical therapy on an animal must pursue additional licensure as a veterinarian, pursue registration as RVT, or work under the direct supervision of a licensed veterinarian as a veterinary assistant. Direct supervision means the supervising veterinarian is on-site, is readily available, and performs necessary examinations on the animal patient.

RVTs work under the indirect supervision of a licensed veterinarian, which means the licensed veterinarian is not on-site but has provided written or oral instructions, has established a VCPR with the animal patient, and performs examinations as necessary under the veterinary standard of care. This bill seeks to also authorize PTs who are certified in APR, as determined by the VMB and PTBC, to work under the indirect supervision of a licensed veterinarian.

*Veterinary Medicine Education.* Applicants for licensure as a veterinarian must graduate with a Doctor of Veterinary Medicine (DVM) degree from a four-year program at an accredited college of veterinary medicine or its equivalent, as determined by the VMB. Graduates must take and pass the North American Veterinary Licensing Exam and a California-specific law and ethics examination. The national exam covers all aspects of veterinary medicine and contains visual materials designed to test diagnostic skills.

Licensed veterinarians may also seek board certification by completing a 3-to-4-year residency program. The residency program provides intensive training in one of the 39 specialties recognized by the American Veterinary Medical Association (AVMA). The specialties include internal medicine, oncology, pathology, dentistry, nutrition, radiology, surgery, dermatology, anesthesiology, neurology, cardiology, ophthalmology, preventive medicine, and exotic-small-animal medicine.

Applicants for registration as an RVT must be at least 18 years of age, complete a two-year minimum veterinary technology program at a VMB-approved college or postsecondary institution or the equivalent, as determined by the VMB. The VMB may also consider a combination of education and clinical experience of the RVT as equivalent of the graduation requirement. The RVT must also pass a national examination and state-specific examination.

Veterinary assistants are not required to meet any specific requirements for education or examination. RVTs and veterinary assistants may perform animal health care services and tasks as prescribed by law or regulation under the supervision of a veterinarian. However, RVTs may perform animal health care services on impounded animals pursuant to direct, written, or telephonic order of a veterinarian and may directly purchase sodium pentobarbital for performance of euthanasia without the supervision or authorization of a veterinarian.

*Physical Therapy Education.* Applicants for licensure as a PT must complete a post-baccalaureate (master's) degree in physical therapy from an accredited postsecondary institution or an institution approved by the PTBC. The educational requirements must include instruction in the subjects prescribed by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association or Physiotherapy Education Accreditation Canada and must include a combination of didactic and clinical experiences.

Generally, PT programs cover basic science courses, including biology, chemistry, and physics as well as specialized courses in biomechanics, neuroanatomy, human growth and development, manifestations of disease, examination techniques, and therapeutic procedures. In addition to classroom and laboratory instruction, students must complete at least 18 weeks of full-time clinical experience with a variety of patients.

Graduates must also take and pass the National Physical Therapy Examination (NPTE) and a California- specific law and ethics examination. The NPTE PT exam consists of 250 multiple choice questions that are designed to assess basic entry-level competence after graduation from an accredited program or from an equivalent non-accredited program.

*Animal Physical Rehabilitation Task Force.* During the VMB's 2016 Sunset Review hearing, the staff background paper noted that the VMB was becoming increasingly concerned about the welfare of the animals being treated by unlicensed personnel and found evidence of animal harm. As a result, the staff recommendation was for the VMB to "create a task force comprised of stakeholders including veterinarians, RVTs, animal rehabilitation and related animal industry professionals, consumers, and representatives from the legislature to further examine the issue and present a recommendation to the [VMB] by January 1, 2017."

The specific recommendations approved at each meeting are as follows:

*First meeting on June 20, 2016:*

- 1) Animal Physical Rehabilitation is defined as the treatment of injury or illness to address pain and improve function by means of physical corrective treatment.
- 2) Animal Physical Rehabilitation does not include relaxation, recreational or wellness modalities, including but not limited to, massage, athletic training or exercise.
- 3) Any proposed changes to existing law and regulations are not an attempt to restrict or amend section 2038 of the California Code of Regulations regarding the provision of Musculoskeletal Manipulation modalities.
- 4) Prior to performing or authorizing Animal Physical Rehabilitation, a veterinarian shall establish a valid veterinarian-client-patient relationship as defined in sections 2032.1 or 2032.15 of the California Code of Regulations.

*Second meeting on October 4, 2016:*

- 1) Veterinarians have sufficient education and training to provide Animal Physical Rehabilitation.
- 2) Registered Veterinary Technicians (RVTs) may provide Animal Physical Rehabilitation under the direct supervision of a veterinarian unless in a range setting in which case the veterinarian may provide the appropriate level of supervision.
- 3) Veterinary Assistants may provide Animal Physical Rehabilitation under the direct supervision of a veterinarian or an RVT.

*Third and final meeting on February 2, 2017:*

California licensed physical therapists with advanced certification in Animal Physical Rehabilitation (with such certification to be defined by the Veterinary Medical Board and Physical Therapy Board working cooperatively) may provide animal physical rehabilitation under the degree of supervision to be determined by the veterinarian who

has established a veterinarian-client-patient relationship, on a veterinary premises or an Animal Physical Rehabilitation premises (as defined in regulation by the Veterinary Medical Board and the Physical Therapy Board working cooperatively), or a range setting.

However, at the VMB's April 19, 2017, board meeting, the VMB approved a motion to modify the task force's final recommendation to specify that a PT may offer APR under direct supervision, rather than the degree of supervision to be determined by the supervising veterinarian. This bill seeks to codify the task force's original recommendations.

**Other States.** According to the American Veterinary Medical Association, thirty states are silent regarding APR. Thirteen states specifically include APR in their practice acts, with some allowing direct supervision of PTs: Florida, Georgia, Illinois, Iowa, Maine, Mississippi, Tennessee, Indiana, Louisiana, New Mexico, Oklahoma, Pennsylvania, and South Carolina.

Seven states allow for an indirect model similar to this bill: Oregon, Colorado, Nebraska, Utah, Virginia, Nevada, and New Hampshire. Oregon has authorized PTs to practice APR since 1975.

**Prior Related Legislation.** AB 3013 (Chu) of 2018 would have authorized a licensed PT with a certificate in APR, as determined by the VMB in collaboration with the PTBC, to provide APR to an animal patient if certain requirements are met, including that the APR is performed on specified premises registered with the VMB and that the PT works under the indirect supervision of a licensed veterinarian who has an established veterinarian-client-patient relationship with the animal, among other things.

#### **ARGUMENTS IN SUPPORT:**

The *Animal Physical Therapy Coalition* (sponsor) writes in support:

We are acutely aware of the veterinary access to care issues that plague California. It is very difficult to get the physical rehabilitative care for our animals and passage of this bill will make a profound difference so more animals can get the care they need.

- Veterinarians have been asking for the ability to authorize/refer to a qualified animal physical therapist (licensed PT with additional training specifically on animals) to assess and treat their animal patients under their supervision (whether that be direct or indirect) at a premise that meets health and safety standards. Once a veterinarian has diagnosed, examined, and determined that physical rehabilitation is the best choice for an animal patient, the veterinarian should be allowed to refer to a qualified animal PT at a facility that is registered with the California Veterinary Medical Board (CVMB).
- Consumers want and need more access to and choice of animal rehabilitative services.
- The CVMB wants the ability to inspect facilities where animal rehabilitation services are provided. For this reason, under this measure, a qualified animal PT will be allowed to carry the newly created Animal Physical Rehabilitation Facility permit. This limited premise permit will give the CVMB the authority



to inspect these animal rehabilitation facilities as an additional layer of consumer protection.

- The CVMB wants to ensure liability would not fall on the referring veterinarian. Sharing this concern, [this bill] makes clear that liability would appropriately be placed on the treating licensed professional. This is standard and customary for any licensed professional in California but was explicitly defined in this measure to directly address CVMB concerns.
- Qualified animal PTs want to be able to provide physical rehabilitative services at their own facility registered with the CVMB under veterinary indirect supervision after a veterinarian has made a diagnosis and determined that their animal patient could benefit from such services.

This bill will not only greatly increase safe access to animal rehab care, but it will also improve interprofessional collaboration between DVMs and PTs which will elevate patient care for animals.

#### **ARGUMENTS IN OPPOSITION:**

The *California Veterinary Medical Association (CVMA)*, the *Southern California Veterinary Medical Association (SCVMA)*, the *Sacramento Valley Veterinary Medical Association (SVVMA)*, and the *American Veterinary Medical Association (AVMA)*, write in opposition:

A. Animal Physical Rehabilitation (APR) is the Practice of Veterinary Medicine and Should be Performed by or Under the Direct Supervision of Veterinarians, as Stated in Current Law

After over a decade of dialogue about animal physical rehabilitation and how it should be performed, the California Veterinary Medical Board (VMB) promulgated CCR Title 16, section 2038.5 in 2022. This regulation is now in effect and defines APR as “the treatment of an injury or an illness to address pain and improve function by means of physical corrective treatment,” which places it squarely within the practice of veterinary medicine per California Business and Professions Code section 4826(c).

The rulemaking process pursuant to which Section 2038.5 was promulgated was open and fair and welcomed all stakeholders to present information to help the VMB craft a regulation that best serves the interests of animals and consumers alike. The resulting regulation allows a registered veterinary technician (RVT), veterinary assistant, or even a human physical therapist (the subject of AB 814) to perform APR on an animal, but only if specific supervisory parameters are in place to guarantee the safety of the treatment. The model for these 2022 regulations were based on California’s twenty-year old regulations allowing chiropractors to work on animals under the direct supervision of a veterinarian, which have been viewed as successful and workable by veterinarians and chiropractors alike.

B. [This bill] Would Allow Physical Therapists to Practice on Animals Without Veterinary Supervision

California’s Veterinary Medicine Practice Act—specifically, 16 CCR section 2034—defines two types of veterinary supervision: “Direct” or “indirect.” “Direct” supervision means that the veterinarian has established a Veterinarian-Client-Patient Relationship (VCPR) through examination of the animal and communication with the client, and is present on the premises while veterinary staff perform a treatment. “Indirect” supervision means that the same VCPR is established, but the veterinarian is not present on the premises while veterinary staff perform a treatment under direct veterinarian treatment orders. For example, under “indirect supervision,” an RVT could be instructed by a veterinarian to give a pill to an animal every 4 hours if the veterinarian had to be offsite during that time.

The “supervision” contemplated with [this bill] falls under neither of these rubrics. Indeed, and in stark contrast to the two types of supervision resident in the practice act, [this bill] would allow a human physical therapist to “hang out their own shingle” and perform work on an animal without any veterinarian present on the property whatsoever. Because of the misleading characterization of the term “supervision” both in the bill itself and in the sponsors’ publications concerning same, an unsuspecting consumer will wrongly assume that all protections will be in place at the animal rehab facility to provide for the safety and proper veterinary medical care of the animal. Such will not be the case.

### C. Physical Therapists Have No Animal-Related Training in Their Licensing Curriculum

Allowing physical therapists to work without veterinary supervision poses a threat to both animal welfare and consumer protection for the following reasons:

- 1) Physical therapists learn only about human beings in their core education. Vast anatomic, physiologic, and behavioral differences exist between human beings and animals. For that matter, significant differences exist between animal species. In addition, animals obviously cannot speak, and will instinctively hide signs of pain. Animal-specific education is absent in a physical therapist’s education, and training in human anatomy and physiology does not translate sufficiently to safely permit physical therapists to practice on animals without veterinary supervision.
- 2) Physical Therapists have no formal training or aptitude testing to address emergency conditions in animals. Currently, if a human suffers a health emergency on a physical therapy premises, the physical therapist can call 911 and have paramedics promptly arrive. Because there is no 911 or 911 equivalent for animals, animals experiencing a health crisis will not receive emergency care if being treated at a facility that does not have veterinary licensees present. In that regard, veterinary practices are required by law to be equipped with emergency medical equipment and drugs to treat emergencies that could arise as a result of procedures being performed on the premises.

Furthermore, allowing physical therapists to arbitrarily insert the word “animals” into the California Physical Therapy Practice Act is unacceptable since they have no formal training to justify them working on animals.

#### D. Certification is Inadequate to Permit Unsupervised Veterinary Practice

Currently, the two certification programs in the United States that offer animal-centric training to physical therapists do so via online self-study and/or a few weekend classes. Because the core education of physical therapists is focused on a very specific facet of human medicine, the certifications offered in APR do not give them the necessary education or experience needed to safely manage animal patients without veterinary supervision. Specifically, these certifications include:

- No standardization and institutional oversight of curricula
- No uniform time, clinical practice, or course work requirements
- No practice restriction for those who perform poorly in the course
- No standardized aptitude testing
- No continuing education requirement
- No obligation to meet ongoing minimum standards of care

#### E. The Veterinary Profession Has Adequate Training in APR and Provides Services at Hundreds of Veterinary Hospitals Throughout California

As demonstrated through analysis of standardized veterinary school curricula and previously presented to both the VMB and the California legislature, veterinary school curricula incorporate elements of APR throughout a veterinary student's education. Veterinarians who graduate from accredited schools and obtain licensure are well-versed in rehabilitative therapy and commonly incorporate such practices into their case management. There are currently 13,082 licensed veterinarians in California—all of whom have knowledge, skill, ability, and experience in rehabilitating sick or injured animals.

### **POLICY ISSUES FOR CONSIDERATION:**

*Consent.* One point of disagreement among proponents and opponents is whether clients can safely consent to APR on behalf of animal patients, even if a veterinarian performs a pre-examination due to the possibility of latent conditions or other difficult-to-observe risks. In human healthcare, a patient or guardian can in most circumstances provide well-informed consent and assume the risk of healthcare procedures. However, in veterinary healthcare, a veterinarian's duties extend to both the client and the animal patient. Because concepts like risk and recovery outcomes cannot be effectively communicated to an animal patient, it is often up to the client to decide whether the risk to an animal patient is acceptable. However, if the provider is unable to explain or the client does not fully understand the risks, then neither the animal patient nor human client can consent.

**AMENDMENTS:**

- 1) To incorporate VMB staff recommendations made on April 19, 2023, amend the bill to:
  - a) Rename authorization to registration.
  - b) Establish premises expiration and reporting requirements.
  - c) Remove cross-references to existing APR requirements.
  - d) Strike the veterinary medicine activity list, including surgery, that an authorized animal PT or APR assistant shall not perform “unless specifically authorized.”
  - e) Delay implementation by 1 year.
- 2) To further clarify the role of veterinarians in the referral process, amend the bill to:
  - a) Require the veterinarian order to additionally include directions, reporting, and limitations.
  - b) Require the veterinarian pre-exam to account for the animal’s specific condition.
- 3) Because the PTBC is not involved in veterinary medicine education, amend the bill to remove the PTBC from the education development process.
- 4) To provide an opportunity to review the safety of the new supervision model under this bill, amend the bill to add a sunset date aligned with the VMB sunset date.

On page 3 of the bill, after line 15:

**4828.5.** (a) For purposes of this section, the following definitions apply:

(1) “Animal physical rehabilitation” means the treatment of injury or illness to address pain and improve function by means of physical or corrective ~~treatment, as defined under Section 2038.5 of Title 16 of the California Code of Regulations.~~ *treatment*. Animal physical rehabilitation does not include relaxation, recreational, or wellness modalities, including, but not limited to, massage, athletic training, or exercise.

(2) “Animal physical rehabilitation assistant” means an unlicensed person who is not a licensed veterinarian, registered veterinarian technician, or ~~authorized~~ *registered* animal physical therapist, and who assists ~~an authorized~~ *a registered* animal physical therapist with delegated animal rehabilitation tasks pursuant to this section.

(3) “Animal physical rehabilitation facility” means a facility registered with the board where ~~an authorized~~ *a registered* animal physical therapist performs delegated animal rehabilitation tasks on an animal patient.

(4) ~~“Authorized~~ *“Registered* animal physical therapist” means a physical therapist licensed under the Physical Therapy Practice Act (Chapter 5.7 (commencing with

Section 2600)), who is registered with the board, and who performs animal physical rehabilitation under a supervising veterinarian pursuant to this section.

(5) “Delegated animal rehabilitation task” means animal physical rehabilitation treatments, functional assessment, or services delegated to ~~an authorized~~ *a registered* animal physical therapist or animal physical rehabilitation assistant by a supervising veterinarian providing an order for treatment.

(6) “Direct supervision” means both of the following:

(A) The supervising veterinarian is physically present at the location where delegated animal rehabilitation tasks are to be performed and is quickly and easily available.

(B) The animal has been examined by the supervising veterinarian within the period of time consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task.

(7) “Indirect supervision” means both of the following:

(A) The supervising veterinarian is not physically present at the location where delegated animal rehabilitation tasks are to be performed, but has given an order for treatment to ~~an authorized~~ *a registered* physical therapist to provide treatment to an animal patient.

(B) The animal has been examined by the supervising veterinarian within the period of time consistent with standards of good veterinary medical practice and the particular delegated animal physical rehabilitation task.

(8) “Order for treatment” means oral or written instruction from a supervising veterinarian authorizing physical rehabilitation of an animal patient, including, but not limited to, ~~communication~~ *directions, communication, reporting, limitations*, and safety protocols or procedures specific to the animal patient, consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task.

(9) “Supervising veterinarian” means a veterinarian licensed pursuant to this chapter who is responsible for all of the following:

(A) Examining the animal patient before giving an order for treatment ~~an authorized~~ *a registered* physical therapist or animal physical rehabilitation assistant to perform a delegated animal physical rehabilitation task. The examination of the animal patient shall establish a veterinary-patient-client-relationship and shall be conducted within the period of time consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation ~~task~~ *task, including specific consideration of the animal patient’s condition*.

(B) Making all decisions relating to the diagnosis, treatment, management, and future disposition of the animal patient.

(C) Determining the appropriate degree of supervision of ~~an-authorized~~ *a registered* animal physical therapist or an animal physical rehabilitation assistant necessary for the performance of the particular delegated animal physical rehabilitation task, consistent with standards of good veterinary medical practice.

(10) “Supervision” or “degree of supervision” means veterinary oversight of the treatment plan performed by the ~~authorized~~ *registered* physical therapist and may be either direct supervision or indirect supervision.

(b) Notwithstanding any other law, ~~an-authorized~~ *a registered* physical therapist may provide animal physical rehabilitation to an animal if all of the following requirements are met:

(1) The ~~an-authorized~~ *a registered* animal physical therapist performs all delegated animal rehabilitation tasks under the supervision of a veterinarian who has an established veterinary-patient-client-relationship with the animal. This veterinary-patient-client-relationship need not be established on the same premises where the delegated animal rehabilitation tasks are performed.

(2) The degree of supervision is consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task, as determined by the supervising veterinarian.

(3) The delegated animal rehabilitation task is performed on a veterinary premise registered with the board, in an animal physical rehabilitation facility registered with the board, or in a mobile or range setting.

(4) The ~~authorized~~ *registered* physical therapist has registered to practice animal physical rehabilitation with the board and has paid the fee as described in Section 4905.

(c) An animal physical rehabilitation assistant may assist with delegated animal rehabilitation tasks if both of the following requirements are met:

(1) The animal physical rehabilitation assistant performs the delegated animal rehabilitation tasks under the direct supervision of ~~an-authorized~~ *a registered* physical therapist in compliance with subdivision (b).

(2) The animal physical rehabilitation assistant is working under the degree of supervision consistent with standards of good veterinary medical practice and the particular delegated animal rehabilitation task, as determined by the ~~authorized~~ *registered* physical therapist’s supervising veterinarian.

(d) Unless specifically authorized by this section, ~~an-authorized~~ *a registered* physical therapist or animal physical rehabilitation assistant shall not perform any activity that represents the practice of veterinary medicine or requires the knowledge, skill, and training of a licensed veterinarian or registered veterinary ~~technician, including the following:~~ *technician*.

~~(1) Surgery.~~

~~(2) Diagnosis and prognosis of animal diseases.~~

~~(3) Prescription of drugs, medicines, or appliances.~~

~~(4) Anesthesia.~~

~~(5) Application of casts or splints, except temporary cast molding for purposes of fitting custom or prefabricated orthotics or prosthetics if ordered by a supervising veterinarian.~~

~~(6) Dental extraction.~~

~~(7) Suture.~~

~~(8) Administration of controlled substances.~~

~~(9) Any other veterinary medicine function, tasks, or activities not specifically authorized by a supervising veterinarian as a delegated animal rehabilitation task.~~

(e) (1) ~~An~~ *The owner or operator of an animal physical rehabilitation facility shall be registered with the board, on a form approved by the board, submit a registration application to the board* and pay the registration fee described in Section 4905.

(2) *The application shall include the name of each owner or operator of the premises, including the type of corporate entity, if applicable, the name of the premises, and the name of the responsible licensee or registered physical therapist manager who is to act for and on behalf of the registered premises.*

(3) The board may inspect an animal rehabilitation facility for safety and compliance with this ~~chapter.~~ *and require reporting of adverse events, client complaints, or other safe and compliance information.*

(4) *The registration shall expire two years after the date of registration and may be renewed in a manner approved by the board and consistent with Article 5 (commencing with Section 4900).*

(f) (1) The board ~~and the Physical Therapy Board of California, in cooperation,~~ shall determine the qualifications necessary for a physical therapist licensed under Chapter 5.7 (commencing with Section 2600) to register with the board ~~and receive an authorization in~~ *to provide* animal physical rehabilitation. When making this determination, the board ~~and the Physical Therapy Board of California~~ shall ensure that the qualifications provide for safe and efficacious treatment of an animal and are consistent with the Veterinary Medical Board's Animal Rehabilitation Task Force findings and approved motions.

(2) The board shall create the registration form and determine the registration ~~process for the authorization.~~ *process.*

(g) ~~An authorization~~ *A registration* shall expire two years after the date of ~~issuance~~ *registration* and may be renewed in a manner approved by the board and consistent with Article 5 (commencing with Section 4900).

(h) ~~An authorized~~ *A registered* animal physical therapist shall be solely liable for any delegated animal rehabilitation tasks that they perform. The veterinarian who issues an order for treatment for animal physical rehabilitation shall not be liable for any animal physical rehabilitation provided by the ~~authorized~~ *registered* physical therapist or the animal physical rehabilitation assistant.

(i) Consistent with this chapter, the board may discipline ~~an authorized~~ *a registered* physical therapist, including, but not limited to, revocation of the physical therapist's authorization to perform animal physical rehabilitation.

(j) Failure to comply with the supervision requirements in this section shall be deemed unprofessional conduct and shall subject ~~an authorized~~ *a registered* physical therapist to revocation of the authorization issued by the board.

(k) The board shall report final disciplinary actions against an authorized physical therapist pursuant to subdivision (i) to the Physical Therapy Board of California.

*(l) This section shall become operative on January 1, 2025, and shall remain in effect only until January 1, 2026, and as of that date is repealed.*

## **REGISTERED SUPPORT:**

### Animal Physical Therapy Coalition (sponsor)

Best Friends Animal Society  
A Well-Adjusted Pet  
Veterinary Medical and Surgical Group  
Advanced Veterinary Specialists  
Jurney Veterinary Neurology  
Wilder Animal Hospital  
Santa Barbara Veterinary Integrative Services  
Scout's House—A Rehab Center for Animals  
Roadogs Rescue  
The Whole Pet Vet Hospital and Wellness Center  
Adobe Pet Hospital  
Canine Rehabilitation Institute, Inc.  
Law Enforcement Canine Handlers  
Search and Rescue Canine Handlers  
FitPaws  
SpectraVet Therapeutic Lasers  
Paw Prosper  
Hero Canine Orthotics  
Doggon' Wheels  
The Street Dog Coalition  
Santa Barbara Flyers Dog Sports  
FourLeg Rehab, Inc.  
Beach Animal Rehabilitation Center (BARC)



Atlas Rehabilitation for Canines  
Shorty's Rescue  
Chrissie's Fund  
K9 PT Academy  
A Heart Performance Horses  
Return to Freedom Wild Horse Conservation  
Academy of Orthopaedic Physical Therapy—Animal Physical Therapy SIG  
Dermatology and Allergy Clinic for Animals  
Santa Ynez Valley Humane Society/Dog Adoption and Welfare Group  
Happy Hounds Massage and Fitness  
Moe Love Myofascial Release  
Medipaw  
Help 'Em Up Harness  
ResQcats  
Respond Systems Therapeutic Lasers  
Animal Rehab Division of the Canadian Physiotherapy Association  
Muffin's Halo—Guide for Blind Dogs  
Registry of Allied Animal Health Practitioners of Canada  
Wiggleless—Canine Spine Supportive Device  
California Physical Therapy Association  
Office of The Sheriff, Santa Barbara County  
Santa Barbara County Sheriff's Search and Rescue Team  
Numerous individuals

**REGISTERED OPPOSITION:**

American College of Veterinary Sports Medicine and Rehabilitation  
American Veterinary Medical Association  
California Veterinary Medical Association  
Sacramento Valley Medical Association  
Southern California Veterinary Medical Association  
Numerous individuals

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 996 (Low) – As Amended March 27, 2023

**SUBJECT:** Department of Consumer Affairs: continuing education: conflict-of-interest policy.

**SUMMARY:** Requires each board under the Department of Consumer Affairs (DCA) that approves continuing education (CE) providers or courses to have a conflict-of-interest policy that discourages the qualification of courses that promote a product or enterprise in which the provider has a financial interest, and requires those conflicts to be disclosed before each course.

**EXISTING LAW:**

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Defines “board” as also inclusive of “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 3) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA’s jurisdiction. (BPC § 101)
- 4) Provides that all boards, bureaus, and commissions within the DCA 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. (BPC § 101.6)

**THIS BILL:**

- 1) Requires any entity under the DCA that is responsible for approving CE providers or courses shall develop and maintain a conflict-of-interest policy.
- 2) Provides that each conflict-of-interest policy shall, at a minimum, do both of the following:
  - a) Discourage the qualification of any CE course if the provider of that course has an economic interest in a commercial product or enterprise directly or indirectly promoted in that course; and
  - b) Require conflicts to be disclosed at the beginning of each CE course.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author:

“While continuing education can be a valuable tool to help ensure that California’s licensed professionals continue to provide high-quality services to their patients and clients that reflect the current standards of their profession, there may be times where that education has an

ulterior financial motive for the course provider. AB 996 will require regulatory boards to take steps to prevent sales pitches from masquerading as education courses by requiring each board to have a conflict-of-interest policy in place and requiring any potential conflicts to be disclosed to licensees.”

### **Background.**

Numerous practice acts governing the licensing, regulation, and oversight of professionals within the jurisdiction of the DCA require licensees to continue their education and training as a condition of continuing their licensure. Statutes and regulations dictate how many hours of CE a licensee must complete over a certain number of years. While CE requirements can often be fulfilled through a wide variety of courses, some professionals must fulfill more complete more specific course content in order to renew a license.

CE providers and courses are approved to count toward professional requirements different ways depending on the practice act. For example, the Professional Fiduciaries Bureau is responsible for approving CE providers for its licensees, and the Bureau also reviews and approves specific CE courses. The Dental Board of California (DBC) is tasked with approving providers of CE for dental professionals; however, excluding mandatory courses, the DBC does not individually approve specific courses offered by approved registered providers. The California State Board of Pharmacy (BOP) is not responsible for approving CE providers or courses, and relies entirely on two accreditation agencies.

Over the past several years, questions have been raised during the review of various boards under the DCA through the sunset process relating to the potential for conflicts-of-interest in CE courses. This type of conflict would typically occur when the provider or author of a CE course has a pecuniary interest in its topic. For example, a company that manufactures and sells a specific medical device would arguably have a conflict of interest if they are sponsoring a CE course that teaches health professionals about the availability and merit of that device. While perhaps there is some value to licensees learning about the device, there should be some basic awareness as to whether the content of the CE course is motivated in part by the company’s concern for profitability.

While this bill would not expressly prohibit any particular CE course or content, it would require each entity under the DCA that plays a role in approving CE to develop and maintain a conflict-of-interest policy. A number of private accrediting associations and organizations already maintain a similar policy. Each policy would, at a minimum, be required to discourage the qualification of any CE course if the provider of that course has an economic interest in a commercial product or enterprise directly or indirectly promoted in that course. Any conflicts would also be required to be disclosed at the beginning of each course.

### **REGISTERED SUPPORT:**

None on file.

### **REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1130 (Berman) – As Introduced February 15, 2023

**SUBJECT:** Substance use disorder.

**SUMMARY:** Updates various provisions of code to replace use of the term “addict” with the term “person with substance use disorder.”

**EXISTING LAW:**

- 1) Defines “addict” as 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.(Business and Professions Code (BPC § 2241)
- 2) Provides for the circumstances under which a physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict. (BPC §§ 2241, 2241.5)
- 3) Authorizes the California State Board of Pharmacy to take disciplinary action against a licensee for knowingly selling, furnishing, giving away, or administering any controlled substance to an addict, except for under certain circumstances. (BPC § 4301)
- 4) Provides that a prescription is not legal if it is an order for an addict or habitual user of controlled substances, unless it is issued 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 them comfortable by maintaining customary use. (Health and Safety Code (HSC) § 11153)
- 5) Prohibits medical professionals from prescribing, administering, or dispensing a controlled substance to an addict, as defined. (HSC § 11156)
- 6) Proscribes requirements for the use of controlled substances in the treatment of an addict for addiction. (HSC §§ 11215 *et seq.*)
- 7) Includes among the factors indicating that a court should not exercise discretion to strike additional punishments for drug trafficking, whether the defendant, in committing the crime, preyed on drug addicts. (HSC § 11380.7)
- 8) Makes findings and declarations regarding the need to implement a comprehensive and integrated statewide program to address the prevention, care, treatment, and rehabilitation of narcotics addicts. (HSC § 11847)

**THIS BILL:**

- 1) Replaces the term “addict” with “person with substance use disorder” in various provisions of the BPC and HSC.

**FISCAL EFFECT:** This bill is keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author:

“As an epidemic of substance use disorder has continued to grow toward a crisis point in California, there is a consensus among experts that vilifying the afflicted is not an effective public health strategy. Use of the term ‘addict’ is outdated and not representative of the terminology we should use to describe those in need of care and support. AB 1130 would modernize our laws to reflect the appropriate use of person-first language in regards to individuals with substance use disorders.”

**Background.**

To adapt and paraphrase a quote by the late Mitchell Hedberg: “Addiction is a disease, but it is the only disease that you get yelled at for having.” Over the past several decades, policymakers and public health experts have worked collaboratively to advance laws in California that reflect modern best practices in the treatment of substance use disorder. State policy has undergone a paradigm shift away from criminalizing addiction and toward acknowledging that addiction is first and foremost a health concern. Medication-assisted treatment, harm reduction strategies, and funding for local substance use disorder treatment programs have all played a role in these efforts.

Nevertheless, numerous provisions of law currently use the outdated term “addict” to describe individuals suffering from substance use disorder. The National Institute on Drug Abuse within the National Institutes of Health (NIH) has published guidance on preferred language for talking about addiction. This guidance urges providers to use person-first language and avoid terms that increase stigma and negative bias when discussing the disease of addiction. The educational resources published by NIH discourage use of the term “addict” and advocate for its replacement with the term “person with substance use disorder,” explaining that shifting to person-first language “shows that a person ‘has’ a problem, rather than ‘is’ the problem.”<sup>1</sup>

The NIH guidance is aligned with modern research into the effect of addiction stigma in the treatment of substance use disorder. One editorial<sup>2</sup> published by a peer-reviewed journal focused on the treatment of addiction treatment made the case as follows:

“Appropriate use of language in the field of addiction is important. Inappropriate use of language can negatively impact the way society perceives substance use and the people who are affected by it. Language frames what the public thinks about substance use and recovery,

---

<sup>1</sup> <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction>

<sup>2</sup> Broyles, Lauren M., *et al.* “Confronting inadvertent stigma and pejorative language in addiction scholarship: a recognition and response.” *Substance Abuse* 35.3 (2014).

and it can also affect how individuals think about themselves and their own ability to change. But most importantly, language intentionally and unintentionally propagates stigma: the mark of dishonor, disgrace, and difference that depersonalizes people, depriving them of individual or personal qualities and personal identity. Stigma is harmful, distressing, and marginalizing to the individuals, groups, and populations who bear it.”

The editorial concluded by “[making] an appeal for the use of language that (1) respects the worth and dignity of all persons (“people-first language”); (2) focuses on the medical nature of substance use disorders and treatment; (3) promotes the recovery process; and (4) avoids perpetuating negative stereotypes and biases through the use of slang and idioms.”

This bill would reflect the expert consensus around the need for person-first, non-pejorative language in the discussion of persons suffering from addiction or substance use disorder. While the immediate effect of the bill would appear to primarily be technical, it represents a substantive shift in the state’s approach to a significant public health problem. Replacing the term “addict” in code will represent a meaningful step in California’s continued progress toward reducing stigma and enhancing treatment of individuals suffering with substance use disorder.

**Prior Related Legislation.** AB 1055 (Bains) would create an Allied Behavioral Health Board within the Department of Consumer Affairs to license alcohol drug counselors. *This bill is pending in this committee.*

#### **ARGUMENTS IN SUPPORT:**

**Alcohol Justice** supports this bill, writing: “We strongly support shifting public language to less stigmatic framing. We are in the midst of twin opioid and alcohol crises, and every step we take to providing services that are welcoming, nonjudgmental, and compassionate is desperately needed. Please demonstrate that California understands and accepts the best clinical standards of care, including framing language, and vote ‘yes’ on AB 1130.”

#### **ARGUMENTS IN OPPOSITION:**

None on file.

#### **REGISTERED SUPPORT:**

Alcohol Justice

#### **REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1204 (Holden) – As Introduced February 16, 2023

**SUBJECT:** Contractors: contracts: restrictions.

**SUMMARY:** Prohibits a contractor from contracting with two or more subcontractors in the same license classification for the same work at the same jobsite, unless the subcontractor has employees who perform work in that license classification.

**EXISTING LAW:**

- 1) Defines “compensation” as compensation under the state system of workers’ compensation and includes every benefit or payment conferred by this division upon an injured employee, or in the event of the employee’s death, upon their dependents, without regard to negligence. (Labor Code (LAB) § 3207)
- 2) Requires a private employer to secure the payment of workers’ compensation either through workers’ compensation insurance or self-insurance. (LAB §§ 3700-3709.5)
- 3) Specifies that any person who holds a valid state contractor’s license, and who willingly and knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status or hold a valid state contractor’s license, to a civil penalty in the amount of two hundred dollars (\$200) per person so contracted with for each day of the contract. (LAB § 1021.5)
- 4) Authorizes the Labor Commissioner to issue a citation to any person, upon inspection or investigation, found to be unlawfully employing workers. (LAB § 1022)
- 5) States that it is the intent of the Legislature to provide for the prompt and effective enforcement of labor laws relating to the construction industry. (LAB § 1024)
- 6) Specifies that there is a rebuttable presumption affecting the burden of proof that a worker performing services for which a contractor’s license is required, or who is performing such services for a person who is required to obtain such a license, is an employee rather than an independent contractor. (LAB § 2750.5)
- 7) Specifies that proof of independent contractor status includes satisfactory proof of the following factors:
  - a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.
  - b) That the individual is customarily engaged in an independently established business.
  - c) That the individual’s independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by

the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.

- d) Requires any person performing any function or activity for which a license is required to hold a valid contractors' license as a condition of having independent contractor status.

(LAB § 2750.5)

- 8) Establishes the Contractors State License Board (CSLB or board) within the Department of Consumer Affairs (DCA) to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) §§ 7000-7191)
- 9) Requires as a condition of initial licensure, reinstatement, reactivation, renewal or continued maintenance of a license, that an applicant or licensee have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance in the applicant's or licensee's business name. (BPC § 7125)
- 10) Exempts, until January 1, 2026, any applicant or licensee from the requirement to have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance if they meet both of the following conditions:
  - a) Has no employees and files a statement with the CSLB certifying that they do not employ any person in any manner so as to become subject to the workers' compensation laws or California; and
  - b) Does not hold a C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), C-39 (Roofing), or D-49 (Tree Service) license, as specified.

(BPC § 7125(a)(b))

**THIS BILL:**

- 1) Prohibits a contractor from entering into a contract for the performance of work on the same jobsite with two or more subcontractors in the same license classification, unless the subcontractor employs persons who are classified as employees to perform work in that license classification.
- 2) Specifies that a violation constitutes a cause for disciplinary action.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.



## COMMENTS:

**Purpose.** This bill is sponsored by the *State Building and Construction Trades Council of California*. According to the author: “The issue of employees being misclassified as independent contractors remains an ongoing problem in the construction industry. Contractors who choose to ignore our labor laws continue to prevent their employees from receiving well-deserved wages and benefits. [This bill] would lead to safer workplaces where workers are not misclassified.”

## Background.

*Contractors and the CSLB.* The board was established in 1929 to regulate the construction industry in California and to protect consumers from unscrupulous contractors.<sup>1</sup> It is responsible for implementing and enforcing the Contractors State License Law and related regulations pertaining to the licensure, practice, and discipline of the construction industry in California. Notably, the law requires, in part, that any person or business that constructs or alters, or offers to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California be licensed by CSLB if the total cost of labor and materials for one or more contracts on the project is \$500 or more.<sup>2</sup>

CSLB issues licenses to sole proprietors and legal business entities such as a partnership, corporation, limited liability company, or joint venture.<sup>3</sup> Every license is required to have a qualifying individual (also referred to as a “qualifier”) who is the person listed in CSLB records that satisfies the experience and examination requirements for a license.<sup>4</sup>

CSLB issues four (4) license types: “A” General Engineering Contractor; “B” General Building Contractor; “B-2” Residential Remodeling Contractor; and “C” Specialty Contractor of which there are 42 specialty contractor classifications (e.g., electrical, drywall, painting, plumbing, roofing, and fencing).<sup>5</sup> Certain license holders are eligible to additionally obtain an asbestos or hazardous substance removal certification issued by CSLB.<sup>6</sup> As of March 1, 2023, there are 285,179 licensed contractors and 27,904 registered home improvement salespersons.

*Employment Status.* Contractor licensees contract with consumers for construction, repair work, and the like. Construction work is inherently dangerous, and employers are subject to a number of state requirements on employee safety. In addition, injured or killed employees are entitled to workers’ compensation. However, the author and sponsor report that some contractors either misclassify employees as independent contractors or contract with subcontractors, both of which are done to avoid having to carry workers’ compensation insurance or pay payroll taxes.

This bill would prohibit any contractor from using two or more subcontractors in the same license classification for work at the same jobsite, unless the subcontractor has employees. The

---

<sup>1</sup> Contractors State License Board. (n.d.). *History and Background*. Contractors State License Board. Retrieved April 2, 2023, from [https://www.cslb.ca.gov/About\\_Us/History\\_and\\_BackGround.aspx](https://www.cslb.ca.gov/About_Us/History_and_BackGround.aspx)

<sup>2</sup> BPC § 7027.2

<sup>3</sup> Contractors State License Board. (2018, December). *Contractors State License Board Sunset Review*. Contractors State License Board. Retrieved April 2, 2023, from <https://www.cslb.ca.gov/Resources/Reports/Sunset/SunsetReviewReport2018.pdf>

<sup>4</sup> Ibid.

<sup>5</sup> Contractors State License Board. (n.d.). *CSLB Licensing Classifications*. Contractors State License Board. Retrieved April 2, 2023, from [https://www.cslb.ca.gov/About\\_Us/Library/Licensing\\_Classifications/](https://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/)

<sup>6</sup> Ibid.

author and sponsor contend that this prohibition will deter contractors from misclassifying employees as independent contractors and from hiring subcontractors instead of employees.

### **Current Related Legislation.**

*AB 334 (Rubio)* would specify that for a public entity that has entered a contract with an independent contractor to perform one phase of a project and seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project, the independent contractor who meets specified requirements is not an officer for purposes of being subject to the prohibition on being financially interested in a contract. *Pending in the Assembly Appropriations Committee.*

*AB 1121 (Haney)* would require awarding authorities to submit to the Department of Industrial Relations' electronic project registration database a list of contractors with specified information that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, pursuant to local debarment or suspension processes. *Pending in the Assembly Appropriations Committee.*

### **Prior Related Legislation.**

*SB 459 (Corbett), Chapter 706, Statutes of 2011*, in part, prohibited willful misclassification, as defined, of individuals as independent contractors.

*AB 276 (Koretz), Chapter 329, Statutes of 2003*, as it relates to this bill, increased the penalty for a violation of the independent contractor's licensing law from \$100 to \$200 per employee per each day of employment.

### **ARGUMENTS IN SUPPORT:**

According to the *State Building and Construction Trades Council of California*, the sponsor of this bill:

Despite the best efforts of the Labor Commissioner, the labor movement, and high-road contractors who follow the law, the issue of employees being misclassified as independent contractors remains an ongoing problem in the construction industry. There are scores of examples of a Contractor State License Board-licensed contractor winning a bid on a project and not hiring journeyworkers or apprentices to perform the work and instead hiring independent contractors. These independent contractors are used because they can underbid the work at the expense of law-abiding contractors. These low-road contractors do not follow worker protections required by law which allows them to have the lowest bid.

With several independent contractors working for and getting direction from someone who has no employees and therefore no responsibility for their health and safety, California's strong labor laws are not enforced equitably among all the contractors on a given project. They are less likely to participate in job site safety meetings and often do not keep the same hours as the law-abiding, high-road contractors on the job. Common certifications like first aid, CPR, and OSHA 10 often required by contractors to maintain a safe and affordable workers' compensation policy are virtually non-existent among those who aren't required to carry workers' compensation as independent contractors.

By limiting the number of independent contractors performing the same scope of work under a single subcontract, [This bill] will help solve the problem of misclassification of employees. It will also lead to getting accurate certified payroll reports and decrease the likelihood a project is abandoned. The bill would lead to safer workplaces where workers are not misclassified. This bill will not affect subcontracting between legitimate subcontractors who properly classify themselves as employers and their workers as employees.

#### **ARGUMENTS IN OPPOSITION:**

None on file.

#### **POLICY ISSUE(S) FOR CONSIDERATION:**

*Need for this bill.* Beginning January 1, 2026, all contractors, including independent contractors, will be required to have workers' compensation insurance regardless of whether they have any employees. The usefulness of this bill may be reduced to the extent that contractor licensees regularly subcontract with independent contractors instead of hiring employees entitled to workers' compensation.

*Breadth of this bill.* This bill currently applies to all contractor license types, including general contractors who typically oversee projects and coordinate subcontractors and specialty contractors who specialize in a particular skill or trade and are usually hired for a single job.<sup>7</sup> Limiting a general contractor's ability to hire subcontractors may affect residential remodels. Rather than a general contractor contracting with subcontractors for work, homeowners may have to individually contract with subcontractors whenever two or more subcontractors within the same license classification are needed (unless the subcontractor has employees). Additionally, limiting a general contractor's ability to hire subcontractors may disadvantage businesses that are small and legitimately do not have employees and businesses that specialize in a particular skill or trade. For example, a small business that specializes in exterior painting may be overlooked for a larger business that offers both exterior and interior painting.

*Undefined terms.* It is unclear whether the term "jobsite" is intended to mean an entire construction site or, if there are multiple buildings or structures, if each building or structure is considered its own jobsite.

*Public Works Projects.* It is unclear whether this bill would apply to public works projects, which involve the construction, alteration, demolition, installation, or repair work paid in whole or in part out of public funds, or if the application of this bill is limited to residential and commercial projects.<sup>8</sup> Public works contractors are required to register with the Department of Industrial Relations, carry workers' compensation insurance for employees, and only use subcontractors

---

<sup>7</sup> Contractors State License Board. (n.d.). *What kind of contractor do you need?* Contractors State License Board. Retrieved April 21, 2023, from [https://www.cslb.ca.gov/Consumers/Public\\_Works/What\\_Kind\\_of\\_Contractor\\_Do\\_You\\_Need.aspx](https://www.cslb.ca.gov/Consumers/Public_Works/What_Kind_of_Contractor_Do_You_Need.aspx)

<sup>8</sup> Department of Industrial Relations. (n.d.). *Frequently asked questions on public works.* Department of Industrial Relations. Retrieved April 21, 2023, from <https://www.dir.ca.gov/public-works/publicworkssb854faq.html>

who are registered public works contractors.<sup>9</sup> Public works contractors and subcontractors are required to submit certified payroll records to the Labor Commissioner, unless exempt, as specified.<sup>10</sup> Anyone working on a public works project must be paid a prevailing wage as determined by the Department of Industrial Relations.<sup>11</sup>

#### AMENDMENTS:

The author proposes to amend this bill as follows to apply only to specialty contractors, as defined; further limit the number of subcontractors in the same license classification as the specialty contractor that a specialty contractor can contract with; exempt specialty contractors that are signatories to bona fide collective bargaining agreements, as specified; and clarify the terms “jobsite” and “classified as employees.”

On page 2 of the bill, after line 2:

**7035.** (a) A *specialty* contractor shall not enter into a contract for the performance of work on the same ~~jobsite—single project or undertaking~~ with ~~two—or~~ more *than one subcontractors* *subcontractor* in the same license classification *as the specialty contractor offering the contract*, unless *either of the following requirements is satisfied*:

(1) ~~the~~*The* subcontractor employs persons who are classified as employees to perform work in that license classification *on the single project or undertaking*.

(2) *The specialty contractor is signatory to a bona fide collective bargaining agreement that covers the type of work being performed on the single project or undertaking and addresses the issue of subcontracting or subletting.*

(b) A violation of subdivision (a) shall constitute a cause for disciplinary action.

(c) *For purposes of this section:*

(1) *“Specialty contractor” has the same meaning as in Section 7058.*

(2) *“Employs persons who are classified as employees” means the subcontractor classifies the individuals as employees rather than as independent contractors for purposes of the Labor Code.*

#### REGISTERED SUPPORT:

State Building and Construction Trades Council of CA (sponsor)  
California State Council of Laborers  
District Council of Iron Workers of The State of California and Vicinity

#### REGISTERED OPPOSITION:

None on file.

---

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

**Analysis Prepared by:** Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1257 (Committee on Business and Professions) – As Amended April 24, 2023

**SUBJECT:** Dentistry: Dental Hygiene Board of California: Dental hygienists: Examinations and licensure.

**SUMMARY:** Extends the sunset date for the Dental Hygiene Board of California (DHBC) until January 1, 2028, and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the DHBC's sunset review oversight process.

**EXISTING LAW:**

- 1) Establishes the Dental Hygiene Board of California (DHBC) under the Department of Consumer Affairs (DCA) with the authority to grant and regulate licensure of various types of dental hygienists. (Business and Professions Code (BPC) § 1902)
- 2) Specifies the DHBC to consist of nine members. The Governor appoints seven members and specifies two of those members must be public members and one member must be a practicing general or public health dentist who holds a current license in California. Requires four members to be registered dental hygienists who hold current licenses in California. Of the registered dental hygienist members, one shall be licensed either in alternative practice or in extended functions, one shall be a dental hygiene educator, and two shall be registered dental hygienists. No public member shall have been licensed under this chapter within five years of the date of his or her appointment or have any current financial interest in a dental-related business. Requires one public member to be appointed by the Senate Committee on Rules. Requires one public member to be appointed by the Speaker of the Assembly. (BPC § 1903)
- 3) Authorizes a registered dental hygienist (RDH) to perform all functions that may be performed by a registered dental assistant (RDA). (BPC § 1907(a))
- 4) Specifies the practice of dental hygiene includes dental hygiene assessment and development, planning, and implementation of a dental hygiene care plan. The practice also includes oral health education, counseling, and health screenings. (BPC § 1908(a))
- 5) Specifies the practice of dental hygiene does not include diagnosis and comprehensive treatment planning, placing, condensing, carving, or removal of permanent restorations, surgery or cutting on hard and soft tissue including, but not limited to, the removal of teeth and the cutting and suturing of soft tissue, prescribing medication, and administering local or general anesthesia or oral or parenteral conscious sedation, except for the administration of nitrous oxide and oxygen, whether administered alone or in combination with each other, or local anesthesia. (BPC § 1908)
- 6) Authorizes an RDH to perform the following procedures under direct supervision of a licensed dentist, after submitting to the dental hygiene board evidence of satisfactory completion of a course of instruction, approved by the dental hygiene board, in the procedures:

- a) Soft-tissue curettage.
- b) Administration of local anesthesia.

Administration of nitrous oxide and oxygen, whether administered alone or in combination with each other.(BPC § 1909 (a)(b)(c))

- 1) Authorizes an RDH to perform, under general supervision the following procedures: preventive and therapeutic interventions, including oral prophylaxis, scaling, and root planning, application of topical, therapeutic, and subgingival agents used for the control of caries and periodontal disease, taking of impressions for bleaching trays and application and activation of agents with nonlaser, light-curing devices, and taking of impressions for bleaching trays and placements of in-office, tooth-whitening devices. (BPC § 1910 (a)(b)(c)(d))
- 2) Authorizes an RDH to place interim therapeutic restorations. (BPC § 1910.5(a)(2))
- 3) Permits an RDHAP to practice as an employee of a dentist or of another RDHAP, as an independent contractor, as a sole proprietor of an alternative dental hygiene practice, in a primary care clinic or specialty clinic licensed by CDPH, in a clinic exempt from licensure, as specified, in clinics owned or operated by a public hospital or health system, or in a professional corporation. (BPC § 1925)
- 4) Authorizes a registered dental hygienist in alternative practice (RDHAP) may perform the duties authorized pursuant to subdivision (a) of Section 1907, subdivision (a) of Section 1908, and subdivisions (a) and (b) of Section 1910 in the following settings:
  - a) Residences of the homebound.
  - b) Schools.
  - c) Residential facilities and other institutions and medical settings that a residential facility patient has been transferred to for outpatient services.
  - d) Dental health professional shortage areas, as certified by the Department of Health Care Access and Information in accordance with existing office guidelines.
  - e) Dental offices.

(BPC § 1926)

**THIS BILL:**

- 1) Extends the sunset date of the DHBC and related appointment provisions to January 1, 2028.
- 2) Authorizes graduation from a California-accredited dental hygiene college approved by the DHBC within three years of application to qualify for initial licensure as a registered dental hygienist.
- 3) Requires a Basic Life Support (BLS) certification requirement for initial licensure applicants.

- 4) Revises the number of DHBC mandated continuing education (CE) hours ceiling from 7.5 to 10.
- 5) Makes a clarifying change regarding the removal of board members by their appointing authority.

**FISCAL EFFECT:** Unknown. This bill has been keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is the sunset review vehicle for the Dental Hygiene Board of California (DHBC). The measure extends the sunset date for the DHBC and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the DHBC’s 2023 Sunset Review Report.

**Background.**

*Sunset review.* In order to ensure California’s professional boards and bureaus are meeting the state’s public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal. Unless the date is extended by the Legislature, the entity “sunsets” and its enacting statute is repealed from law. The sunset process allows for a consistent forum to facilitate constructive discussions regarding the successes and challenges of various programs. The process also provides the Legislature with thoughtful consideration of proposed changes to laws governing the regulation of professionals. On a schedule averaging every four years, each entity is required to present a report to the Legislature’s policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

*Dental Hygiene Board of California.* The Dental Hygiene Board of California (DHBC) regulates three categories of mid-level dental professionals. These categories include registered dental hygienists (RDH), registered dental hygienists in alternative practice (RDHAP), and registered dental hygienists in extended functions (RDHEF). The DHBC maintains authority over all aspects of licensure, enforcement, and investigation of California dental hygienists.

The DHBC is also responsible for approving the state’s dental hygiene educational programs (DHEPs). In all, there are 29 educational programs in California. The DHBC provides prospective dental hygienists and dental professionals with the state’s education and training standards to become California-licensed dental hygienists. The DHBC also dedicates time toward outreach efforts to support new professionals entering the dental hygiene community.

The DHBC has the authority to regulate the dental hygiene profession under the direction of statutes contained in the Business and Professions Code (BPC) Sections 1900-1967.4 as well as sections of the California Code of Regulations (CCR). Current law grants the DHBC with the responsibility to do all of the following:

- Pursue legislation;
- Author and enforce regulations;
- Grant, renew, review, and withdraw approval of dental hygiene programs;



- Periodically conduct site visits, cite and fine, and place dental hygiene educational programs on probation;
- Conduct feasibility standards for new dental hygiene educational programs;
- Develop and maintain the dental hygiene Law of Ethics Examination in conjunction with the Office of Professional Examination Services;
- Review and approve RDHAP applications for mobile dental hygiene clinics to enhance access to care in underserved areas of the state.
- Issue, suspend, and revoke dental hygiene licenses and permits;
- Conduct random continuing education audits of licensees for compliance of license renewal laws;
- Oversee licenses placed on probation;
- Conduct investigation of and administer enforcement for licensing violations; and
- Participate in outreach and support of the dental and dental hygiene community.

*History of the Board.* The practice of dental hygiene includes dental hygiene assessment and development, planning, implementation of a dental hygiene care plan, health education, counseling, and health screenings. Dental hygiene does not include diagnosis or comprehensive treatment planning, placing or removal of permanent restorations, surgery, prescribing medication, or administering anesthesia or conscious sedation.

More than twenty years ago in 2002, the Joint Legislative Sunset Review Committee (JLSRC) reached a consensus that dental hygienists had attained a status where the profession's roles and responsibilities justified granting dental hygienists an independent regulatory body separate from the Dental Board of California (DBC). Prior to this decision, dental hygienists and dental assisting professions were co-regulated under the DBC through its Committee on Dental Auxiliaries (COMDA), which was established by the Legislature in 1974. Beginning in 2001, COMDA was repeatedly criticized by the JLSRC because of its consistent failure to implement and "permit the full utilization of dental auxiliaries in order to meet the dental care needs of all the state's citizens."

One of the perceived flaws of COMDA was that it did not have the independent authority to regulate dental auxiliaries, which included dental assistants, registered dental hygienists, registered dental hygienists in extended functions, and registered dental hygienists in alternative practice; it could merely provide recommendations to DBC. The recommendations provided were regularly rejected by the DBC, with a majority of its members consisting of practicing dentists. With allegations of bias and conflict between COMDA and DBC, it was determined that COMDA needed significant reform and restructuring. The JLSRC, believing that the DBC advocated only for dentists, urged the Legislature to move COMDA into its own independent licensing agency for dental auxiliaries.

The Legislature responded to the JLSRC's recommendation and introduced Senate Bill (SB) 853 (Chapter 31, Statutes of 2008) to address the JLSRC's ongoing concerns. One provision of SB 853 eliminated COMDA and authorized the Committee on Dental Auxiliaries (CODA) to operate as its own independent licensing agency for dental auxiliaries. In 2008, Governor Schwarzenegger signed SB 853 into law. The Dental Hygiene Committee of California (DHCC) was officially established in Fiscal Year (FY) 2009-10, nominally still within the jurisdiction of the DBC. Ten years after the dental hygiene profession successfully advocated and established a separate committee, the Legislature revisited whether its name should be changed to reflect its

status as a truly independent regulatory body. In 2018, the Legislature granted the DHCC approval to change its name to the DHBC. The official name change from “Committee” to “Board” was accomplished through the DHBC’s sunset bill, SB 1482 (Chapter 858, Statutes of 2018). The changes in SB 1482 were considered significant for a variety of reasons. The name change was viewed as legitimizing the DHBC as an independent, semiautonomous state agency and not a subdivision of another entity, and operating within the Department of Consumer Affairs (DCA). Although the DHBC’s revised name could be seen as purely technical, the change was considered notable as it conveyed the regulator’s independence from the DBC, and focus on the dental hygienist profession. Although the DHCC was never meaningfully under the purview of the DBC, it was perceived to be under the DBC because the majority of dental hygiene licensing entities are structured this way.

It is worth noting that the DHBC is the only self-regulating dental hygiene oversight government agency with the mission of consumer protection in the United States. Other states are watching what the DHBC does in regulating the profession to possibly initiate an autonomous dental hygiene oversight agency themselves. During the DHBC/DHCC’s early years and under its former name, it functioned as an independent committee that acted as the sole authority for regulating every aspect of the dental hygiene profession. The DHCC maintained authority of dental hygiene profession for licensing, enforcement, and approval of dental hygiene education programs. Since its last sunset review, the DHBC has continued that mission with a name that is more reflective of its status and autonomy.

*Workforce Development:* The DHBC has made efforts in seeking pathways to implement BPC Section 1900 which states: “It is the intent of the Legislature by enactment of this article to permit the full utilization of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions in order to meet the dental care needs of all of the state’s citizens.”

According to the DHBC’s 2023 sunset review, one primary reason that restrict full utilization of all categories of dental hygienists and decreases their ability to provide care for all of the state’s citizens are restrictive supervision levels, scope of practice restrictions limiting the services that dental hygienists are allowed to provide independently, and the inability for dental hygiene practitioners such as the RDHAP to obtain full reimbursement payment for the services rendered. DHBC also points to current law that states which dental hygiene services are completed under the direct supervision of a licensed dentist – the dentist employer must be physically present in the office when the service is performed – and general supervision – the dentist employer need not be present when the services are performed.

Current laws allow the dentist employer to determine the level of supervision necessary for the performance of the services that dental assistants are legally allowed to provide. This same provision should be extended to dental hygienists where the supervising dentist should be able to determine the level of supervision required for a dental hygienist working in the dental office rather than the law dictating the required level of supervision. Although BPC Sections 1912 through 1914 allow for general supervision for most services performed by dental hygienists, some services are still authorized under direct supervision (soft tissue curettage, local anesthesia administration, and nitrous oxide-oxygen analgesia) which, according to the DHBC, limits the full utilization of the dental hygienist services. The DHBC has approved to seek legislation to remove the direct supervision restrictions in the current law for soft tissue curettage and

administration of local anesthesia and amend it for the supervising dentist to indicate the level of supervision needed for these procedures.

Regarding DHBC's efforts to address workforce issues, the DHBC collects workforce information data for the California Department of Healthcare Access and Information (HCAI) through surveys required to be completed at the time of the license renewal. This data is forwarded to HCAI annually for its use, however, is not shared with the DHBC. Unfortunately, many dental hygienists could be considered "nomads," an individual constantly moving for a variety of reasons. Many dental hygienists work in several dental locations and do not have typical fulltime jobs at one single office. There is also a consensus in communications with the educational programs and licensees that they prefer to work in the heavier populated areas of the state rather than seeking work in the more rural and underserved areas. Better employment opportunities and higher wages play the largest role in determining where licensees choose to work.

The DHBC has requested amendments to BPC Section 1909 for clarification and authorize local anesthesia administration under the direct or general supervision as determined by the supervising licensed dentist and maintain the nitrous oxide-oxygen analgesia and soft tissue curettage under the direct supervision of a licensed dentist. The DHBC and segments of the dental profession state this revision allows registered dental hygienists that are confident in these functions to provide the care under standing orders or with more oversight depending on the how the specific dental office chooses to operate. This change in supervision would allow more flexibility for the dental team to meet the needs of patients more efficiently.

*Question of the Direct Supervision Requirements:* Dental hygienists work under the general and direct supervision of a licensed dentist unless they are employed by a public health agency. The definition of general supervision is the supervision of dental procedures based on instructions given by a licensed dentist who is not required to be physically present in the treatment facility during the performance of these procedures. Direct supervision is defined as the dentist is required to be physically present in the treatment facility during the performance of these procedures.

There are only three dental procedures where direct supervision is required: Soft Tissue Curettage, Local Anesthesia administration, and Nitrous Oxide-Oxygen Analgesia administration. All other dental hygiene procedures may be completed under the general supervision of a licensed dentist. If the patient is a patient of record of the dentist and a comprehensive treatment plan has been previously established, the majority of dental hygienists may perform general supervision services with authorization from a licensed dentist through online means such as telehealth or tele-dentistry.

*DHPSA Designation:* In the DHBC's 2023 Sunset Review Report, the Board recommends new statutory language that will allow an RDHAP who has opened a stand-alone dental hygiene practice site in a Dental Health Professional Shortage Area (DHPSA) to maintain their practice if in the future, the DHPSA designation is removed. According to the DHBC, one reason the RDHAP license category was created was to serve the designated shortage areas of the state where dental hygiene services are scarce. The DHBC states that licensees are wary of opening a dental hygiene practice with the risk that they could lose the business if the DHPSA designation is lifted by the Federal Government due to the dental hygiene services they are providing to the population. According to the DHBC, with the ability to maintain their practice should the

DHPSA designation be lifted, more RDHAPs would be willing to open new practices in these communities where their dental services are vitally needed the most

### **Prior Related Legislation.**

*AB 560 (Perata) Chapter 753, Statutes of 1997*, authorized RDHAPs to perform certain duties in “residential facilities and other institutions,” among other settings.

*SB 853 (Perata) Chapter 31, Statutes of 2008*, eliminated the Committee on Dental Auxiliaries within the Dental Board of California, transfers the regulation of dental hygienists to a newly created Dental Hygiene Committee, and transfers the regulation of a Registered Dental Assistants (RDA) to the Dental Board of California.

*SB 1482 (Hill) Chapter 858, Statutes of 2018*, reestablished the Dental Hygiene Committee of California (DHCC) as the Dental Hygiene Board of California (DHBC), an independent board within the Department of Consumer Affairs (DCA). This measure authorizes the DHBC to review and discipline educational programs. The bill also continued DHBC’s operations until January 1, 2023 and made other technical, non-substantive changes and updates to the Dental Hygiene Practice Act (Act). Finally, the measure reduced the time to attain licensure following successful completion of the dental hygiene exam from five to two years.

*SB 786 (Committee on Business, Professions and Economic Development) Chapter 456, Statutes of 2020*, implemented changes related to the DHBC. Specifically, this bill added "Dental" before “hygiene board” throughout the Act and clarified that restoration materials used in interim therapeutic restorations are "interim.”

*SB 1495 (Committee on Business, Professions and Economic Development) Chapter 511, Statutes of 2022*, clarifies licensees complete a specific number of continuing education (CE) hours in order to be eligible for licensure renewal. Specifically, this measure made it clear CE requirements must be completed in the preceding two-year period prior to the license’s expiration.

*AB 2145 (Davies) Chapter 157, Statutes of 2022*, clarifies that a registered dental hygienist in alternative practice (RDHAP) may provide dental services to patients in long term health care health (LTC) facilities. Also permits a RDHAP to provide oral health in-service training to staff in LTC facilities.

### **ARGUMENTS IN SUPPORT:**

*The CA Dental Hygienists’ Association (CDHA)* supports this bill and allowing board appointees to be removed by the appointing authority. Additionally, the CDHA states that it understands this bill will be the vehicle for the sunset extension of the DHBC. CDHA supports extending the sunset of the DHBC and the board appointee provision. CDHA would like to work with the legislature to address outstanding issues in the sunset review report.

### **ARGUMENTS IN OPPOSITION:**

**The California Dental Association (CDA)** is opposed to possible inclusion of specific language in this sunset bill. CDA writes, “to express a position of ‘oppose unless amended’ to the

anticipated language to be amended in [this bill], which serves as the legislative vehicle for the Dental Hygiene Board of California's (DHBC) sunset review. While supporting the continuation of DHBC and the role it maintains in protecting the public, CDA respectfully opposes sections of the DHBC Legislative Sunset Review Report regarding the expansion of the registered dental hygienist (RDH) scope of practice to include the unsupervised administration of local anesthesia and the continuation of brick-and-mortar practices of registered dental hygienists in alternative practice (RDHAP) in previously designated Dental Health Professional Shortage Areas (DHPSA). Information is unclear about the current problems these proposals aim to solve and whether sunset review is the most appropriate venue in which to make these changes.”

**REGISTERED SUPPORT:**

The California Dental Hygienists' Association (CDHA)

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1262 (Committee on Business and Professions) – As Amended April 20, 2023

**SUBJECT:** Professional fiduciaries.

**SUMMARY:** Extends the sunset date for the Professional Fiduciaries Bureau (Bureau) until January 1, 2028 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau’s sunset review oversight process.

**EXISTING LAW:**

- 1) Establishes the Professional Fiduciaries Act to provide for the licensing and regulation of professional fiduciaries. (Business and Professions Code (BPC) §§ 6500 *et seq.*)
- 2) Establishes the Bureau within the Department of Consumer Affairs, subject to repeal on January 1, 2024 unless extended by the Legislature. (BPC § 6510)
- 3) Establishes a Professional Fiduciaries Advisory Committee comprised of three professional members and four members of the public, and provides that if the Bureau becomes inoperative or is repealed, the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the bureau and its chief. (BPC § 6511)
- 4) Provides that protection of the public shall be the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. (BPC § 6516)
- 5) Exempts licensed attorneys, as well as certified public accountants and enrolled agents when acting within their scopes of practice, from the provisions of the Professional Fiduciaries Act. (BPC § 6530)
- 6) Requires private conservators, guardians, trustees, personal representatives of decedent’s estate, and agents under a durable power of attorney for health care or finances to obtain a license as a professional fiduciary from the Bureau, with certain additional exceptions. (BPC § 6533)
- 7) Requires the Bureau to maintain specified information in each licensee’s file relating to the licensee’s current conservatees, wards, principals under a durable power of attorney, and administered trusts or estates, as well as whether the licensee has ever been removed for cause, and to make this information available to a court for any purpose. (BPC § 6534)
- 8) Provides that a professional fiduciary license that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated, and the license shall be canceled immediately upon expiration of the three-year period. (BPC § 6541.1)
- 9) Authorizes the Bureau to establish a system for the placement of a license into retired status. (BPC § 6542)

- 10) Requires licensed professional fiduciaries to file an annual statement containing information about their practice and whether they have been removed for cause or otherwise subjected to adverse action. (BPC § 6561)
- 11) Requires licensed professional fiduciaries with an internet website to post on that website a schedule or range of the licensee's fees, including, but not limited to, hourly fees, for services offered. (BPC § 6563)
- 12) Empowers the Bureau to investigate the actions of a professional fiduciary based on complaints or for alleged violations of law. (BPC § 6580)
- 13) Prohibits a licensed professional fiduciary from billing a client or imposing a fee on the estate or trust of a client for responding to a complaint filed with the Bureau against the licensee. (BPC § 6581)
- 14) Provides that a professional fiduciary license may be suspended, revoked, denied, or other disciplinary action may be imposed for various offenses, including fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in the practice of a professional fiduciary. (BPC § 6584)
- 15) Provides that various sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by the BPC for purposes of unlicensed activity enforcement as a misdemeanor. (BPC § 146)
- 16) Specifies that a prohibition against guardians or conservators hiring or referring any business to an entity in which the guardian or conservator or an employee has a financial interest does not prohibit a guardian or conservator from hiring and compensating individuals as employees, with court approval. (Probate Code § 2401)

**THIS BILL:**

- 1) Extends the repeal date for the Bureau until January 1, 2028.
- 2) Repeals provisions of law that transfer the responsibilities and jurisdiction of the Bureau to the Professional Fiduciaries Advisory Committee in the event the Bureau is ever repealed.
- 3) Temporarily restructures the terms for appointees to the Professional Fiduciaries Advisory Committee so that appointed members will no longer all reach the term limit simultaneously.
- 4) Clarifies that information relating to case names, court locations, and case numbers associated with the removal or resignation of a professional fiduciary do not need to be made available to the public.
- 5) Provides for a process by which a canceled license may be reinstated.
- 6) Allows for a person whose license has been revoked or surrendered to petition the Bureau 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.
- 7) Requires licensees to notify the Bureau in writing of their intent not to renew their license and submit a final annual statement demonstrating they are no longer subject to licensure.

- 8) Requires licensees to respond to any written inquiry by the Bureau within 30 calendar days to the extent it relates to an investigation of a complaint against a licensee, and provides that the failure of, or refusal by, a licensee to respond to such written inquiry from the Bureau shall constitute a cause for disciplinary action.
- 9) Expressly provides that aiding or abetting an unlicensed person to evade the provisions of the Professional Fiduciaries Act constitutes a cause for disciplinary action.
- 10) Adds professional fiduciary licensing provisions to the list of sections that make certain unlicensed activity prosecutable as a misdemeanor.
- 11) Clarifies that the prohibition against guardians or conservators hiring or referring any business to an entity in which the guardian or conservator or an employee has a financial interest does not prohibit a guardian or conservator, in the course of providing services, from utilizing the services of their employees and seeking compensation for those services.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is the sunset review vehicle for the Professional Fiduciaries Bureau, authored by the Assembly Business and Professions Committee. The bill extends the sunset date for the Bureau and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau's sunset review oversight process.

**Background.**

*Sunset review.* In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacy and efficiency of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

*Professional Fiduciaries Bureau.* The Bureau was established through the enactment of the Professional Fiduciaries Act in 2006. As a regulatory agency within the Department of Consumer Affairs, protection of the public is the Bureau's highest priority. The Bureau is advised by a Professional Fiduciaries Advisory Committee, consisting of both public and professional members, which is empowered to take over the Bureau's responsibilities under the Act were the Bureau to ever be repealed.



As of September 1, 2022, the Bureau oversees 841 current and active professional fiduciary licensees, with 1,333 total licenses issued since July 1, 2008. Professional fiduciaries include non-family member conservators, guardians, trustees, personal representatives of a decedent's estate, and agents under a durable power of attorney. These professions are trusted to look after the personal and financial interests of vulnerable Californians including seniors, children, and persons with disabilities. Professional fiduciaries may provide their clients with daily care, housing and medical needs, as well as financial management services ranging from the basic payment of bills to estate and investment management.

Attorneys licensed by the State Bar are not required to be licensed as professional fiduciaries, nor are certified public accountants and enrolled agents when working within the scope of their professions. Statute additionally exempts employees and agents of trust companies, FDIC-insured institutions, public agencies, certain nonprofits, and specified broker-dealers and investment advisers from licensure. Guardians, conservators, or personal representatives of a decedent's estate serving on behalf of fewer than two individuals at the same time are also not required to be licensed; trustees and agents under a durable power of attorney are exempt if serving on behalf of three individuals or fewer at the same time.

Under the Act, the Bureau is charged with carrying out the following functions:

- Ensuring protection of the public as its highest priority;
- Promoting legal and ethical standards of professional conduct;
- Ensuring that applicants meet minimum requirements prior to licensure;
- Investigating all complaints; and,
- Taking disciplinary and administrative actions against licensees when appropriate.

Licensure of private conservators and other professional fiduciaries was repeatedly sought over the course of two decades, incepted following the publication of a series of articles by the Associated Press under the title "Guardians of the Elderly: An Ailing System" in 1987. This advocacy was galvanized in late 2005 when another investigative series into deficiencies in the state's conservatorship laws was published, this time by the *Los Angeles Times*. The *Times* followed its investigative series with an editorial explicitly calling for legislation to establish formal state-level licensure of professional conservators and guardians. The editorial argued that the current laws governing minimum standards for conservators were insufficient and would not affect most professional conservators already engaged in providing services. The editorial concluded: "The state Department of Consumer Affairs, which oversees the licensing of many other professions, should add conservators to its purview."

In 2006, Senator Liz Figueroa introduced Senate Bill 1550, sponsored by the Professional Fiduciary Association of California. This bill established the Professional Fiduciaries Act, which in early iterations would have been enforced by a Board of Professional Fiduciaries within the Department of Consumer Affairs. It was reported that aides to Governor Arnold Schwarzenegger had concerns about the bill and that the Governor had "criticized such boards as bloated bureaucracy and advocated their replacement with bureaus." The bill was ultimately amended in the final weeks of the session to instead establish the Professional Fiduciaries Bureau, advised by a Professional Fiduciaries Advisory Committee.

On September 27, 2006, Governor Schwarzenegger signed Senate Bill 1550 and three other bills comprising a legislative package collectively referred to as the Omnibus Conservatorship and Guardianship Reform Act. Governor Schwarzenegger stated in signing the legislation that “we have a responsibility to help ensure that individuals entrusted with the well-being of our most vulnerable citizens are not taking advantage of or harming them.” With the enactment of Senate Bill 1550, the Bureau was established.

Shortly after the Bureau began issuing licenses, it became apparent that the number of anticipated license applicants had been dramatically overestimated during the sunrise process. Approximately 1,300 professional fiduciaries who had previously been registered with the Department of Justice were expected to seek licensure. Instead, only 450 licenses were issued by the Bureau by the end of Fiscal Year (FY) 2009-10. The Reorganization Plan proposed by Governor Schwarzenegger in his FY 2009-10 May Budget Revision recommended that the Bureau be consolidated with the California Board of Accountancy, both to provide greater revenue stability and as part of a broader effort to reduce governmental bureaucracy. The Senate Business, Professions, and Economic Development Committee held a hearing to consider this and other proposed reorganizations in June 2009, ultimately voting against consolidation.

A new wave of public and legislative interest in oversight of professional conservators arose when the *New York Times* aired a documentary titled “Framing Britney Spears” in February 2021, which detailed the rise to fame and the troubling circumstances surrounding the pop star’s involuntary conservatorship under the control of her father. Shortly after the documentary was initially aired, Assembly Bill 1194 by Assemblymember Evan Low was signed into law, enacting a series of new requirements on professional fiduciaries and empowering the Bureau to engage in more robust enforcement of malfeasant conservators. While “#FreeBritney” advocates celebrated these reforms, the Bureau has raised concerns that implementation of the bill’s mandates will be challenging within existing resources. New workload and enforcement-related expenditures are expected to place pressures on the Bureau’s fund condition, with already comparatively high fees charged to licensed fiduciaries potentially in need of further increase.

*Issues Raised during Sunset Review.* The background paper for the Bureau’s sunset review oversight hearing contained a total of 16 issues and recommendations, each of which is eligible to result in statutory changes enacted through the Bureau’s sunset bill.

Issue #1 in the sunset background paper related to the Professional Fiduciaries Act’s so-called “reverse sunset provision.” Statute provides that “if the Bureau becomes inoperative or is repealed ... the [Professional Fiduciaries Advisory Committee] shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the Bureau and its chief.” This statute would have the effect of reconstituting the Advisory Committee as a traditional regulatory board, empowered to continue enforcement of the Act. In his signing message for Senate Bill 1550, Governor Schwarzenegger stated that he intended to seek legislative action in the following session to “clean up” the bill by removing the reverse sunset language, which he believed was “unnecessary and complicated.”

However, the language was never repealed. Seventeen years later, this bill would remove the Bureau’s reverse sunset provision and strike references to its Advisory Committee assuming its duties. The Bureau would still be subject to the traditional sunset process, and the Legislature would remain fully empowered to provide for any alternative form of regulation of professional fiduciaries were the Bureau to ever be repealed.

Issue #2 raised a concern that every member of the Bureau's Advisory Committee is currently scheduled to term out at the same time. This issue was initially raised by the Bureau in its sunset report. The Bureau pointed out that the alignment of the Advisory Committee's term expirations is not fortuitous and potentially places a strain upon the appointing authorities to reconstitute the entire committee membership. Further, the Advisory Committee would immediately lose all institutional expertise upon the members' departure. The Bureau has therefore suggested that the terms of three Advisory Committee members be temporarily set to two years each, instead of four, so as to stagger the terms. This bill contains language to implement the Bureau's recommendation.

Issue #3 questioned whether the Bureau should continue to be required to publish potentially sensitive personal information in court documents on its website. Statute requires the Bureau to publish information on its website regarding its licensees, including details relating to probate cases involving a professional fiduciary who has been removed or resigned. This information includes case names, locations, and case numbers that can be personally identifying for conservatees and other individuals. The Bureau expressed concern that "this information can expose vulnerable people to serious consumer harm." This bill would resolve that concern by narrowing statute to allow more limited disclosure of information relating to a professional fiduciary who has been removed or resigned in a matter.

Issue #5 raised the issue of the Bureau's long-term financial sustainability in light of its comparatively small licensee population and its high fees, which the Bureau has indicated will potentially need to be adjusted even higher in the future. This issue has been raised repeatedly throughout the Bureau's existence. The background paper for the Bureau's first sunset review in 2011 repeated contemporary assertions that "the Bureau struggled for viability, having a scarcity of licensees and minimal revenues." The issue was also raised in the Bureau's 2014 and 2018 sunset review background papers.

One proposed solution has been to increase the Bureau's licensee population by removing or narrowing existing exemptions for certain professions currently exempted from licensure as professional fiduciaries. For example, some stakeholders have proposed eliminating the current exemption for enrolled agents acting within their scope of practice, arguing that the services required of a professional fiduciary acting in a representative capacity extend well beyond tax return preparation. As the Legislature considers multiple options for preserving the financial sustainability of the Bureau as a standalone entity, the proposal to strike the exemption for enrolled agents will remain an active topic of stakeholder discussion, as well as any other viable solutions to resolve the Bureau's fiscal instability.

Issue #7 pointed out that the Professional Fiduciaries Act does not currently provide the Bureau with clear authority to reinstate or deny reinstatement to former licensees, under any circumstances. Statute prohibits the Bureau from renewing, restoring, or reinstating a license that has been canceled, but otherwise offers no criteria for determining if a former licensee warrants having their license restored. The Bureau stated that it believes the Act should be amended to expressly authorize the Bureau to grant or deny a petition for reinstatement of a license, and to provide criteria for the Bureau to consider in determining whether the individual seeking reinstatement poses no discernable public harm and has sufficiently met certain requirements. This bill contains language to implement that recommendation.

Issue #8 related to non-renewing licensees. The Bureau reported that if a professional fiduciary does not renew their license, it may be because they no longer intend to work as a professional fiduciary. However, if a license is not renewed, the licensee may not report final case closures to the Bureau and the Bureau may seek disciplinary action under the assumption that the professional fiduciary is continuing to practice without an active license. The Bureau proposed that licensees be required to provide notice that they no longer intend to practice, regardless of the licensee's status and provide a final annual statement to close out any remaining cases. This bill contains language to implement that recommendation.

Issue #10 proposed giving the Bureau explicit authority to discipline active licensees who aid and abet unlicensed practice. In its sunset report, the Bureau expressed concern that some individuals whose professional fiduciary license has been disciplined by the Bureau, either by revocation or stipulated surrender, simply transfer their cases to their business partners, employers, or coworkers who are actively licensed professional fiduciaries, thereby keeping access to their former clients/cases and the potential to continue working despite being unlicensed. While unlicensed practice itself is an enforceable offense, the Bureau does not have clear authority to discipline licensees who aid and abet it.

The Bureau proposed that the Professional Fiduciaries Act be amended to give the Bureau express authority to discipline licensees who aid and abet unlicensed individuals engaged in the practice of a professional fiduciary. This bill currently contains language to implement that recommendation. However, the Committee intends to engage in further discussion with stakeholders to ensure that this language is not excessively broad or at risk of proscribing a licensee's lawful use of unlicensed persons under appropriate circumstances.

Issue #11 discussed how the Bureau could more effectively compel cooperation from licensees during investigations. According to the Bureau, there have been instances where licensees have failed to cooperate with Bureau staff during investigations, and the Bureau lacks tools to compel compliance when licensees ignore the Bureau's inquiries or provide incomplete information. The Bureau proposed that failure to cooperate with an investigation be made an express form of unprofessional conduct; this bill contains language to implement that recommendation.

Issue #12 related to unlicensed activity. Currently, the Bureau can impose an administrative citation and fine up to \$5,000 for unlicensed activity, but the Bureau has stated that unlicensed individuals simply ignore the citation. While other practice acts under the Business and Professions Code provide that unlicensed activity is punishable as a misdemeanor, this is not the case for the Professional Fiduciaries Act. The Bureau believes that in order to meaningfully pursue unlicensed activity outside of issuing administrative sanctions, the law should be amended to criminalize unlicensed practice, consistent with other regulated professions.

Issue #14 proposed that statute be amended to clarify that professional fiduciaries may utilize and compensate the services of their employees without prior court approval. Assembly Bill 1194 prohibited a guardian or conservator from hiring or referring any business to an entity in which they or an employee have a financial interest. However, representatives of the profession have raised concerns that both courts and licensees have misinterpreted the statute to require a professional fiduciary to seek court approval prior to utilizing their staff to assist with the administration of a guardianship or conservatorship proceeding. Stakeholders asked that the Probate Code be amended to clarify that a professional fiduciary may utilize and compensate the services of their employees. This bill contains language to effectuate that request.

Issue #16 raised the traditional question of whether the licensing of professional fiduciaries should be continued and be regulated by the Bureau. The sunset background paper acknowledged that persistent questions remain unresolved regarding the Bureau's long-term sustainability as an independent regulatory agency. However, the sunset background paper concluded that the argument for the Bureau continuing to license and regulate professional fiduciaries remains cogent and that if an extension of the Bureau as it currently exists is ultimately deemed practicable, then preserving that regulatory structure should likely be considered ideal. This bill would extend the Bureau's repeal date by an additional four years.

**Current Related Legislation.** AB 1257 (Business and Professions) is the sunset bill for the Dental Hygiene Board of California. *This bill is pending in this committee.*

AB 1263 (Business and Professions) is the sunset bill for the Bureau of Automotive Repair. *This bill is pending in this committee.*

AB 1264 (Business and Professions) is the sunset bill for the Acupuncture Board. *This bill is pending in this committee.*

**Prior Related Legislation.** AB 1194 (Low, Chapter 417, Statutes of 2021) amended the Professional Fiduciaries Act to provide additional protections and rights for conservatees and require coordination between the courts and the Bureau.

SB 607 (Min, Chapter 367, Statutes of 2021) extended the sunset date for the Bureau until January 1, 2024 and made numerous unrelated changes.

AB 3144 (Low, Chapter 681, Statutes of 2018) extended the sunset date for the Bureau until January 1, 2023 and enacted various reforms to the Professional Fiduciaries Act.

AB 2741 (Bonilla, Chapter 344, Statutes of 2014) extended the sunset date for the Bureau until January 1, 2019 and enacted various reforms to the Professional Fiduciaries Act.

SB 543 (Steinberg, Chapter 448, Statutes of 2011) extended the sunset date for the Bureau until January 1, 2015.

SB 1550 (Figueroa, Chapter 491, Statutes of 2006) established the Professional Fiduciaries Act and created the Bureau.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1263 Committee on Business and Professions – As Amended April 20, 2023

**SUBJECT:** Vehicles: Bureau of Automotive Repair: smog check program.

**SUMMARY:** Extends the sunset date for the Bureau of Automotive Repair (BAR or Bureau) until January 1, 2028, and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau’s sunset review oversight process.

**EXISTING LAW:**

- 1) Regulates the business of automotive repair under the Automotive Repair Act (Act). (Business and Professions Code (BPC) §§ 9880-9889.68)
- 2) Establishes the BAR within the Department of Consumer Affairs (DCA), places the BAR under the supervision and control of the director of the DCA, and vests the duty of enforcing and administering the Act in the BAR’s bureau chief. (BPC § 9882)
- 3) Defines “automotive repair dealer” (ARD) as a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles. (BPC § 9880.1(a))
- 4) Specifies that a person required to have a valid ARD registration shall not have the benefit of any lien for labor or materials, including the ability to charge storage fees in accordance with applicable laws, or the right to sue on a contract for motor vehicle repairs unless the person possesses a valid registration. (BPC § 9884.16)
- 5) Makes it unlawful for any person to be an ARD unless that person is currently registered with the BAR. (BPC § 9884.6)
- 6) Authorizes the BAR to deny, suspend, revoke, or place on probation an ARD’s registration for specified acts or omissions, including failure to comply with the Act, negligence, and fraudulent conduct. (BPC § 9884.7)
- 7) Authorizes the BAR to investigate violations of the Act, requires the BAR to establish procedures for accepting complaints from the public, and authorizes the BAR to mediate complaints between consumers and ARDs. (BPC § 9882.5)
- 8) Makes any person who fails to comply with the provisions of the Act guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding six months, or by both that fine and imprisonment, except as specified. (BPC § 9889.21)
- 9) Authorizes the BAR to file charges with the district attorney or city attorney against an ARD who violates the provisions of the Act or the BAR’s regulations. (BPC § 9884.15)
- 10) Establishes the Motor Vehicle Inspection Program for the purpose of meeting or exceeding air quality standards set by the federal Clean Air Act in 1990. (Health and Safety Code (HSC) § 44000-44299.91)

- 11) Requires all motor vehicles powered by internal combustion engines that are registered within an area designated for Motor Vehicle Inspection Program coverage to be required biennially to obtain a certificate of compliance or noncompliance, unless exempt, as specified. (HSC § 44011(a))
- 12) Requires DCA, in cooperation with the California Air Resources Board (CARB), to perform analyses of data collected pursuant to Motor Vehicle Inspection Program and report the results to the public annually. (HSC § 44024.5(b))
- 13) Prohibits a person from performing, for compensation, tests or repairs of emission control devices or systems of motor vehicles unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. (HSC § 44032)
- 14) Requires DCA to revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. (HSC § 44072.10)

**THIS BILL:**

- 1) Requires specified vehicles to receive smog check inspections at referee facilities or a similar contracted inspection network established by DCA, which may include subcontracted licensed smog check stations.
- 2) Authorizes the Bureau to issue a temporary waiver from a biennial smog check inspection if circumstances determined through regulations by BAR warrant it.
- 3) Authorizes DCA, in cooperation with CARB, to analyze smog check program data and report the results to the public biennially.
- 4) Expands the definition of “automotive repair dealer” to include a person who, for compensation, engages in the business of collecting compensation for automotive repair services that are referred or sublet to someone other than the dealer or their employee.
- 5) Extends the sunset date for the Bureau from January 1, 2024, to January 1, 2028.
- 6) Authorizes the Bureau to adopt, as necessary, regulations to clarify its authority to regulate storage fees charged by automotive repair dealers.
- 7) Makes numerous technical, clarifying, and conforming changes.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is the sunset review vehicle for the Bureau of Automotive Repair, authored by the Assembly Business and Professions Committee. The bill extends the sunset date for BAR and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau’s sunset review oversight process.

## Background.

*Sunset review.* In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

*History and function of the Bureau of Automotive Repair.* BAR was established within the DCA in 1972 following the enactment of the Automotive Repair Act pursuant to Senate Bill (SB) 51 (Beilenson), Chapter 1578, Statutes of 1971.<sup>1</sup> The Act authorized the Bureau to regulate the automotive repair industry in California and mandated among other things that automotive repair dealers (ARD) be registered by the Bureau and subject to specific requirements such as providing customers with written estimates that must be authorized by the customer prior to performing any work on the vehicle and invoices for the repairs performed.

In 1984, the Bureau implemented a vehicle emissions inspection and maintenance (Smog Check) program, pursuant to SB 33 (Presley), Chapter 892, Statutes of 1982. The program is administered by the Bureau in consultation with the Department of Motor Vehicles (DMV) and the California Air Resources Board (CARB), with the Bureau being responsible for licensing Smog Check stations, inspectors, and technicians. The Bureau also administers financial assistance programs that make repairing or retiring high polluting vehicles more affordable for Californians.

Today the Bureau issues eleven license, registration, and certificate types. Any business that repairs and/or diagnoses malfunctions of motor vehicles for compensation must be *registered* as an ARD. An ARD may additionally be *licensed* as a:

- *Smog Check test-and-repair station*, which inspects, diagnoses, and repairs vehicles subject to the Smog Check Program;
  - *Smog Check test-only station*, which inspects vehicles subject to the Smog Check Program;
  - *Smog Check repair-only station*, which diagnoses and repairs vehicles subject to the Smog Check Program;
  - *Brake station*, which tests, inspects, adjusts, and repairs vehicle brakes and brake systems;
- or

---

<sup>1</sup>Business and Professions Code §§ 9880-9889.68



- *Lamp station*, which tests, inspects, adjusts, and repairs lamps and related electrical systems on vehicles.

Licensed Smog Check stations who meet higher performance standards established in regulation by the Bureau may receive STAR certification, authorizing the business to administer Smog Check inspections and repairs of high-polluting vehicles that cannot be inspected or repaired by non-STAR certified Smog Check stations.

Individuals may be licensed as a:

- *Smog Check inspector* to inspect and certify the emissions control systems on vehicles subject to the Smog Check Program;
- *Smog Check repair technician* to diagnose and repair the emissions control systems on vehicles subject to the Smog Check Program;
- *Brake adjuster* to test, inspect, adjust, and repair the brakes and brake systems on vehicles;  
or
- *Lamp adjuster* to test, inspect adjust, or repair the lamps and related electrical systems on vehicles.

As of fiscal year (FY) 2021-22, the Bureau is responsible for overseeing 34,093 registered ARDs, of which 6,397 are licensed Smog Check stations and 1,577 are licensed brake and lamp stations, as well 20,773 Smog Check inspectors, repair technicians, and brake and lamp adjusters.<sup>2</sup>

The Bureau mediates consumer complaints, investigates violations of the Act and related laws and regulations, and takes disciplinary action against registrants and licensees as authorized.

The Bureau has established two informal advisory groups: the Educational Advisory Group (EAG), which advises the Bureau on the education and training requirements of Smog Check inspectors and repair technicians and the BAR Advisory Group (BAG), which facilitates communication and coordination between the Bureau, industry stakeholders, educators, and consumers.

According to BAR's 2023-2027 Strategic Plan, its mission is to "*protect Californians through effective oversight of the automotive repair industry and administration of vehicle emissions reduction and safety programs.*"<sup>3</sup>

*Sunset issues for consideration.* In preparation for the sunset hearings, committee staff prepared public background papers that identify outstanding issues relating to the entity being reviewed. The background paper is available on the Committee's website: <https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in the amendments to this bill or otherwise actively discussed:

---

<sup>2</sup>Bureau of Automotive Repair. (n.d.). *Home Page*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/>

<sup>3</sup>Bureau of Automotive Repair. (n.d.). *Strategic Plan 2023-2027*. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/strategic-plan>

- 1) *Sunset Issue #7: Storage Fees and Insurer Referrals.* In January 2022, the Bureau created a specific email account for insurance companies to notify the Bureau when they believe an ARD is charging unreasonable or excessive storage fees. As of April 1, 2023, the Bureau has received over 320 referrals. Upon referral, the Bureau helps negotiate a fair resolution for all parties in an expedient manner.

ARDs can similarly file complaints with the California Department of Insurance if they have an issue with an insurance company. Some stakeholders have suggested that insurance companies have delayed vehicle inspections and/or removal of total-loss vehicles from the ARD, resulting in hefty storage fees. However, the Bureau does not have any authority over insurance companies. Moreover, the Bureau only has authority to enforce laws in the Business and Professions Code and therefore, cannot enforce the provisions of law related to the reasonableness of towing and storage fees, which are located in the Vehicle Code (unless there is also a violation of the Business and Professions Code).

This bill would authorize the Bureau to develop regulations to clarify its authority to regulate storage fees charged by automotive repair dealers.

- 2) *Sunset Issue #10: Online Automotive Repair Referral Businesses.* In an effort to curb unlicensed activity, the Bureau adopted regulations in 2017 requiring mobile ARDs to include specific identifying information in all advertisements and on mobile ARD vehicles. Although the regulations have made it easier for consumers to identify and verify a mobile ARD's license before hire and for the Bureau to detect unlicensed activity, the Bureau reports that online advertising by unlicensed automotive repair referral businesses is a new issue. Automotive repair referral businesses, which refer customers to licensed ARDs in exchange for a portion of the repair costs, are not subject to oversight by the Bureau. The Bureau reports that consumers often do not know whom they are authorizing to repair their vehicle.

This bill would amend the definition of "automotive repair dealer" to include a person who, for compensation, collects compensation for the automotive repair services that are referred or sublet to someone other than the dealer or their employees. This change will bring online automotive repair referral businesses under the regulatory oversight of the Bureau.

- 3) *Sunset Issue #11: Smog Check Inspection of Model Year 1976-1995 Vehicles.* Of the approximately 10 million Smog Check inspections performed annually in California, just seven percent are of model year (MY) 1995 and older vehicles.<sup>4</sup> As the population of MY 1995 and older vehicles requiring inspection declines, the cost of maintaining the necessary equipment (the BAR-97 Emissions Inspection System) and inspecting MY 1995 and older vehicles continues to increase.

In 2013, the Bureau established the STAR program, a voluntary certification for Smog Check stations that meet inspection-based performance standards and maintain

---

<sup>4</sup> Vehicles that are model year 1975 and older do not require a Smog Check.

equipment to test all vehicles.<sup>5 6</sup> In response to the aforementioned cost pressures and the declining number of Smog Check stations offering inspections of MY 1995 and older vehicles, BAR currently requires all MY 1976 to 1999 vehicles to be inspected at STAR-certified stations.<sup>7 8 9</sup> Even so, on average, over 90 percent of STAR-certified stations perform one or less inspection on MY 1995 or older vehicles each day.

This bill would authorize the Bureau to establish a centralized testing network that would be established through a competitively bid contract. Each centralized testing facility would maintain the BAR-97 inspection equipment required to inspect MY 1995 and older vehicles and inspection fees collected from consumers would pay for the testing sites and necessary staff to implement the program.

- 4) *Sunset Issue #12: Smog Check Performance Reporting.* The Bureau, in cooperation with the California Air Resources Board, is required to annually evaluate the Smog Check Program and the performance of Smog Check stations and report its findings in the Smog Check Performance Report.<sup>10</sup> Specific data is required to be included in the report, including but not limited to the percentage of vehicles that initially passed, or initially failed and then passed, a smog check that later fail a roadside inspection.<sup>11</sup> The Bureau is also required to provide an estimate of the excessive emissions from these vehicles and recommend changes to the program to reduce excess emissions. Excess emissions refers to the “additional benefits that could be realized if all vehicles were inspected at ‘high-performing’ Smog Check stations.”<sup>12</sup> Because vehicles subject to the Smog Check Program are only required to be inspected every other year, it takes two years for all vehicles to be tested. Currently half of the data reported in the annual Smog Check Performance Report is duplicative because two years’ worth of roadside data is necessary to curate a statistically significant sample size.

This bill would require the Bureau to analyze and report data pertaining to the Smog Check Program biennially instead of annually.

- 5) *Sunset Issue #13: COVID-19.* During the COVID-19 pandemic, the Bureau received requests from consumers to waive the biennial Smog Check requirement. The Bureau, unable to waive the requirement, allowed consumers facing a hardship due to the State of Emergency to have a free Smog Check performed by a Bureau Referee. The Bureau reports that it will consider opportunities to issue Smog Check inspection waivers during a future State of Emergency.

---

<sup>5</sup> Bureau of Automotive Repair. (n.d.). Star Program FAQ. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/star/faq>

<sup>6</sup> Bureau of Automotive Repair. (n.d.). Smog Check Reference Guide Version 3.0. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/smog-check-reference-guide.pdf>

<sup>7</sup> Ibid.

<sup>8</sup> Bureau of Automotive Repair. (n.d.). 2022 Smog Check Performance Report. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/bag/202207/smog-check-report.pdf>

<sup>9</sup> Model year 1996-1999 vehicles are tested using the BAR-97 system but are OBD-II equipped and compatible with the BAR-OIS system.

<sup>10</sup> Bureau of Automotive Repair. (n.d.). 2022 Smog Check Performance Report. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/pdf/bag/202207/smog-check-report.pdf>

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

This bill would allow BAR to waive the biennial requirement for a Smog Check Inspection.

- 6) *Sunset Issue #14: Technical Cleanup.* The Bureau has identified several technical, non-substantive amendments that are necessary in the Business and Professions Code, Health and Safety Code, and Vehicle Code.

This bill makes numerous technical, clarifying, and conforming changes.

- 7) *Sunset Issue #15: Continued Regulation.* The Bureau's oversight of the automotive repair industry and administration of vehicle emissions reduction and safety programs are integral to the welfare of California motorists and to meeting California's ambitious climate goals. The Bureau provides numerous services to protect consumers and the environment, including:

- Licensing ARDs; Smog Check stations, repair technicians, and inspectors; and brake and lamp stations and adjusters.
  - Pursuant to AB 471 (Low), Chapter 372, Statutes of 2021, vehicle safety systems licenses will replace lamp and brake licenses, effective January 1, 2024.
- Mediating automotive repair complaints, saving consumers millions of dollars each year in the form of direct refunds, rework, and bill adjustments.
- Investigating and taking disciplinary action against licensees who violate the law.
- Performing no-cost inspections of collision-related repairs to help ensure the safety of consumers and their vehicles.
- Administering and enforcing the Smog Check Program, which helps keep California's air clean by reducing air pollution produced by motor vehicles.<sup>13</sup>

This bill would extend BAR's sunset date to January 1, 2028.

### **Current Related Legislation.**

*AB 1257 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Dental Hygiene Board of California. Pending in this committee.*

*AB 1262 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Professional Fiduciaries Bureau. Pending in this committee.*

*AB 1264 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Acupuncture Board. Pending in this committee.*

*SB 813 (Roth) is the sunset review bill for the Structural Pest Control Board. Pending in the Senate Business, Professions, and Economic Development Committee.*

*SB 814 (Roth) is the sunset review bill for the Bureau of Household Goods and Services. Pending in the Senate Business, Professions, and Economic Development Committee.*

---

<sup>13</sup> Bureau of Automotive Repair. (n.d.). We are committed to consumer protection. Bureau of Automotive Repair. Retrieved from <https://bar.ca.gov/strategic-plan/consumer-protection>

*SB 815 (Roth)* is the sunset review bill for the Medical Board of California. *Pending in the Senate Business, Professions, and Economic Development Committee.*

### **Prior Related Legislation.**

*AB 471 (Low), Chapter 372, Statutes of 2021*, authorizes BAR to establish an informal citation conference for automotive repair dealers, beginning July 1, 2023, and a program to permit remedial training in lieu of posting minor violations online until July 1, 2026. AB 471 also required BAR to collect additional information on licensing applications and revised and recast the provisions of the brake and lamp inspection act into a new Vehicle Safety Systems Inspection program, as determined by BAR.

*AB 294 (Santiago) of 2022* would have established the Vehicle Towing and Storage Board (VTSB) within the Department of Consumer Affairs, required businesses that tow and store vehicles to receive a permit from VTSB, authorized VTSB to resolve disputes associated with the tow and storage of vehicles, and added additional requirements to existing tow and storage laws. *Held on the Assembly Appropriations Committee Suspense File.*

*SB 607 (Min), Chapter 367, Statutes of 2021*, extended the sunset review date of BAR from January 1, 2023, to January 2, 2024.

*AB 3141 (Low), Chapter 503, Statutes of 2018*, extended the sunset date of BAR by four years, until January 1, 2023, allowed for minor services to be conducted without a written estimate, required the registration of minor services repair dealers, and allowed BAR to access DMV photographic license database for the purpose of enforcement.

### **ARGUMENTS IN SUPPORT:**

The *Specialty Equipment Market Association* writes in support:

Many of SEMA's members are involved in the restoration and customization of older vehicles, including those that are considered to be collector's items and only driven occasionally or for special events. Unfortunately, owners of these vehicles often face significant challenges when it comes to emissions testing. In particular, many owners have difficulty locating emissions test centers that offer the necessary BAR-97 test at a reasonable price, if at all.

Creating a centralized testing network for emissions testing older vehicles would help address this issue by ensuring that owners have access to the necessary BAR-97 test. This would save them time, money, and the frustration of having to navigate a complex testing process.

SEMA believes that this legislation would benefit both consumers and the environment. It would provide owners of collector cars with greater access to emissions testing and ensure that these vehicles are meeting emissions standards. It would also help protect the environment by reducing emissions from older vehicles.

### **ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

Specialty Equipment Market Association

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1264 (Committee on Business and Professions) – As Amended April 20, 2023

**SUBJECT:** Acupuncture.

**SUMMARY:** Extends the sunset date for the California Acupuncture Board (CAB) until January 1, 2028, authorizes acupuncturists to supervise acupuncture assistants, as specified, and makes other technical changes.

**EXISTING LAW:**

- 1) Regulates the practice of acupuncture under the Acupuncture Licensure Act. (Business and Professions Code (BPC) §§ 4925-4934)
- 2) Defines “Acupuncture” as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control for the treatment of certain diseases or dysfunctions of the body, and includes the techniques of electroacupuncture, cupping, and moxibustion. (BPC § 4927(d))
- 3) Establishes the CAB, until January 1, 2024, to administer and enforce the act. (BPC § 4928)
- 4) Authorizes the CAB, until January 1, 2024, to appoint an executive officer. (BPC § 4934)
- 5) Defines “approved educational and training program” as a school or college offering education and training in the practice of an acupuncturist that meets specified requirements, including accreditation or other pre-accreditation status by the Accreditation Commission for Acupuncture and Oriental Medicine. (BPC § 4927.5)

**THIS BILL:**

- 1) Extends the CAB and the authority to appoint an executive officer until January 1, 2028.
- 2) Defines “supervising acupuncturist” as a person who meets the following conditions:
  - a) Is licensed to practice acupuncture in this state and that license is current, valid, and has not been suspended, revoked, or otherwise subject to formal disciplinary action unless approved by the CAB.
  - b) Has been practiced as a licensed acupuncturist in this state for at least five years.
  - c) Is in compliance with local laws substantially related to the qualifications, functions, or duties of an acupuncturist.
- 3) Defines “acupuncture assistant” as a person who, without a license, may perform basic supportive acupuncture procedures under the supervision and order of an acupuncturist.
- 4) Requires supervising acupuncturists to do the following:

- a) Be physically present and available in the place of practice during the performance of any ordered basic supportive acupuncture procedures.
  - b) Be responsible for the training and overall competency of the acupuncture assistant, including the ability to perform any specific basic supportive acupuncture service.
  - c) Ensure the acupuncture assistant meets the following:
    - i) Is enrolled in an approved education and training program and has completed at least a minimum of 700 hours of clinical practice.
    - ii) Holds a certificate in Clean Needle Technique issued by the Council of Colleges of Acupuncture and Herbal Medicine, or its successor entity, or has completed an approved educational and training program's Clean Needle Technique course using the Council of Colleges of Acupuncture and Herbal Medicine Clean Needle Technique, 7th edition, revised 1/2016.
- 5) Defines "basic supportive acupuncture service" as any of the following:
- a) Needle removal.
  - b) Cupping.
  - c) Moxibustion.
  - d) Gua sha.
  - e) The use of massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health.
- 6) Excludes from the definition of "basic supportive acupuncture service" diagnosis, point location, needle insertion, electrical stimulation, rendering advice to patients, or any other procedure requiring a similar degree of judgment or skill.
- 7) Replaces references to the Accreditation Commission for Acupuncture and Oriental Medicine to the Accreditation Commission for Acupuncture and Herbal Medicine, or its successor entity.
- 8) Makes other technical and conforming changes.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** Each year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development hold joint sunset review oversight hearings to review the licensing boards under the Department of Consumer Affairs (DCA). The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the



Legislature, DCA, boards, and stakeholders to discuss the performance of the boards and make recommendations for improvements.

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the “sunset” bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings.

This year, there are four sunset review bills authored by the Assembly Committee on Business and Professions and four sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee.

**Background.** The CAB is a licensing entity within the Department of Consumer Affairs (DCA). The CAB is responsible for administering and enforcing the Acupuncture Licensing Act. The act is the chapter of laws that establish the CAB and outlines the regulatory framework for the practice, licensing, education, and discipline of acupuncturists.

An acupuncture license authorizes the holder:

To engage in the practice of acupuncture [and] perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health.

Specifically, the Acupuncture Licensing Act defines the following:

- “Acupuncture” is "the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."
- A “Magnet” is a mineral or metal that produces a magnetic field without the application of an electric current.
- “Plant, animal, and mineral products” are "naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs."
- “Dietary supplement” has the meaning as under federal law, except that dietary supplement does not include controlled substances or dangerous drugs as defined under state law.

The CAB is the agency responsible for administering and enforcing the act. The CAB is also authorized to establish and clarify licensing procedures and practice standards through administrative rulemaking (the process for issuing regulations). For fiscal year (FY) 2021-22, the CAB reported a total of 11,819 actively licensed acupuncturists.

The CAB’s mission statement, as stated in its *2018–2022 Strategic Plan*, is:

To protect the people of California by upholding acupuncture practice standards through the oversight and enforcement of the Acupuncture Licensure Act.

**Current Related Legislation.** AB 1257 (Business and Professions Committee), which is pending in this committee, is the sunset bill for the Dental Hygiene Board of California and extends the Dental Hygiene Board of California until January 1, 2028, and makes other changes raised during sunset review.

AB 1262 (Business and Professions Committee), which is pending in this committee, is the sunset bill for the Professional Fiduciaries Bureau and extends the sunset date for the Professional Fiduciaries Bureau until January 1, 2028, and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the bureau's sunset review oversight process.

AB 1263 (Business and Professions Committee), which is pending in this committee, is the sunset bill for the Bureau of Automotive Repair and extends the sunset date for the Bureau of Automotive Repair until January 1, 2028, and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the bureau's sunset review oversight process.

SB 812 (Roth), which is pending in the Senate, is the sunset review bill for the California Tax Education Council and would council to post a notice of specified claims and links the California Board of Accountancy, the State Bar of California, and the Internal Revenue Service on its social media accounts, to the extent feasible, as specified.

SB 813 (Roth), which is pending in the Senate, is the sunset review bill for the Structural Pest Control Board and requires a registered company to notify the registrar in writing within seven business days when the licensed operator ceases to be connected with the company.

SB 814 (Roth), which is pending in the Senate, is the sunset review bill for the Bureau of Household Goods and Services and would require the Director of Consumer Affairs to conduct spot check investigations, as described above, no less than twice per year.

SB 815 (Roth), which is pending in the Senate, is the sunset review bill for the Medical Board of California and currently makes technical changes.

**Prior Related Legislation.** AB 3142 (Low), Chapter 596, Statutes of 2018, extended the CAB and the CAB's authority to appoint an executive officer by four years and made various changes to the Acupuncture Licensure Act raised during sunset review.

AB 2190 (Salas), Chapter 667, Statutes of 2016, extended the operation of the CAB and the CAB's authority to appoint an executive officer until January 1, 2019, established processes for the CAB to assess the educational equivalency of license applicants who received their education outside the United States, and made clarifying changes.

SB 1246 (Lieu), Chapter 397, Statues of 2014, extended the CAB and the CAB's authority to appoint an executive officer until January 1, 2017, and revised acupuncture program approval requirements, including removing the CAB's ability to perform site visits and added national programmatic accreditation as a requirement for acupuncture schools.

SB 1236 (Price), Chapter 332, Statutes of 2012, extended the sunset date for the CAB and other boards under the DCA and the term of the CAB's executive officer by two years, until January 1,

2015, and made technical and clarifying changes to statutes governing CAB-approved acupuncture training programs.

**ARGUMENTS IN SUPPORT:**

None on file

**ARGUMENTS IN OPPOSITION:**

None on file

**SUNSET ISSUES FOR CONSIDERATION:**

In preparation for the sunset hearings, committee staff public background papers that identify outstanding issues relating to the entity being reviewed. The background paper is available on the Committee's website: <https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in the amendments to this bill or otherwise actively discussed:

- 1) *Issue #8: Acupuncture Assistants.* Currently, the Acupuncture Licensure Act limits the entirety of the practice of acupuncture to licensed acupuncturists unless the unlicensed person is engaged in an acupuncture course or tutorial program or participating in a post-graduate review course. As a result, acupuncturists are not allowed to hire or train acupuncture students in a typical practice.

Some stakeholders have requested the authority to supervise senior acupuncture students as "acupuncture assistants," allowing assistants to perform low-level, non-invasive acupuncture functions in an acupuncture practice, such as the removal of needles or checking pulse or blood pressure. This would be similar to the use of supervised assistants in other professions, such as physical therapy assistants, occupational therapy assistants, and dental assistants, among numerous others.

*Staff Recommendation:* The CAB should update the Committees on any discussions it may have had on the topic and whether there are any immediate patient safety concerns.

*Board Response:*

The Board has not discussed this item in the last 15 years. It appears that this was an item of interest for the Joint Committee on Boards, Commissions, and Consumer Protection as Business and Professions Code section 4934.2(a) required the Board to research and report to said Committee by September 1, 2004 a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants.

In the examples provided in the background paper for what an assistant could be doing, the only challenge would be for unlicensed individuals removing needles. Board staff have identified possible patient safety concerns from unsupervised practice that may manifest during needle removal or because of inadequate infection control practices.

BPC section 4937 lists modalities that are not solely within an acupuncturist's scope such that if those assistants have the appropriate training in those modalities, they can carry out those treatments.

CCR section 1399.434(h) does afford an acupuncture student attending an approved educational and training program to earn 25% of their clinical hours in an externship at a private clinic. The supervisor in this environment would be required to be a licensed acupuncturist with at least five years of licensed clinical experience in acupuncture and Asian medicine and have an agreement with an educational and training program. Acupuncture trainees, in an approved acupuncture tutorial program, would also be allowed to work in an acupuncture clinic, under the responsibility of the tutorial program supervisor.

The Board encourages the acupuncture profession to work with acupuncture educational and training programs for hiring qualified externship students, or engaging training tutorial students as a tutorial supervisor, if it is seeking to engage the assistance of individuals who have training in acupuncture prior to licensure.

The Board would need greater details from the profession on what specific practices they are seeking to have acupuncture assistants carry out to ensure that public safety concerns are addressed.

*Committee Recommendation:* Based on CAB's response, this bill authorizes the use of acupuncture assistants to provide services provided by acupuncture stakeholders so long as the assistants are supervised students who have clinical experience equivalent to the final year of a terminal degree and have completed infection control training. The specific procedures authorized are:

- a) Needle removal after placement by the supervising acupuncturist.
  - b) Cupping, which is the use of cups on the skin to create suction.
  - c) Moxibustion, which is the use of lit mugwort to warm points on the body.
  - d) Gua sha, which is the use of a smooth-edged tool to gently scrape skin.
  - e) The use of massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health.
- 2) *Issue #10: Technical Changes.* There may be technical changes that can be made to the Acupuncture Licensure Act to help the CAB perform its duties or streamline its processes.

For example, the Acupuncture Licensure Act still refers specifically to the entity that approves schools as the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), but in 2021 the entity changed its name to the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM). It would clarify the act to update the name and language allowing for a successor organization.

*Staff Recommendation:* The CAB should continue to work with the Committees and suggest any technical clean-up that may be needed.

*Board Response:* The Board requests the Committees' example to align the current association name, Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM).

In BPC section 4961(f)(1), the Board requests that, “Asian massage services,” be removed as it is already called out as part of an acupuncturist’s scope in BPC section 4937.

*Committee Recommendation:* This bill contains the CAB’s recommended technical changes.

- 3) *Sunset Extension.* The CAB continues to work well with the Legislature in implementing its consumer protection mission. This is demonstrated by the CAB’s recent completion of its fee study, occupational analysis, and ongoing improvements consistent with its Strategic Plan, including balancing its budget.

While the COVID-19 pandemic created understandable challenges, the CAB should continue to implement its CE auditing processes and monitor the needs of the acupuncture community, such as the availability of affordable and effective CE.

*Staff Recommendation:* The CAB’s regulation of acupuncturists should be continued and reviewed again on a future date to be determined.

*Board Response:* Yes, continued regulation and licensure of the practice of Acupuncture by the Board will provide for greater public safety.

*Committee Recommendation:* This bill extends the CAB by four years.

**REGISTERED SUPPORT:**

None on file

**REGISTERED OPPOSITION:**

None on file

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1292 (Flora) – As Amended March 16, 2023

**SUBJECT:** Nursing: distance education nursing program students.

**SUMMARY:** Authorizes an unlicensed nursing student who is enrolled in an out-of-state distance education nursing program to provide nursing services that are incidental to the course of study, as specified.

**EXISTING LAW:**

- 1) Regulates the practice of nursing under the Nursing Practice Act. (Business and Professions Code (BPC) §§ 2700-2838.4)
- 2) Establishes the Board of Registered Nursing (BRN) within the Department of Consumer Affairs (DCA) to administer and enforce the Nursing Practice Act until January 1, 2027. (BPC § 2701)
- 3) Prohibits the practice of nursing without holding a license which is in an active status issued under the Nursing Practice Act, except as otherwise provided, and specifies that every licensee may be known as a registered nurse (RN) and use the title “R.N.” (BPC § 2732)
- 4) Requires an applicant for licensure as an RN to complete the education requirements established by the BRN in a program in this state approved by the BRN or in a school of nursing outside of this state which, in the opinion of the BRN, offers an education that meets the BRN’s requirements. (BPC § 2736)
- 5) Defines “an approved school of nursing” or “an approved nursing program” as one that (1) has been approved by the BRN, (2) gives the course of instruction approved by the BRN, covering not less than two academic years, (3) is affiliated or conducted in connection with one or more hospitals, and (4) is an institution of higher education. (BPC § 2786(a))
- 6) Requires the BRN to determine by regulation the required subjects of instruction for licensure as an RN and (1) include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry level of an RN and (2) require all programs to provide clinical instruction in all phases of the educational process, except as specified. (BPC § 2786(c))
- 7) Authorizes a student to render nursing services if those services are incidental to the course of study of one of the following:
  - a) A student enrolled in a BRN-approved pre-licensure program or school of nursing. (BPC § 2729(a))
  - b) A nurse licensed in another state or country taking a BRN-approved continuing education course or a post-licensure course. (BPC § 2729(b))

- 8) Requires a nursing program to obtain approval from the BRN for the use of any agency or facility for clinical experience, and requires the program to take into consideration the impact that an additional group of students would have on students of other nursing programs already assigned to the agency or facility. (California Code of Regulations, Title 16, § 1427)
- 9) Prohibits an institution of higher education or a private postsecondary school of nursing, or an entity affiliated with the institution or school of nursing, from making a payment to any clinical agency or facility in exchange for clinical experience placements for students enrolled in a nursing program offered by or affiliated with the institution or private postsecondary school of nursing, as specified. (BPC § 2786.4)
- 10) Defines an “out-of-state private postsecondary educational institution” as a private entity without a physical presence in this state that offers distance education to California students for an institutional charge, regardless of whether the institution has affiliated institutions or institutional locations in California. (Education Code § 94850.5)

**THIS BILL:**

- 1) Authorizes a student who is a resident of this state and enrolled in a pre-licensure distance education nursing program based at an out-of-state private postsecondary educational institution to provide nursing services to gain clinical experience in a clinical setting if the following are met:
  - a) The program is accredited by a programmatic accreditation entity recognized by the United States Department of Education.
  - b) The BRN has not otherwise approved the program.
- 2) Requires a student providing services under this bill to be supervised by an RN while rendering nursing services.
- 3) Specifies that, for purposes of the authorization under this bill, “out-of-state private postsecondary educational institution” means a private entity without a physical presence in this state that offers distance education to California students for an institutional charge, regardless of whether the institution has affiliated institutions or institutional locations in California.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Nightingale Education Group*. According to the author, “California Nursing Students, who are enrolled in a blended distance education nursing program domiciled outside the State of California, experience difficulties completing their nursing degree. The reality for these students is that they are forced to find another state, where they can move to for a number of weeks, to fulfill on-ground practical components of their education. This has to be done at their own expense, forcing them to take time away from their families and their home, in order to complete their nursing degree. Further, these students develop relationships with these health facilities outside of the State and often results in their leaving the State of California to become a nurse in another State when California needs as many nurses as possible.... Many

students choose not to further their education because of limited options in their area. With blended distance education programs, students can enroll in colleges and universities hundreds or thousands of miles from home. Having a strong local nursing workforce is imperative to improving patient care and access across the state and to decreasing the state's healthcare financial burdens. [This bill] provides an immediate, long-lasting, and much desired solution for creating and keeping a strong nursing workforce of local California nurses.”

**Background.** Generally in nursing education, nursing students must have clinical experience, which is the opportunity to apply theory to practice. Existing law prohibits students from providing nursing services without an RN license, and therefore gaining clinical experience, unless they are providing services incidental to the course of study of a BRN-approved course. As a result, the sponsors note that California residents enrolled in out-of-state distance education programs that are not BRN-approved must move to other states during their education to obtain the California-required clinical experience. This bill would allow those students to obtain the required clinical experience in California.

**Current Related Legislation.** AB 1577 (Low), which is pending hearing in the Assembly Health Committee, would require a general acute care hospital, as a condition of licensure, to provide clinical placements for postsecondary education students enrolled in an approved school of nursing or an approved program of nursing education, as defined.

**Prior Related Legislation.** AB 2684 (Berman), Chapter 413, Statutes of 2022, which was the BRN's 2022 Sunset Review bill,<sup>1</sup> made several changes to address the lack of clinical placements, including establishing a lower 500 minimum number of clinical experience hours, authorizing clinical placements to take place in the academic term immediately following theory, prohibiting nursing schools and programs from paying for clinical placements, and requiring the BRN to utilize data from available regional or individual institution databases in collecting information related to the number of clinical placement slots available to nursing students.

AB 2288 (Low), Chapter 282, Statutes of 2020, in response to the COVID-19 pandemic, authorized the director of an approved nursing program, during a state of emergency, to make requests to the BRN for the following: 1) the use of a clinical setting without meeting specified requirements; 2) the use of preceptorships without having to maintain specified written policies; 3) the use of clinical simulation up to 50% for medical-surgical and geriatric courses; 4) the use of clinical simulation up to 75% for psychiatric-mental health nursing, obstetrics, and pediatrics courses; and 5) allowing clinical placements to take place in the academic term immediately following theory.

AB 1015 (Blanca Rubio), Chapter 591, Statutes of 2021, required the BRN to incorporate regional forecasts into its biennial analyses of the nursing workforce, develop a plan to address regional areas of shortage identified by its nursing workforce forecast, as specified, and annually collect, analyze, and report information related to the number of clinical placement slots that are available and the location of those clinical placement slots within the state.

---

<sup>1</sup> The sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards, and make recommendations for improvements. Each year, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee hold joint sunset review oversight hearings to review the boards and bureaus. For more information, see the background paper on the BRN's 2022 Sunset Review, accessible at: <https://abp.assembly.ca.gov/jointsunsethearings>.



**ARGUMENTS IN SUPPORT:**

*Nightingale Education Group* (sponsor) writes in support:

On behalf of the Nightingale Education Group, I am writing to express our strong support for [this bill]. Nightingale Education Group is the parent company of Nightingale College, a distance education nursing college headquartered in Salt Lake City, Utah. Nightingale College was established in 2011 and currently serves thousands of pre-licensure nursing students across the country, including over 1,500 California residents.

[This bill] recognizes that for many California residents, distance nursing education is the best, or only, option for pursuing a nursing degree. By amending the nurse practice act to allow California residents enrolled in accredited distance nursing education programs to participate in clinical rotations at California facilities (conducted by California licensed registered nurses), the Legislature will allow these California residents to complete their online nursing education while simultaneously participating in their required hands-on training in their local communities, providing them much-needed experience and exposure to California healthcare systems and removing the need for costly out-of-state travel. [This bill] assures quality and cooperation from distance nursing education programs by mandating full accreditation by a USDOE recognized nursing education accrediting entity and by requiring programs to work together with California healthcare facilities to determine availability for local clinical rotations.

Under the current nursing regulations, the reality for many California residents is that they are forced, while enrolled in distance education programs domiciled outside of California, to fulfill clinical experiential learning requirements in other states, where they are required to relocate for several weeks each semester to fulfill the mandatory on-ground practical components of their education. This creates a costly and cumbersome reality where students must travel at their own expense, leaving their families, homes, and employment, for weeks at a time every semester for the duration of their nursing program. Additionally, during these travel rotations, these students are developing relationships with, and actively being recruited by, healthcare facilities in other states, which often results in the students leaving California after graduation, further adding to California's already drastic nursing shortage.

The Covid-19 pandemic elevated the nursing shortage to crisis levels while simultaneously increasing interest in distance education. For some California students pursuing nursing careers, work schedules, family life, finances, and other priorities now make distance nursing education programs their only option. Unfortunately, many other students have chosen not to pursue their education at all because options in their local areas are either severely limited or non-existent. [This bill] would allow these students to enroll in readily available blended distance education programs (online education + local on-ground experiential learning), offered by colleges and universities across the country that provide education opportunities meeting the students' lifestyle and financial needs.

Distance education can provide many benefits for California nursing students including, open enrollment without waiting lists or lottery systems, less expensive education costs relative to traditional on-site counterparts, substantial savings on gas, car maintenance, room and board, and childcare, and many others. In addition to the personal benefits for students, the economic benefits experienced by communities when residents stay and work at local businesses during school and after graduation are immeasurable. Rural communities are especially affected by economic pressures, and due to cost and space constraints, traditional on-site colleges and universities are simply not able to meet the needs of these cities and towns. Distance education programs provide much-needed workforce development options for underserved communities, especially for critical services such as nursing and healthcare.

Having a strong local nursing workforce is imperative to improving patient care and access across California and to decreasing the state's healthcare financial burdens. [This bill] provides an immediate, long-lasting, and much desired solution for creating and keeping a strong nursing workforce of local California nurses. We strongly support this bill and appreciate your efforts in serving California patients, students, and communities.

#### **ARGUMENTS IN OPPOSITION:**

The *California Nurses Association* writes in opposition:

Direct patient care clinical hours for nursing students is a critical component of nursing education programs. To ensure the quality of nursing programs approved by the [BRN], nursing students must continue to have robust direct patient care clinical education. Indeed, the legislature recently passed a requirement that California-approved nursing programs provide at least 500 direct patient care clinical hours to nursing students. [This bill] would frustrate California's ability to provide nurses in California-approved nursing programs with necessary and important clinical education. For the reasons detailed below, CNA opposes [this bill].

- i) *The bill allows out-of-state distance education programs that are not approved nursing programs by the California Board of Registered Nursing to place their students in already limited clinical education slots.* The availability of clinical education slots in California health care facilities for existing nursing students is already impacted. But [this bill] would allow non-California programs to take clinical education slots, exacerbating ongoing difficulties providing nursing students in California programs to access clinical education. In the most recent [BRN] survey of prelicensure programs in our state, 128 programs reported they were denied access to clinical space in the 2020-2021 academic year with 70 programs reporting being denied access to clinical space in the academic year prior to the Covid-19 pandemic.
- ii) *The bill would place patients in danger by allowing nursing students enrolled in out-of-state distance programs to render nursing services through remote supervision.* CNA is concerned that [this bill] would allow nursing students to provide care to patients with only remote supervision by an RN, placing

patients in danger. Currently, only students enrolled in nursing programs approved by the California BRN can provide, as part of the clinical education of the Board-approved program, nursing services to patients. The California BRN evaluates and monitors clinical education provided, including the supervision of nursing students, as part of its nursing program approval process. [This bill], however, would allow out-of-state distance programs that are not regulated and not regularly evaluated by the California BRN to provide clinical education.

While CNA members sometimes provide support as preceptors to clinical students in the hospital, this bill does not clearly ensure that in-person supervision remains in place for clinical nursing faculty providing supervision of clinical students enrolled in out-of-state distance education programs. It is exceedingly important that supervision of nursing students who render care to patients in clinical education settings is provided in person. The observations made and knowledge acquired during clinical training are the beginning of a vast amount of experiential learning that registered nurses need to provide safe and effective direct care to patients in hospitals, clinics, and community settings. Without regulatory oversight of the California BRN over out-of-state distance nursing programs, it would remain unclear what the quality of supervision of nursing students rendering patient care in California's patients would be under [this bill].

- iii) *[This bill] would further displace students in community college nursing programs from placement into limited clinical education slots.* Importantly, the allowance of out-of-state distance education programs to place students in limited clinical education slots would worsen existing difficulties for public nursing programs, particularly community college programs, to place their nursing students in clinical slots. CNA is concerned that allowing distance programs to place students in clinical slots would further disadvantage and displace from clinical education slots affordable community college and other public nursing programs, which have long served as meaningful pathways into the nursing profession for racially, economically, and geographically diverse communities in California.

#### **POLICY ISSUES FOR CONSIDERATION:**

- 1) *Lack of Clinical Placements.* During the BRN's 2020 Sunset Review, this committee and the Senate Business, Professions and Economic Development Committee raised, and continue to work on, the issue of the availability of clinical placements for nursing students. The availability of student placements for clinical experiences is based on the willingness of clinical facilities, such as hospitals or clinics, to accept and teach students. While there are no requirements that facilities accept students, many willingly accept students because it is necessary for the workforce and can help with recruitment. However, the facilities must have staff that is qualified to teach and supervise students.

As a result, clinical placements are often difficult to find, and even more so during the pandemic when partner facilities were turning students away. Unfortunately, students who are unable to obtain their clinical placements before the end of the term will either have to drop

out or receive an incomplete and under either circumstance would have to repeat the course. This bill may complicate that problem by authorizing nursing students who are enrolled in out-of-state distance education programs to compete for already limited clinical placements.

- 2) *Pay to Play*. Because publicly funded nursing programs, such as community colleges, cannot pay or otherwise provide compensation for clinical placements, existing law prohibits nursing programs from making payments to clinical agencies or facilities in exchange for clinical placements. This bill would not apply the same prohibition on out-of-state programs.

### **AMENDMENTS:**

To address the policy concerns raised above and the remote supervision issue raised by the opposition, the bill should be amended as follows:

On page 2 of the bill, after line 9:

(c) (1) A student who is a resident of the state and enrolled in a prelicensure distance education nursing program based at an out-of-state private postsecondary educational institution for the purpose of gaining clinical experience in a clinical setting that meets ~~both of~~ the following criteria:

(A) The program is accredited by a programmatic accreditation entity recognized by the United States Department of Education.

(B) The board has not otherwise approved the program.

*(C) The student placement shall not impact any students already assigned to the agency or facility.*

*(D) The program shall not make a payment to any clinical agency or facility in exchange for clinical experience placements for students enrolled in a nursing program offered by or affiliated with the institution or private postsecondary school of nursing.*

(2) A student described by this subdivision shall be ~~supervised~~ *supervised, in-person*, by a registered nurse licensed by the board pursuant to this chapter while rendering nursing services.

*(3) A clinical agency or facility shall not offer clinical experience placements to an out-of-state private postsecondary educational institution if the placements are needed to fulfill the clinical experience requirements of in-state student enrolled in a board-approved nursing program.*

(d) For purposes of this section, “out-of-state private postsecondary educational institution” has the same meaning as defined in Section 94850.5 of the Education Code.

### **REGISTERED SUPPORT:**

Nightingale Education Group (sponsor)

**REGISTERED OPPOSITION:**

California Nurses Association

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1328 (Gipson) – As Amended March 23, 2023

**SUBJECT:** Cosmetology Licensure Compact.

**SUMMARY:** Enacts the Cosmetology Licensure Compact (Compact) to facilitate California's participation in a multistate licensing program whereby cosmetologists can receive reciprocity to practice in other states that have adopted the Compact and vice versa.

**EXISTING LAW:**

- 1) Establishes the State Board of Barbering and Cosmetology (BBC) within the Department of Consumer Affairs (DCA) to license and regulate barbers, cosmetologists, hairstylists, electrologists, estheticians, and manicurists pursuant to the Barbering and Cosmetology Act. (Business and Professions Code (BPC) §§ 7301 *et seq.*)
- 2) Provides that protection of the public shall be the highest priority for the BBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 7303.1)
- 3) Defines the practice of cosmetology as all or any combination of the following:
  - a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means the hair of any person.
  - b) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
  - c) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
  - d) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.
  - e) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.
  - f) Massaging, cleansing, treating, or beautifying the hands or feet of any person.
  - g) Tinting and perming of the eyelashes and brows, or applying eyelashes to any person.  
  
(BPC § 7316(b))
- 4) Exempts from the definitions of cosmetology the practices of wig-fitting, natural hair braiding, and threading. (BPC § 7316(d))

- 5) Provides that it is unlawful for any person to engage in cosmetology for compensation without a valid, unexpired license from the BBC, with certain exceptions. (BPC § 7317)
- 6) Expressly prohibits any person who is not licensed to practice cosmetology from representing themselves as a cosmetologist. (BPC § 7320.3)
- 7) Requires the BBC to grant a license to an individual who already possesses an unrestricted license in good standing from another state upon completion of an application and payment of applicable fees. (BPC § 7331)
- 8) Requires a course in cosmetology to consist of not less than 1,000 hours of practical and technical instruction in the practice of cosmetology. (BPC § 7362.5)
- 9) Requires a board under the DCA to expedite the licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged. (BPC § 115.4)
- 10) Requires a board under the DCA to expedite the licensure process for an applicant who 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 California under official active duty military orders; and who holds a current license in another state in the profession or vocation for which they are seeking a license from the board. (BPC § 115.5)
- 11) Requires the boards under the DCA to grant temporary licenses to applicants who are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces and who holds a current, active, and unrestricted license in another state. (BPC § 115.6)

**THIS BILL:**

- 1) Enacts the Compact and designates the BBC as the state's licensing authority for its purposes.
- 2) Provides that the Compact shall come into effect on the date on which the Compact is enacted into law by seven member states.
- 3) Establishes the Cosmetology Licensure Compact Commission, a joint government agency comprised of member states that have enacted the Compact.
- 4) Requires the Commission to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system.
- 5) Empowers the Commission to promulgate reasonable rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact.
- 6) Requires a state seeking to join the Compact to do all of the following:
  - a) License and regulate cosmetology.
  - b) Have a mechanism or entity in place to receive and investigate complaints about licensees practicing in that state.

- c) Require its licensees to pass a cosmetology competency examination prior to being licensed.
  - d) Require that its licensees satisfy educational or training requirements in cosmetology.
  - e) Implement procedures for considering one or more of the following categories of information from applicants for licensure: criminal history; disciplinary history; or background check.
  - f) Participate in the Compact's data system.
  - g) Share information related to adverse actions with the Commission and other member states, both through the data system and otherwise.
  - h) Notify the Commission and other member states, in compliance with the terms of the Compact and Rules of the Commission, of the existence of investigative information or current significant investigative information in the state's possession regarding a licensee practicing in that state.
  - i) Comply with any rules enacted by the Commission.
  - j) Accept licensees from other member states.
- 7) Clarifies that nothing in the compact affects the requirements for any single-state license.
- 8) Provides for the requirements for a cosmetologist to obtain a multistate license under the Compact from the BBC, which then be recognized by each member state as authorizing the practice of cosmetology as though the licensee were licensed in each member state.
- 9) Requires the BBC and other member state licensing authorities to cooperate with the Commission and with each entity exercising independent regulatory authority over the practice of cosmetology according to the provisions of the Compact.
- 10) Provides that discipline shall be the sole responsibility of the state in which cosmetology services are provided.
- 11) Automatically suspends a multistate license if the licensee is subjected to a disciplinary order by a member state that imposes an adverse action on the license.
- 12) Authorizes member states to participate in joint investigations of licensees.
- 13) Requires active duty military personnel and their spouses to designate a home state where they have a current license to practice cosmetology in good standing.
- 14) Authorizes a member state to withdraw from the Compact by enacting a statute repealing its enactment of the Compact.
- 15) Provides that nothing in the Compact shall prevent or inhibit the enforcement of any other law of a member state that is not inconsistent with the Compact.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.



**COMMENTS:**

**Purpose.** This bill is sponsored by the **State Board of Barbering and Cosmetology**. According to the author:

“I believe that this compact will have a very meaningful positive impact on the barbering and cosmetology community. An interstate compact can establish uniform licensing for cosmetologists across states. This will ensure that all cosmetologists meet the same standards regardless of where they practice, thereby increasing consumer protection and safety. Cosmetologists will also be able to easily transfer their licenses to other states without the need to take additional exams or fulfill extra requirements. This means that cosmetologists will have more flexibility in choosing where they work and can quickly adapt to new locations and this will save time and money for both cosmetologists and businesses. An interstate compact can help to strengthen industry standards by promoting collaboration and sharing of best practices among participating states. This can lead to better training, education, and regulation, ultimately benefiting both cosmetologists and consumers. Overall, creating an interstate cosmetology board compact is a smart move that can benefit the industry and those who work in it. By establishing uniform licensing requirements, increasing mobility and flexibility, enhancing reciprocity, promoting competition and innovation, and strengthening industry standards, a compact can improve the overall quality and safety of cosmetology services, while also providing cosmetologists with greater opportunities to grow and thrive in their careers.”

**Background.**

*Board of Barbering and Cosmetology.* The BBC is responsible for licensing and regulating barbers, cosmetologists, hairstylists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 615,000 licensees as of its last sunset review, including over 250,000 active cosmetology licenses. Annually, the BBC issues approximately 25,000 new licenses each year and administers over 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with overlap in some areas.

In addition to licensing individuals, the BBC approves schools. A cosmetology school must first be approved by the BBC and subsequently approved by the Bureau for Private Postsecondary Education. Under existing law, a cosmetology course is required to be 1,000 hours of practical training and technical instruction. Licensees are not required to complete continuing education. To obtain a license as a cosmetologist, an applicant must complete a written examination. The BBC has historically used licensing examinations developed by the National Interstate Council of State Boards of Cosmetology. Most states offer similar exams and have some form of reciprocity with California for barbers and cosmetologists seeking licensure in another state.

The BBC is required to routinely inspect cosmetology establishments to ensure compliance with the Barbering and Cosmetology Act, health and safety requirements, and applicable labor laws. In 2017, the BBC issued 3,048 citations to cosmetologists for violations identified through an inspection, many of which were issued following a consumer complaint submitted to the BBC. According to the BBC, 164 consumer harm allegations were received in 2017, of which 50 were for overprocessed hair, 32 were for scalp burns, 16 were for facial burns, 15 were for facial cuts, and 7 were for skin burns, among other complaints.

*Existing License Reciprocity.* Statute currently provides for several forms of license reciprocity for cosmetologists licensed by the BBC. First, legislation was previously enacted to expand license portability for military spouses and partners. Beginning July 1, 2023, the BBC will join other boards under the DCA in offering temporary licensure to applicants who hold a current, active, unrestricted license in another state and are 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 California. Temporary licenses expire after 12 months; however, all boards under the DCA are additionally required to expedite the licensure process for these applicants.

In addition, the Barbering and Cosmetology Act provides for a process through which the BBC offers licensure reciprocity to individuals licensed and in good standing in other states. Issue #10 in the background paper for the BBC's most recent sunset review oversight hearing discussed licensure by endorsement. This process allows an individual licensed in another state to become licensed in California without having to take additional steps or conduct additional review, including determining whether the individual completed the same number of hours as California requires for licensure.

At the time of the BBC's last sunset review, statute allowed the BBC to license an individual who held a current, unrestricted license from another state if they had been "active for three of the last five years, during which time the applicant has not been subject to a disciplinary action or a criminal conviction." The sunset hearing background paper noted that "since BBC-regulated practice is extremely similar from state to state (other than states that do not require certain low-risk practices to be regulated), and virtually every state recognizes the same basic practices, it is not clear what added risk there is to California consumers to receive services from an individual who has been licensed in another state for a shorter period of time and has not faced any licensure sanctions." The sunset hearing background paper further argued that given the need for licensure portability among certain populations like military spouses, it was potentially no longer necessary to limit the licensure by endorsement process to individuals who had been active for three of the last five years.

The BBC formally agreed with the Committees' assessment, and statute was subsequently amended to remove the three-year requirement. In its official response to the sunset hearing background paper, the BBC stated that it had reviewed various examinations for licensure provided in four states, and found that all four exams had similar content. The BBC concluded that "someone who tests and becomes licensed in another state should be considered minimally competent to immediately work in California."

*Interstate Compact.* The Cosmetology Licensure Compact is a model legislation project developed by the National Center for Interstate Compacts within the Council of State Governments (CSG), in partnership with the United States Department of Defense (DOD). The intent of the compact is to "create reciprocity among participant states and reduce the barriers to license portability and employment." During its January 23, 2023, the BBC formally voiced its support for joining an interstate cosmetology licensure compact and voted to move forward with pursuing a legislative proposal to enact the model legislation. On April 10, 2023, the BBC formally voted to sponsor and support this bill, which contains the language provided by CSG and DOD.

The terms of the Compact provide that once seven states have enacted the model legislation, the Compact becomes operative and a Cosmetology Licensure Compact Commission becomes established to effectuate the compact and adopt additional rules governing its implementation. According to information supplied by the author and sponsor, seven other states have introduced bills to enact the Compact: Alabama, Arizona, Georgia, Kentucky, Nebraska, Ohio, and Texas. Of these states, only Arizona and Kentucky's legislation have been signed into law.

Were this bill to be enacted, its provisions allowing for multistate licensure and reciprocity would not begin to go into effect until an additional four states have enacted identical proposals. However, California would arguably benefit from being among the earliest states to adopt the Compact, as it would ensure the state's participation in the Commission's foundational rulemaking. Participation by California would also reflect a sustained policy trend within the state toward removing barriers to individuals seeking to enter into the cosmetology profession.

**Prior Related Legislation.** AB 107 (Salas, Chapter 693, Statutes of 2021) expands to all DCA licensing boards the requirement that boards issue temporary licenses to the spouses and partners of active-duty members of the United States Armed Forces.

SB 803 (Roth, Chapter 648, Statutes of 2021) extended the operation of the BBC and, among other things, reduced the required number of hours for courses in both barbering and cosmetology to 1,000 hours.

AB 181 (Bonilla, Chapter 430, Statutes of 2015) extended the operation of the BBC and required the BBC to conduct a review of its current 1,600-hour curriculum requirements for the cosmetologist license.

#### **ARGUMENTS IN SUPPORT:**

The **Future of the Beauty Industry Coalition** supports this bill, writing: "The Cosmetology Licensure Compact preserves California's regulatory authority to protect public health and safety through the existing regulatory structure. The compact allows California to continue to determine the requirements for licensure in California, as well as to maintain California's unique scope of practice for anyone practicing in California, whether through a California license or another state's multistate license. A licensee from another state practicing in California must abide by the laws, regulations and rules that govern the practice of cosmetology in California."

#### **ARGUMENTS IN OPPOSITION:**

None on file.

#### **POLICY ISSUE(S) FOR CONSIDERATION:**

*Precedent.* The National Center for Interstate Compacts within the CSG currently sponsors 15 different interstate compacts to enable reciprocal licensing that goes beyond cosmetology. For example, CSG has worked to effectuate compacts in nursing, psychology, physical therapy, teaching, dentistry, and medicine. Historically, California has chosen not to join interstate compacts, as they would potentially result in individuals practicing within the state who do not meet standards set by California to protect consumers and patients. While the Cosmetology Licensure Compact may be an appropriate compact to join, it should not be viewed as reflecting a more general openness to the state joining any other compacts for other licensed professions.

**IMPLEMENTATION ISSUES:**

The language in this bill would enact precisely the specific language provided by the CSG and DOD in their model legislation. As such, it has not been tailored to fit the structure of statutes in California, nor has it been modified to ensure consistence with the Barbering and Cosmetology Act. However, the CSG and DOD have made it clear that states must enact the model legislation exactly to ensure participation in the Compact.

**REGISTERED SUPPORT:**

State Board of Barbering and Cosmetology (*Sponsor*)

Barbicide

Bellus Academy

Blueco Brands

Floyd's Barbershop

Future of The Beauty Industry Coalition

Great Clips

Hair Cuttery

Intercoiffure

International SalonSpa Business Network

JCPenney Salon

Military Services in California

Professional Beauty Employment Coalition

San Diego Military Advisory Council

Sportclips

Ulta Beauty

United States Department of Defense

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1396 (Garcia) – As Introduced February 17, 2023

**SUBJECT:** Licensed Physicians and Dentists from Mexico Pilot Program: requirements.

**SUMMARY:** Requires the Medical Board of California (MBC) to issue a license to applicants for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who do not currently possess federal documentation but otherwise meet the pilot program's requirements, and authorizes the MBC to extend a pilot program participant's license under certain conditions.

**EXISTING LAW:**

- 1) Establishes the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)
- 2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs comprised of 15 appointed members. (BPC § 2001)
- 3) Requires all continuing medical education courses to contain curriculum that includes cultural and linguistic competency in the practice of medicine and the understanding of implicit bias. (BPC § 2190.1)
- 4) Establishes the Licensed Physicians and Dentists from Mexico Pilot Program, which allows up to 30 physicians from Mexico specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology to practice medicine in California. (BPC § 853(a))
- 5) Provides that the MBC shall issue three-year nonrenewable licenses to practice medicine to licensed Mexican physicians who are eligible to participate in the pilot program. (BPC § 853(b))
- 6) Requires physicians from Mexico to comply with various requirements to participate in the pilot program, including education and practice requirements. (BPC § 853(c))
- 7) Requires all boards under the Department of Consumer Affairs to require individual applicants for licensure to provide a social security number (SSN) or, for certain individuals who do not have an SSN, an individual taxpayer identification number (ITIN). (BPC § 30)

**THIS BILL:**

- 1) Requires the MBC to issue a three-year nonrenewable license to an applicant for participation in the pilot program who has not provided an ITIN or SSN, if the MBC determines the applicant is otherwise eligible for that license.
- 2) Requires applicants for the pilot program who receive a license without submitting an ITIN or SSN to immediately seek both a three-year visa and the accompanying SSN from the United States government within 14 days.

- 3) Further requires applicants to immediately provide the MBC with their SSN within 10 days of the federal government issuing the social security card related to the issued visa.
- 4) Prohibits applicants from engaging in the practice of medicine until the MBC determines that they have met the above requirements.
- 5) Requires the MBC to notify applicants once it has determined that the applicant may engage in the practice of medicine.
- 6) Authorizes the MBC to extend a pilot program participant's three-year nonrenewable license under the following circumstances:
  - a) During the timeframe in which a licensee is unable to treat patients and provide medical services for more than 30 days of work due to an ongoing condition, including, but not limited to, pregnancy, serious illness, credentialing by health plans, or serious injury that renders the licensee incapable of serving patients.
  - b) During the timeframe in which a licensee is unable to work due to a delay in the visa application process beyond the established time line by the United States Customs and Immigration Services.
- 7) Requires a participant to provide documentation to the MBC demonstrating that it meets the requirements to receive an extension on their license to participate in the pilot program.
- 8) Requires the MBC to grant an extension for the timeframe in which the licensee was unable to work if that MBC determines that the applicant has satisfied the requirements.
- 9) Authorizes the MBC to expend special fund monies to cover the costs of monitoring participants who have received an extension on their license.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author:

“AB 1395 is necessary to streamline the process in which Doctors are able to obtain their medical license. As it stands in order for doctors to get their medical license they must have a social security number or Individual Tax identification number (ITIN), right now the process to get an ITIN number 3 to 5 months. This bill includes an urgency clause to specifically allow the remaining doctors from the program to be able to get their medical license without a social security number or ITIN.”

**Background.**

Over the past several decades, there has been an acknowledged decline in the number of accessible primary care physicians, both in California and nationally. This physician shortage has disproportionately impacted communities with concentrated populations of immigrant families and people of color. A recent study found that between 2010 and 2019, the number of primary care physicians in proportion to population remained largely unchanged nationally, and that counties with a high proportion of minorities saw a decline during that period.

There have been additional concerns that those physicians who are accessible in vulnerable communities do not necessarily possess the linguistic or cultural competence to appropriately treat all patients. A 2018 study published by the Latino Policy & Politics Initiative at the University of California, Los Angeles found that while nearly 44 percent of the California population speaks a language other than English at home, many of the state's most commonly spoken languages are underrepresented by the physician workforce, including Spanish, Filipino, Thai/Lao, and Vietnamese as underrepresented languages.

In part to address the primary care physician shortage and to increase the number of physicians who already possess cultural and linguistic competence in the treatment of communities with high proportions of immigrant families from countries like Mexico, the Legislature enacted Assembly Bill 1045 (Firebaugh) in 2002. This bill created the Licensed Physicians and Dentists from Mexico Pilot Program. The pilot program allows a limited number of qualifying physicians and dentists to come to California and practice for a limited time under a three-year nonrenewable license.

The first annual progress report on the pilot program, submitted to the Legislature by the University of California, Davis in August 2022, found that many patients had positive experiences with physicians practicing through the pilot program. In particular, patients reportedly had substantially positive experiences communicating with their doctor, and frequently felt welcome. While the overall efficacy of the pilot program is still under review, initial reports appear positive.

However, there have been reports of certain barriers in the process through which physicians from Mexico receive approval to participate in the pilot program. As noncitizens, applicants typically will not have an ITIN or SSN, which is required by all regulatory boards, including the MBC, as a condition of receiving a license. However, applicants typically cannot apply to receive a visa and accompanying SSN without proof that they may legally work in California, which they cannot demonstrate without a license from the MBC.

This bill would resolve the above issue by creating a process through which the MBC grants a license to applicants who meet all requirements except the ability to submit an ITIN or SSN. The applicant may then use that license to apply for and obtain the needed documentation, at which point they would submit that documentation to the MBC in order to finalize approval of their participation in the pilot program. The physicians would be prohibited from engaging in the practice of Medicine in California until the MBC determines that they have completed all the requirements of participation, including submission of the required documentation.

This bill would also allow the MBC to extend the three-year nonrenewable license of a participant in the pilot program who is unable to provide services during the period of time they were licensed. Specifically, the bill would authorize an extension of a license when the physician was unable to work due to a delay in the visa application process beyond the established time line by the federal Customs and Immigration Services. The MBC would also be authorized to extend a license if the physician was unable to treat patients for more than 30 days due to an ongoing condition, including pregnancy, serious illness, credentialing by health plans, or serious injury.

**Current Related Legislation.** AB 1395 (Garcia) is substantially similar to this proposal. *This bill is pending the Assembly Committee on Appropriations.*

AB 470 (Valencia) would update continuing medical education standards to further promote cultural and linguistic competency and enhance the quality of physician-patient communication. *This bill is pending the Assembly Committee on Appropriations.*

**Prior Related Legislation.** AB 1045 (Firebaugh, Chapter 1157, Statutes of 2002) established the Licensed Physicians and Dentists from Mexico Pilot Program.

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Unclear Degree of Board Discretion.* Currently, this bill provides that the MBC may extend the license of a participant in the pilot program based on certain conditions. However, it then states that the MBC shall extend the license if those conditions are deemed to exist. The author may wish to clarify that the MBC maintains discretion as to whether to grant an extension of any license.

*Length of Extension.* This bill is currently silent as to how long a participant's license may be extended for, except that the extension is to be for the timeframe in which the licensee was unable to work. The author may wish to provide some parameters as to how long a license may be extended. The author may also wish to specify that an extension may only be granted once for each license.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301



Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1518 (Friedman) – As Amended April 17, 2023

**SUBJECT:** Service dogs.

**SUMMARY:** Requires the Department of Consumer Affairs (DCA) to inform places of business through a coordinated, statewide campaign about the importance of trained service dogs and their role in assisting people with disabilities in public accommodations.

**EXISTING FEDERAL LAW AND REGULATIONS:**

- 1) Establishes the Americans with Disabilities Act (ADA), which prohibits discrimination against individuals with disabilities in areas of employment, transportation, public accommodations, and more. (42 United States Code Section 12101 et seq.)
- 2) Defines a “service animal” under the ADA as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory psychiatric intellectual, or other mental disability. States that the work or tasks performed by a service animal must be directly related to the individual’s disability. Specifies that other species of animals, whether wild or domestic, trained or untrained, are not considered service animals (Code of Federal Regulations (CFR) Title 28 Section 35.104)
- 3) States that a public entity, regardless of pet policy, shall accommodate and permit the use of a service animal. Further declares that individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity’s facilities where members of the public are allowed to go. (28 CFR Section 35.136(a) and 35.136(g))

**EXISTING STATE LAW AND REGULATIONS:**

- 1) Defines a “guide dog” as a dog that has been trained or is being trained to assist blind or visually impaired individuals. (Business and Professions Code (BPC) Section 7201)
- 2) Defines a “signal dog” as a dog trained to alert an individual who is deaf or hard of hearing to intruders or sounds (Penal Code Section 365.5(e) and Civil Code Section 54.1(b)(6)(B)(ii))
- 3) Defines a “service dog” as a dog trained individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items (Penal Code section 365.5(f) and Civil Code Section 54.1(b)(6)(B)(ii))
- 4) Defines a “guide dog instructor” as a person who instructs or trains persons who are blind or visually impaired in the use of guide dogs or who engages in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired. (BPC Section 7201(a))
- 5) Prohibits a person from advertising or presenting themselves as a “guide dog instructor,” “certified guide dog instructor,” or any related terms without having knowledge of the special problems of persons who are blind or visually impaired and being able to teach them, being

able to demonstrate the ability to train guide dogs with which persons who are blind or visually impaired would be safe under various traffic conditions, or being employed by a guide dog school certified by the International Guide Dog Federation. (BPC Section 7200)

- 6) States that any person who knowingly and fraudulently represents themselves to be the owner or trainer of a guide, signal, or service dog is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding six months, by a fine not exceeding \$1,000, or by both that fine and imprisonment. (Penal Code Section 365.7)
- 7) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, which regulates the breeding and sale of dogs. (Health and Safety Code, Section 122045 et seq.)
- 8) Establishes the California Fair Employment and Housing Act (FEHA) which, broadly, provides discrimination protections in employment and housing. (Government Code Section 12900 et seq.)
- 9) Defines “support animals” for the purposes of the FEHA as animals that provide emotional, cognitive, or other support to an individual with a disability. Clarifies that a support animal does not need to be trained or certified. States that support animals are also known as comfort animals or emotional support animals. (2 California Code of Regulations (CCR) Section 12005(d)(2))

**THIS BILL:**

- 1) Makes findings and declarations relating to data regarding attacks experienced by guide dog users and guide dogs.
- 2) Makes findings and declarations that both California law and federal law provide specific protections for individuals with disabilities.
- 3) Makes findings and declarations regarding the disconnect between enforcement by businesses and state and federal laws.
- 4) Makes findings and declarations relating to the differences between service dogs and emotional support dogs.
- 5) States existing obligations and legal rights for both the service dog handler and the business.
- 6) Defines “service dog” as a “guide dog”, “signal dog”, or “service dog” as those terms are defined in existing law.
- 7) Requires the DCA, on or before September 10, 2025, to inform places of businesses, through a statewide educational campaign about the following:
  - a) The high number of attacks on their dogs by other dogs.
  - b) The need to exercise better control over untrained dogs to reduce the number of these attacks, and the need for owners and operators of places of public accommodation to exercise their legal right to remove from their premises animals not behaving in a safe and appropriately controlled manner.

- c) The obligation under law for the service dog handler to have their service animal behave in a safe manner and under control.
  - d) The legal right of the business to provide access to service dog users responsibilities relating to legal obligations and the behavior of the animal.
- 8) Requires, upon appropriation by the Legislature, the DCA to carry out the educational campaign through a variety of means, including the DCA's website, posters, and other materials in public places, videos, and public service announcements.
- 9) Authorizes the DCA to, in addition to public funding for conducting the campaign, solicit donations from private sources, including service dog schools.
- 10) Requires the DCA to, in conducting this educational campaign, consult with service dog schools and advocacy organizations for people who are blind or have other physical or sensory disabilities.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by *Canine Companions*. According to the author, "one in four adults in the United States live with a disability. Thousands are assisted by task-trained service dogs to increase independence. Unfortunately, the misrepresentation of pet dogs as service dogs in public places has significant impacts on the access and physical safety of legitimate service dog teams. A dedicated, targeted education campaign for businesses and the general public would explain the importance of task-trained service dogs' roles in public and reduce threats to the safety of these working teams."

**Background.**

*Preventable Problems Identified.* According to the California Council of the Blind's dog attack survey, the responses and data collected indicate that somewhere between one-third and one-half of guide dog users and more than three-quarters of service dog users experience attacks against their guide or service dogs by other dogs. These attacks occur both in places of public accommodation and on private property, including the residences of guide and service dog users. These attacks sometimes produce serious physical or psychological injury to a qualified service dog and can result in expenses to the service dog user that include veterinary expenses, lost income due to missed work days, financial impacts of permanently removing a service dog from duty, including replacement of the service dog, and even medical bills for service dog users themselves. Although criminal penalties exist and include potential recovery of expenses from the owner of, or other person responsible for, the attacking dog, it is argued that these laws are seldom enforced and could be dismissed as an actual solution for the service dog user. The survey also concluded the majority of these incidents could have been prevented if businesses and the general public had a better understanding and education on the importance of trained service dogs and their role in assisting people with disabilities in public accommodations.

*The Americans with Disabilities Act and Service Animals.* The Americans with Disabilities Act (ADA) was established in 1990 and is a landmark civil rights law prohibiting discrimination against individuals with disabilities across broad categories, including employment, education,

transportation, and access to public accommodations. The ADA acknowledges that in order to fully participate in everyday life, some individuals with disabilities require assistance from service animals. In fact, the ADA defines a service animal as a dog that has been individually trained to work or perform tasks for an individual with a disability. The tasks performed by the animal must be directly related to the person's disability in order for the animal to be considered a service animal. Therefore, under the ADA, public entities are required to reasonably accommodate individuals with disabilities and allow service animals into their facilities regardless of established pet policies. California has several statutory provisions extending the same protections over the use of service animals, notably under the California Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Disabled Persons Act.

*Service Animals vs. Emotional Support Animals.* In recent years, a new category of assistance animals has emerged, often referred to as "emotional support animals" (ESAs). ESAs are legally different from service animals. As previously referenced, service animals are defined under federal and California law as a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. An ESA is a dog, or other animal, that is not trained to perform specific acts related to a person's disability. Instead, the owner of an ESA derives a sense of well-being, fulfillment, companionship, or lessened anxiety with the presence of the animal. Of note, ESAs do not enjoy the same legal privileges as trained service dogs. For example, while service dogs must be allowed to accompany their human partner in public places, ESAs do not have to be accommodated.

*Notable Privileges for ESAs.* While ESAs do not have the same rights and privileges as service dogs, there are few, notable exceptions, particularly in housing statutes. Under federal and California laws, individuals with a disability may request to keep an assistance animal as a reasonable accommodation to a housing provider's pet restrictions. In the context of housing, an assistance animal includes both service dogs and any animals that provide emotional support. Generally, reasonable accommodation requests involve a request to allow the animal to live in a property with a no-pets policy, or a request to waive a pet deposit fee. In specified instances, the housing provider may request disability-related information, such as documentation from a health care provider, if the disability and the disability-related need for the animal were not apparent. In order to respect these existing privileges, this bill clarifies that its provisions shall not be construed to restrict or change existing federal and state laws related to a person's rights for reasonable accommodation and equal access to housing.

*Documentation issued by health care or mental health providers.* Letters from health care and mental health providers are sometimes requested to show that an animal provides a disability-related benefit to an individual. In some instances, ESAs can provide legitimate therapeutic benefits and play an important role in supplementing mental health. However, documentation from a provider may be required to bolster the legitimacy of an ESA, particularly in the context of housing and travel. As a result, it has become increasingly common for individuals to request a health care or mental health provider to provide such documentation. Providers who may issue such documentation may include physicians, psychiatrists, psychologists, licensed marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors.

#### **Prior Related Legislation.**

*AB 774 (Hertzberg) Chapter 550, Statutes of 2022*, exempts unhoused individuals from a mandate in existing law that requires all individuals have at least a 30-day existing relationship with a health care practitioner prior to obtaining a certification for an emotional support dog.

*AB 468 (Friedman) Chapter 168, Statutes of 2021*, requires a person or business that sells or provides an emotional support dog to provide notice specifying that the dog does not have the special training required to be a guide, signal or service dog. Requires a person or business that sells or provides a certificate, tag, vest, leash or harness for an emotional support dog to provide notice to the buyer that the material does not entitle an emotional support dog to the rights and privileges afforded to a guide, signal or service dog. Prohibits a licensed healthcare practitioner from providing documentation about an individual's need for an emotional support animal without meeting specified requirements. Creates civil penalties for specified violations.

*AB 1705 (Low) Chapter 669, Statutes of 2017*, established a title protection for guide dog instructors upon the sunset of the State Board of Guide Dogs for the Blind (Board) on January 1, 2018. Requires a guide dog school to annually submit on or before September 1<sup>st</sup> to the Department of Consumer Affairs (DCA) a list of all trainers or guide dog instructors employed or contracted by the school. The measure also prohibits the DCA from charging a fee to the school for collecting the data. Finally, the bill deleted a reference to the Guide Dogs for the Blind Fund.

#### **ARGUMENTS IN SUPPORT:**

*Canine Companions*, one of the bill's sponsor, writes in support of the bill: "both California law and federal law provide protections against the misrepresentation by persons without disabilities to gain the rights afforded to those with disabilities, including the right to be accompanied by a trained service dog in places of public accommodation. However, many businesses do not know or choose not to enforce the laws protecting their rights as business owners, and the rights of people with disabilities, when faced with a service dog and its handler. This measure would require the Department of Consumer Affairs, in consultation with service dog schools and advocacy organizations, to conduct a statewide educational campaign concerning the problems faced by qualified service dog users, including but not limited to out-of-control dogs in places pets are not permitted, access denials, and training of employees. We ask that you join us in supporting this bill. Together we can educate businesses and individuals on the important role service dogs play for their handlers in public places and ensure that businesses and individuals know their rights and expectations relating to service dogs."

The American Kennel Club also write the following in support: "unfortunately, many Californians are unaware of the importance, cost, and fragility of service dogs; this can lead to untrained animals and/or their owners disrupting working service dogs. Such incidents do not even need to be severe to cause damage. Incidents of increasing degree can be hugely damaging to the ability of service dogs to perform the tasks for which they are trained, and for owners to be able to function in public. Additionally, the costs and time associated with remedying such attacks are severely burdensome. This measure seeks to reduce the number of incidents where service dogs and their owners are victimized by raising public awareness through an educational campaign about the important work that service dogs do on a daily basis. Although there are laws that attempt to remedy attacks on service dogs, they are rarely enforced. It is critical that such incidents are avoided altogether by raising the public's knowledge about service dogs."

**ARGUMENTS IN OPPOSITION:**

None on file.

**POLICY ISSUE(S) FOR CONSIDERATION:**

This bill, as currently drafted, would require DCA, on or before September 10, 2025, to inform places of businesses through a statewide educational campaign about unnecessary conflicts and various problems qualified service dog users face on a daily basis. Although prior legislation required guide dog schools to annually submit to the DCA a list of all trainers or guide dog instructors employed or contracted by the school, DCA may not be the most appropriate department to conduct this specific education outreach campaign for places of business. The author may wish to consider whether the Department of Rehabilitation could effectively conduct the education and outreach campaign with service dog schools and advocacy organizations,

**REGISTERED SUPPORT:**

Canine Companions (sponsor)  
American Kennel Club, INC.  
California Council of the Blind  
Guide Dogs for the Blind  
National Federation of the Blind of California

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1560 (Flora) – As Amended March 16, 2023

**SUBJECT:** Crematories: change in ownership.

**SUMMARY:** Authorizes a new owner of a crematory to submit an application to the Cemetery and Funeral Bureau (bureau) to assign the license before the change of ownership occurs and allows the bureau to approve the application prior to the date of the final sale.

**EXISTING LAW:**

- 1) Regulates and licenses funeral establishments and directors; cemeteries and cemetery managers, brokers, and salespersons; embalmers and apprentice embalmers; crematories and crematory managers and cremated remains disposers; hydrolysis facilities, and reduction facilities under the Cemetery and Funeral Act. (Business and Professions Code (BPC) §§ 7600-7746)
- 2) Establishes the Cemetery and Funeral Bureau under the Department of Consumer Affairs (DCA) to administer and enforce the Cemetery and Funeral Act. (BPC § 7602(a))
- 3) Subjects the bureau to review by the appropriate policy committees of the Legislature. The review shall be performed as if the Cemetery and Funeral Act were scheduled to be repealed as of January 1, 2024. (BPC § 7602(b))
- 4) Specifies that a funeral establishment's license may be assigned upon payment of a specified fee, the filing of a completed application, and upon submission of an audit report prepared and signed by an independent certified public accountant or public accountant currently licensed in this state. Requires the assignee to comply with all provisions previously placed on the assignor. (BPC § 7630)
- 5) Requires a change in the ownership of a crematory to be reported to the bureau. (BPC § 7712.1)
- 6) Specifies that any transfer of more than 50 percent of the equitable interest in a licensed crematory constitutes a change of ownership. (BPC § 7712.1)
- 7) Specifies that when a change of ownership in a crematory occurs, the existing crematory license shall lapse and requires the new owner to obtain a new license from the bureau. (BPC § 7712.1)
- 8) Prohibits the bureau from requiring an applicant to obtain any new permit or license from any other governmental agency when the existing permit or license is valid. (BPC § 7712.1)
- 9) Requires the bureau to adopt rules and regulations prescribing standards of knowledge and experience and financial responsibility for applicants for a crematory license. In reviewing an application for a crematory license, the bureau may consider acts of the applicant, including acts of incorporators, officers, directors, and stockholders of the applicant, which shall constitute grounds for the denial of a crematory license. (BPC § 7712.5(a))

- 10) Specifies that upon receipt of an application for a crematory license, the bureau may cause an investigation to be made of the physical status, plans, specifications, and financing of the proposed crematory, the character of the applicant, including, if applicable, its officers, directors, shareholders, or members, and any other qualifications required of the applicant, and for this purpose may subpoena witnesses, administer oaths, and take testimony. (BPC § 7712.5(b))
- 11) Requires, at the time of the filing of the application, the applicant to pay to the Cemetery and Funeral Fund \$750 to defray the expenses of investigation. In the event \$750 is insufficient to defray all of the expenses, the applicant must within five days after request by the bureau, deposit an additional sum sufficient to defray such expenses, provided that the total sum shall not exceed nine hundred dollars (\$900). (BPC § 7712.5(c))
- 12) Requires every crematory licensee operating a crematory to pay an annual regulatory charge for each crematory of seven hundred fifty dollars (\$750). (BPC § 7712.9)
- 13) Specifies that in addition to an annual regulatory charge for each crematory, every licensee operating a crematory shall pay an additional charge of eleven dollars and fifty cents (\$11.50) per cremation made during the preceding quarter, which charges shall be deposited in the Cemetery and Funeral Fund. (BPC § 7712.9)

**THIS BILL:**

- 1) Deletes the requirement that when a change of ownership in a crematory occurs, the existing license must lapse and the new owner must obtain a new license from the bureau.
- 2) Specifies that when a change of ownership in a crematory occurs, all of the following apply:
  - a) The new owner may submit an application to assign the crematory license.
  - b) If the new owner submits an application to assign the crematory license, the new owner shall submit the application at least 30 days before the change of ownership occurs.
  - c) If the new owner submits an application to assign the crematory license, the new owner shall pay a \$750 fee.
  - d) If the new owner submits an application to assign the crematory license, the bureau shall approve or disapprove the application.
  - e) If the new owner submits an application to assign the crematory license, the bureau may approve the application prior to the date of the final sale.
- 3) Requires the new owner, within 10 days after a sale of a crematory is final, to submit to the bureau a copy of the final sales agreement.
- 4) Requires the new owner, within 60 days after a sale of a crematory is final, to submit to the bureau proof that any required permit to operate the crematory issued by a local air pollution control district has been assigned to the new owner.
- 5) Specifies that failure to provide the aforementioned documentation constitutes grounds for disciplinary action.



- 6) Sets the fee to assign a crematory license at \$750 dollars, to be paid by the proposed assignee and deposited in the Cemetery and Funeral Fund.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Cemetery and Mortuary Association of California*. According to the author: “The legislation would enable communities to continue to be served without unnecessary interruption when a crematory is sold. [This bill] provides for advance notice to the state, together with state approval and oversight, including enforcement authority, to ensure that the crematory continues to adhere to all of the applicable laws and regulations and consumers are protected.”

**Background.**

*Cemetery and Funeral Bureau.* The bureau is responsible for administering and enforcing the Cemetery and Funeral Act, which includes licensing and regulating more than 13,000 licensees in 14 different licensing categories, including crematories, crematory managers, and cremated remains disposers.<sup>1</sup> A crematory is a place of business with a building or structure containing a furnace used for the reduction of the body of a deceased human to its essential elements by way of incineration. There are currently 227 licensed crematories with the authority to operate in California.<sup>2</sup>

Currently, when a crematory changes ownership, the crematory license must lapse and the new owner must apply for a new license.<sup>3</sup> The author and sponsors of this bill contend that the existing process is disruptive to crematory operations and creates hardships for the crematory and the people in need of its services. This bill would allow the purchaser of a crematory to apply to have the license reassigned and authorizes the bureau to approve the application before the final sale occurs. These changes are intended to improve continuity of operations when a crematory undergoes a change of ownership.

The bureau, upon receipt of an application for a new crematory license, is authorized to investigate the physical status, plans, specifications, and financing of the proposed crematory, the character of the applicant, including its shareholders, and any other qualifications required of the applicant.<sup>4</sup> To defray these expenses, applicants are required to pay a \$750 fee when filing the application.<sup>5</sup> In the event that the costs of the investigation exceed \$750, the bureau may request that the applicant pay up to an additional \$150.<sup>6</sup> This bill would similarly require an applicant seeking to have an existing license assigned to them to pay \$750.

---

<sup>1</sup> Cemetery and Funeral Bureau. (n.d.). *Licensing applications*. Cemetery and Funeral Bureau. Retrieved April 21, 2023, from <https://www.cfb.ca.gov/licensee/app.shtml>

<sup>2</sup> Department of Consumer Affairs. (n.d.). *License Search*. Department of Consumer Affairs. Retrieved April 21, 2023, from <https://search.dca.ca.gov/results>

<sup>3</sup> BPC § 7712.1

<sup>4</sup> BPC § 7712.5(b)

<sup>5</sup> Ibid.

<sup>6</sup> BPC § 7712.5(c)

**Current Related Legislation.**

*AB 528 (Irwin)* would authorize a public or private cemetery to designate a separate, clearly marked section of the cemetery where deceased pets could be buried in the same plot, niche, crypt, or vault with their deceased owners so long as the pet and human remains be in separate containers. *Pending in this committee.*

**Prior Related Legislation.**

*SB 1443 (Roth), Chapter 625, Statutes of 2022*, subjected the Cemetery and Funeral Bureau to review by the appropriate policy committees of the Legislature as if the bureau and Cemetery and Funeral Act were scheduled to be repealed on January 1, 2025.

*SB 606 (Glazer), Chapter 375, Statutes of 2019*, subjected the Cemetery and Funeral Bureau to review by the appropriate policy committees of the Legislature as if the bureau and Cemetery and Funeral Act were scheduled to be repealed on January 1, 2024.

*AB 180 (Bonilla), Chapter 395, Statutes of 2015*, merged the Funeral Directors and Embalmers Law and the Cemetery Act into the Cemetery and Funeral Act, merged the State Funeral Directors and Embalmers Fund and the Cemetery Fund into the Cemetery and Funeral Fund, increased the fee from \$400 to \$750 that every crematory licensee is required to pay annually, increased from \$8.50 to \$11.50 the fee that every licensee operating a crematory must pay per cremation made during the preceding quarter, and subjected the bureau to review by the appropriate policy committees of the Legislature as if the bureau and Cemetery and Funeral Act were scheduled to be repealed on January 1, 2020.

**ARGUMENTS IN SUPPORT:**

The *Cemetery and Mortuary Association of California*, the sponsor of this bill, writes in support:

[This bill] resolves a problem with existing ... law [which] requires a crematory to stop performing services between the closing of the purchase and the time the Cemetery and Funeral Bureau grants a new license to the purchaser. The cessation of operations can create a significant and unnecessary hardship for the community, families, and the crematory.

[This bill] rectifies this issue by [requiring] the purchaser of a crematory to submit an application to the Cemetery and Funeral Bureau for the bureau's approval of the assignment of the license. The amendments would also require the new owner to notify the bureau of the potential change of ownership and any required inspections that need to be conducted a minimum of thirty calendar days prior to the change of ownership.

Together, these amendments ensure that the bureau receives advance notification of a change of ownership, a reasonable period of time to perform any needed inspections, and the ability of a crematory to continue to serve the community.

**ARGUMENTS IN OPPOSITION:**

None on file.

**IMPLEMENTATION ISSUES:**

*Bill structure.* As currently drafted, this bill places the provision requiring an applicant to pay a \$750 fee in the same code section (BPC § 7712.9) as a requirement that every crematory licensee operating a crematory to pay an annual \$750 regulatory charge for each crematory. The author may wish to consider moving the provision requiring an applicant to pay a \$750 fee to the code section (BPC § 7712) that requires applicants for a new crematory license to pay a \$750 fee.

*Timelines.* This bill currently requires, if the new owner is going to submit an application to the bureau to preserve continuity of operations, that they do so at least 30 days before the change of ownership occurs. The author may wish to consider amending the bill to afford the bureau more time to process the application.

*Lapse Upon Transfer.* This bill deletes the language specifying that a license will lapse upon transfer, but does not specify what happens to the license under this bill. As a result, the author may wish to consider clarifying whether the license will lapse if the new owner does not apply to have the license re-assigned.

**REGISTERED SUPPORT:**

Cemetery and Mortuary Association of California

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1646 (Stephanie Nguyen) – As Amended March 23, 2023

**SUBJECT:** Physicians and surgeons: postgraduate training: guest rotations.

**SUMMARY:** Authorizes a medical resident from out of state who is participating in guest rotations in specified postgraduate training programs in California to practice medicine as part of those training programs for up to 90 days and receive compensation.

**EXISTING LAW:**

- 1) Requires medical school graduates, within 180 days of enrolling in a board-approved postgraduate training program, to obtain a physician's and surgeon's postgraduate training license. (BPC § 2064.5)
- 2) Prohibits a postgraduate training licensee, intern, resident, postdoctoral fellow, or instructor from practicing medicine, or receiving compensation therefore, or offering to practice medicine, unless they hold a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the Medical Board of California (board). (BPC § 2065(a))
- 3) Authorizes a graduate of an approved medical school to engage in the practice of medicine whenever and wherever required as part of a postgraduate training program under the following conditions.
  - a) The medical school graduate has taken and passed the board-approved medical licensing examinations required to qualify the applicant to participate in an approved postgraduate training program.
  - b) If the medical school graduate graduated from a foreign medical school approved by the board, the Educational Commission for Foreign Medical Graduates (ECFMG) has submitted an official ECFMG Certification Status Report directly to the board confirming the graduate is ECFMG certified.
  - c) The medical school graduate is enrolled in a postgraduate training program approved by the board.
  - d) The board-approved postgraduate training program has submitted the required board-approved form to the board documenting that the medical school graduate is enrolled in an approved postgraduate training program.
  - e) The medical school graduate obtains a physician's and surgeon's postgraduate training license as required.  
  
(BPC § 2065(a))
- 4) Authorizes a medical school graduate enrolled in an approved first-year postgraduate training program to practice medicine whenever and wherever required as part of the training program and to receive compensation for that practice. (BPC § 2065(b))

- 5) Authorizes a graduate who has completed the first year of postgraduate training to, in an approved residency or fellowship, practice medicine whenever and wherever required as part of that residency or fellowship, and receive compensation for that practice. (BPC § 2065(c))
- 6) Specifies that a resident or fellow must qualify for, take, and pass the next succeeding written examination for licensure and that failure to do so within 27 months of commencement of the residency or fellowship, will result in denial of their application for licensure and all privileges and exemptions in law will be revoked. (BPC § 2065(c))
- 7) Allows a person to participate in guest rotations in an approved postgraduate training program in California, not to exceed a total of 90 days for all rotations, if the person has graduated from an approved medical school and is engaged in approved postgraduate training outside of California. (California Code of Regulations (CCR), Tit. 16 § 1320(b))
- 8) Requires postgraduate training programs located in the United States and/or its territories or in Canada that are accredited by the Accreditation Council for Graduate Medical Education (ACGME), the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada, to be approved in order for the training to qualify for licensure. (CCR Tit. 16 § 1321(a))

**THIS BILL:**

- 1) Allows a graduate from an approved medical school who is engaged in an ACGME-accredited postgraduate training program outside of California to, as a participant in guest rotations in an approved or ACGME-accredited postgraduate training program in California, engage in the practice of medicine whenever and wherever required as part of that training program, not to exceed a total of 90 days for all rotations, and to receive compensation for that practice without obtaining a physician's and surgeon's postgraduate training license.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Planned Parenthood Affiliates of California*. According to the author:

As more and more States ban access to abortion services, there will be little if any training for medical students in those states. [This bill] is a win-win because it allows those medical students to come to California and get their training. Once trained, they can assist our health care providers which will result in increased access to reproductive health services for Californians and for those women coming from other states seeking these services.

## Background.

*Accreditation Council for Graduate Medical Education.* The ACGME is a private, not-for-profit organization that sets professional standards for U.S. graduate medical education (residency and fellowship) programs and the institutions offering them.<sup>1</sup> Accreditation is voluntary and ensures that the education programs and their sponsoring institutions meet the quality standards for the specialty or subspecialty for which the program is offering training.<sup>2</sup> Accredited programs must enter into a Program Letters of Agreement (PLA) with each site that is not under the governance of the sponsoring institution (e.g., health clinic) where residents and fellows participate in clinical rotations.<sup>3</sup> PLAs provide information on the faculty, supervision, evaluation, educational content, length, and policies and procedures for clinical rotations at each affiliated site.<sup>4</sup> The ACGME requires access to abortion training for all obstetrics and gynecology (OBGYN) residency programs as a condition of accreditation.<sup>5</sup>

*Effect of Abortion Bans on Reproductive Health Care Training.* In a 2022 study on the projected implications of overturning *Roe v. Wade* on abortion training, researchers found that of 286 accredited OBGYN residency programs, 44.8 percent are in states that were certain or likely to ban or severely limit abortion access if *Roe v. Wade* were overturned.<sup>6</sup> Moreover, the authors of the study anticipated that nearly 44 percent of OBGYN residents would be certain or likely to lack access to abortion training in their states.<sup>7</sup> Since the study was published, the U.S. Supreme Court has overturned *Roe v. Wade* resulting in approximately half of states moving to ban or severely limit abortion access.<sup>8</sup> This bill is intended to address that by attempting to make it easier for physicians from other states to receive abortion training in California, which they believe is critical to preserve abortion access.

## Current Related Legislation.

*AB 1707 (Pacheco)* protects licensed health care professionals, clinics, and health facilities from being denied a license or subjected to discipline in California on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state based solely on the application of that state's law that interferes with a person's right to receive care that would be lawful if provided in California. *Pending in the Assembly Appropriations Committee.*

---

<sup>1</sup> Accreditation Council for Graduate Medical Education. (n.d.). *The ACGME for Residents and Fellows.* Accreditation Council for Graduate Medical Education. Retrieved April 21, 2023, from <https://www.acgme.org/residents-and-fellows/the-acgme-for-residents-and-fellows/>

<sup>2</sup> Ibid.

<sup>3</sup> Accreditation Council for Graduate Medical Education. (2022, August 25). PDF.

<sup>4</sup> Ibid.

<sup>5</sup> Vinekar, K., Karlapudi, A., Lauren Nathan, Turk, J. K., Rible, R., & Steinauer, J. (2022, August). *Projected Implications of Overturning Roe v Wade on Abortion Training in U.S. Obstetrics and Gynecology Residency Programs.* Obstetrics & Gynecology. Retrieved April 21, 2023, from [https://journals.lww.com/greenjournal/Fulltext/2022/08000/Projected\\_Implications\\_of\\_Overturning\\_Roe\\_v\\_Wade.3.aspx](https://journals.lww.com/greenjournal/Fulltext/2022/08000/Projected_Implications_of_Overturning_Roe_v_Wade.3.aspx)

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> The New York Times. (n.d.). *Tracking the states where abortion is now banned.* The New York Times. Retrieved April 21, 2023, from <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>

*SB 487 (Atkins)* prohibits a contract issued, amended, or renewed on and after January 1, 2024, between health care service plan or a health insurer and a provider of health care services, from containing any term that would result in the termination or nonrenewal of the contract or otherwise penalize the provider based solely on a civil judgment, criminal conviction, or another disciplinary action in another state if the other state's judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state. *Pending in the Senate Appropriations Committee.*

*SB 36 (Skinner)* prohibits the issuance of warrants for those whose offense pursuant to the laws of another state is related to abortion, contraception, reproductive care, and gender-affirming care legally protected in California and restricts the sharing of information by law enforcement related to such protected activity and ensures convictions in other states of such offenses does not result in ineligibility for state benefits. *Pending in the Senate Appropriations Committee.*

### **Prior Related Legislation.**

*AB 2626 (Calderon), Chapter 565, Statutes of 2022*, prohibited specified licensing boards from suspending, revoking, or denying a license solely for performing an abortion that is lawful in California in accordance with the licensee's practice act.

*AB 1666 (Bauer-Kahan), Chapter 42, Statutes of 2022*, declared that another state's law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of this state.

### **ARGUMENTS IN SUPPORT:**

The *Planned Parenthood Affiliates of California*, the sponsor of this bill, write in support:

Post-Graduate Medical Education is a crucial step in the professional development for a physician between medical school and autonomous clinical practice and it is during this time that residents learn to provide optimal patient care under the supervision of licensed medical professionals. Abortion bans have put medical residency programs in a difficult position – if they provide abortion training in states where the procedure is now illegal, they could be prosecuted; if they don't offer it – they could lose their accreditation. The Accreditation Council for Graduate Medical Education (ACGME) has reaffirmed its longstanding requirement that OB-GYN residency programs make abortion training available. In states like Texas –who has one of the largest OB-GYN residency programs in the country and was one of the first states to ban abortion in 2022 – their residents are now unable to be fully trained. This is now the case for medical residents across the country in ban states.

To meet the needs of residents in other states, California can continue to lead and provide space within our training programs for residents based in other states. California currently allows for guest rotations in an approved postgraduate training program in the state, following certain provisions. [This bill as proposed to be amended] will expand this provision and ensure that medical residents can participate in not only guest rotations in an approved postgraduate training program but also in

an ACGME certified training site, like community clinics, public health centers, and other health facilities, in California.

Planned Parenthood health centers in California already offer clinical rotations and often serve as a training site for abortion. [This bill] will streamline this process and allow residents the opportunity to be trained in abortion even if their current postgraduate training program is in another state.

### **ARGUMENTS IN OPPOSITION:**

None on file.

### **IMPLEMENTATION ISSUES:**

*Existing Regulations.* Current regulations allow graduates from medical school who are participating in a postgraduate training program in another state to participate in guest rotations for up to 90 days (inclusive of all rotations) in a board-approved postgraduate training program in California. This bill specifies that those individuals may practice medicine as a participant in that training program for up to 90 days and receive compensation without having to obtain a postgraduate training license. This bill would also allow individuals participating in an unapproved program that is ACGME-accredited to practice medicine as part of that training program for up to 90 days and receive compensation without having to obtain a postgraduate training license. However, it is unclear how many California programs are ACGME-accredited but not board-approved.

As a result, the author intends to amend this bill, should it pass out of this committee, to specify that graduates from medical school who are in a postgraduate training program in another state may, as a participant in guest rotations in *either* an approved postgraduate training program California *or a participating training site affiliated with an ACGME-accredited program*, practice medicine for up to 90 days and receive compensation without a postgraduate training license. The sponsor of this bill, the Planned Parenthood Affiliates of California, has said that their California-based health centers currently offer clinical rotations.

*Practicality.* It is unclear to what extent postgraduate education programs sponsored by publically funded institutions in states that have banned or severely limited abortion will enter into agreements with training sites in California to provide abortion training.

### **AMENDMENTS:**

At the request of the author, amend the bill as follows to correct a drafting error and additionally allow individuals from out-of-state who are participating in guest rotations *at training sites affiliated with ACGME-accredited programs* to practice medicine for up to 90 days and receive compensation:

On page 2 of the bill, after line 2:

(d) A graduate from a medical school approved pursuant to Section 2084 who is engaged in an Accreditation Council for Graduate Medical Education (ACGME)-accredited postgraduate training program outside of California may, as a participant in guest rotations in an approved ~~or ACGME-accredited~~



postgraduate training program in ~~California~~, *California or a participating training site affiliated with an ACGME-accredited program*, engage in the practice of medicine whenever and wherever required as part of that training program, not to exceed a total of 90 days for all rotations, and may receive compensation for that practice without obtaining a physician's and surgeon's postgraduate training license in accordance with Section 2064.5.

**REGISTERED SUPPORT:**

Planned Parenthood Affiliates of California (sponsor)  
California Academy of Family Physicians  
California Legislative Women's Caucus  
California Nurse-Midwives Association  
California State Council of Service Employees International Union  
NARAL Pro-Choice California

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1741 (Waldron) – As Introduced February 17, 2023

**SUBJECT:** Healing arts: clinical laboratories: personnel.

**SUMMARY:** Lowers the level of supervision required for unlicensed laboratory personnel to perform specified activities, and expands the scope of practice of the personnel in a licensed clinical laboratory, and allows 18 months of those activities to qualify for licensure as a clinical laboratory scientist.

**EXISTING LAW:**

- 1) Defines “CLIA” as the federal Clinical Laboratory Improvement Amendments of 1988 and the relevant regulations adopted by the federal Health Care Financing Administration that are also adopted by the California Department of Public Health (CDPH). (BPC Business and Professions Code (BPC) § 1202.5(a))
- 2) Regulates clinical laboratories and the performance of clinical laboratory tests through the licensing of clinical laboratories and laboratory directors, scientists, and other laboratory personnel under the CDPH and CLIA. (BPC §§ 1200-1327)
- 3) Defines “clinical laboratory test or examination” means the detection, identification, measurement, evaluation, correlation, monitoring, and reporting of any particular analyte, entity, or substance within a biological specimen for the purpose of obtaining scientific data that may be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being, or for the performance of nondiagnostic tests for assessing the health of an individual. (BPC § 1206(a)(5))
- 4) Defines “clinical laboratory” as a place or organization used for the performance of clinical laboratory tests or examinations or the practical application of the clinical laboratory sciences. (BPC § 1206(a)(8))
- 5) Requires every clinical laboratory to have a laboratory director who is responsible for the overall operation and administration of the clinical laboratory, including (1) administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with state clinical laboratory laws and CLIA, (2) the proper performance of all laboratory work of all subordinates, and (3) employing a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and state clinical laboratory laws. (BPC § 1209(d)(1))
- 6) Defines “direct and constant supervision” as personal observation and critical evaluation of the activity of unlicensed laboratory personnel by a physician and surgeon, or by a clinical

laboratory licensee other than a trainee, during the entire time that unlicensed laboratory personnel are engaged in specified laboratory activities that require additional supervision, education, and training. (BPC §§ 1206(a)(9), 1269)

- 7) Defines “unlicensed laboratory personnel” as a laboratory aide, histocompatibility technician, cardiopulmonary technician, or other person performing authorized unlicensed activities. (BPC § 1212)
- 8) Authorizes unlicensed laboratory personnel to perform additional activities in a licensed clinical laboratory under the direct and constant supervision of a physician and surgeon or a clinical laboratory licensee other than a trainee if they meet all of the following criteria:
  - a) Have earned a high school diploma, or its equivalent. (BPC § 1269(a)(1))
  - b) Have documentation of training appropriate to ensure that the individual has all of the following skills and abilities:
    - i) The skills required for proper specimen collection, including patient preparation, labeling, handling, preservation or fixation, processing or preparation, and transportation and storage of specimens. (BPC § 1269(a)(2)(A))
    - ii) The skills required for assisting a physician and surgeon or a clinical laboratory licensee, other than a trainee, in a licensed clinical laboratory. (BPC § 1269(a)(2)(B))
    - iii) The skills required for performing preventive maintenance and troubleshooting. (BPC § 1269(a)(2)(C))
    - iv) A working knowledge of reagent stability and storage. (BPC § 1269(a)(2)(D))
    - v) The skills required for assisting in the performance of quality control procedures and an understanding of the quality control policies of the laboratory. (BPC § 1269(a)(2)(E))
    - vi) An awareness of the factors that influence test results. (BPC § 1269(a)(2)(F))
- 9) Authorizes unlicensed personnel who meet the specified education and training criteria to perform the following activities under direct and constant supervision:
  - a) Biological specimen collection, including patient preparation, labeling, handling, preservation or fixation, processing or preparation, and transportation and storage of specimens. (BPC § 1269(b)(1))
  - b) Assisting a physician and surgeon or a clinical laboratory licensee, other than a trainee, in a licensed clinical laboratory. (BPC § 1269(b)(2))
  - c) Assisting in preventive maintenance, and troubleshooting. (BPC § 1269(b)(3))
  - d) Preparation and storage of reagents and culture media. (BPC § 1269(b)(4))
  - e) Assisting in the performance of quality control procedures. (BPC § 1269(b)(5))

- 10) Authorizes unlicensed personnel to, under the supervision and control of a physician and surgeon or clinical laboratory licensee, perform specimen labeling, handling, preservation or fixation, processing or preparation, transportation, and storing if they have a high school diploma or its equivalent and documentation of the skills necessary to perform those activities, and. (BPC § 1269(c))
- 11) Prohibits unlicensed laboratory personnel from doing any of the following:
  - a) Recording test results, except they may transcribe results that have been previously recorded either manually by a physician and surgeon or licensed laboratory personnel or automatically by a testing instrument. (BPC § 1269(d)(1))
  - b) Performing any part of a test that involves the quantitative measurement of the specimen or test reagent, or any mathematical calculation relative to determining the results or the validity of a test procedure. (BPC § 1269(d)(2))
  - c) Performing any phase of clinical laboratory tests or examinations in the specialty of immunohematology beyond initial collection and centrifugation. (BPC § 1269(d)(3))
- 12) Limits the activities unlicensed laboratory personnel may perform when using the following manual methods:
  - a) In the case of qualitative and semi-quantitative “spot, tablet, or stick” tests, the personnel may add the test reagent to the specimen or vice versa, but the results must be read by a physician and surgeon or clinical laboratory licensee. (BPC § 1269(e)(1))
  - b) In the case of microbiological tests, the unlicensed laboratory personnel may make primary inoculations of test material onto appropriate culture media, stain slide preparations for microscopic examination, and subculture from liquid media. (BPC § 1269(e)(2))
- 13) Prohibits unlicensed laboratory personnel from performing the following activities when using any of the following mechanical or electronic instruments:
  - a) Standardizing or calibrating the instrument or assessing its performance by monitoring results of appropriate standards and control. (BPC § 1269(f)(1))
  - b) Reading or recording test results, except that the personnel may transcribe results that have been previously recorded automatically by a testing instrument. (BPC § 1269(f)(2))
  - c) Quantitatively measuring any sample or reagents unless done automatically by the instrument in the course of its normal operation or by the use of previously calibrated and approved automatic syringes or other dispensers. (BPC § 1269(f)(3))

**THIS BILL:**

- 1) Defines “supervision and control” to mean there is a qualified supervisor who:
  - a) Is a physician and surgeon or clinical laboratory licensee other than a certified phlebotomy technician or licensed trainee.

- b) Is designated by the laboratory director to provide supervision.
  - c) Is physically present onsite at the location where the unlicensed person is working.
  - d) Is available for consultation as needed.
- 2) Counts experience as an unlicensed person performing the specified activities requiring additional supervision, education, and training in a licensed laboratory for at least 18 months towards licensure as a clinical laboratory scientist or a limited clinical laboratory scientist.
  - 3) Authorizes an applicant for a specialty limited clinical scientist license to use eighteen months of full-time training or experience as an unlicensed person performing the specified activities requiring additional supervision, education, and training in a licensed laboratory appropriate to the field for which the license is being sought.
  - 4) Requires unlicensed personnel to additionally have documentation of the skills to perform waived testing before performing the specified activities requiring additional supervision, education, and training.
  - 5) Lowers the supervision required for the following unlicensed activities from “direct and constant supervision” to “supervision and control”:
    - a) Biological specimen collection, including patient preparation, specimen labeling, handling, preservation or fixation, processing or preparation, transportation, and storage of specimens.
    - b) Preventive maintenance.
    - c) Preparation and storage of reagents and culture media.
    - d) Transcribing results that have been previously recorded either manually by a physician and surgeon or clinical laboratory licensee or automatically by a testing instrument.
  - 6) Authorizes unlicensed laboratory personnel to, under “supervision and control,” but not under “direct and constant supervision,” make subsequent inoculations of test material, rather than just primary inoculations.
  - 7) Removes the limitations related to specified manual methods for activities performed under “direct and constant supervision,” applies them to the activities performed under “supervision and control,” and loosens the limitations to allow unlicensed laboratory personnel to make subsequent inoculations of test material onto appropriate culture media, rather than just primary inoculations.
  - 8) Modifies the prohibition against unlicensed personnel performing any part of a test that involves the quantitative measurement of the specimen or test reagent, or any mathematical calculation relative to determining the results or the validity of a test, to allow them to perform the tests if they are assisting a physician and surgeon or clinical laboratory licensee, other than trainees, in a licensed clinical laboratory.

- 9) Deletes the prohibition against unlicensed personnel performing any phase of clinical laboratory tests or examinations in the specialty of immunohematology beyond initial collection and centrifugation.
- 10) Authorizes unlicensed personnel to perform any waived testing under supervision and control, but requires the results to be read by a physician and surgeon or clinical laboratory licensee.
- 11) Authorizes unlicensed personnel to assist a physician and surgeon or clinical laboratory licensee with the performance of moderate- or high-complexity testing.
- 12) Prohibits unlicensed personnel from releasing the results of waived, moderate, or high-complexity testing.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is co-sponsored by *Quest Diagnostics Incorporated* and the *California Clinical Laboratories Association*. According to the author, “California clinical laboratories have a unique workforce shortage applicable to licensed personnel due to a very narrow path to licensure. [This bill] proposes to update the rules governing what unlicensed personnel can do in a lab and expands the pathway to licensure for Clinical Laboratory Scientists. This will help alleviate the licensed workforce shortage in labs, improve laboratory testing capacity, and create new jobs in the industry and increase access to care.”

**Background.** Existing law limits the use of laboratory testing because the tests are generally used in the diagnostic process. The purpose of CLIA and the California requirements is to minimize the risk of incorrect or unreliable results, patient harm during testing, and improper diagnoses, among other things. Existing law authorizes unlicensed personnel to perform laboratory activities under direct supervision, which is defined as personal observation and critical evaluation of the activity of unlicensed laboratory personnel by a physician and surgeon, or by a clinical laboratory licensee. This bill authorizes some of those tasks under supervision and control, which is defined to mean the supervisor is on site.

*CLIA.* At both the federal and state level, a facility or location where people perform laboratory tests on human specimens for diagnostic or assessment purposes must be certified under CLIA. While CLIA establishes the minimum standards under federal law, it allows states to establish more stringent requirements.

In all cases, the requirements for CLIA certification vary depending on the complexity of the laboratory tests performed. Clinical laboratories or other testing sites need to know whether each test system used is waived, moderate, or high complexity. In general, the more complicated the test, the more stringent the requirements, including increased training and licensing of laboratory personnel. At a minimum, all laboratories must have a licensed clinical laboratory director.

The FDA determines the complexity of laboratory tests under CLIA. Waived tests are simple tests with a low risk for an incorrect result. They include tests listed in the CLIA regulations, tests cleared by the FDA for home use, and tests approved for a waiver by the FDA using the CLIA criteria. Tests not classified as waived are assigned a moderate or high complexity

category based on seven criteria given in the CLIA regulations, including ease of use, knowledge required, and types of materials tested. For commercially available FDA-cleared or approved tests, the test complexity is determined by the FDA during the pre-market approval process.

Under federal and California law, anyone providing direct care may perform a waived test in a federally certified laboratory or as part of a nondiagnostic health assessment program under the overall direction of a laboratory director, unless otherwise limited. In applying for a CLIA certificate of waiver, the laboratory director must list the types of analytes to be tested, the tests performed, and the test manufacturer. Existing law requires a laboratory director of a clinical laboratory to document the adequacy of the qualifications of any personnel in the laboratory, including educational background, training, and experience, of the personnel.

**Prior Related Legislation.** SB 334 (Pan), Chapter 144, Statutes of 2019, required CDPH to develop a medical laboratory technician to clinical laboratory scientist pathway to allow work experience in a lab to count towards licensure as a clinical laboratory scientist by January 1, 2022.

#### **ARGUMENTS IN SUPPORT:**

*Quest Diagnostics* (co-sponsor) writes in support, “There is an acute shortage of licensed clinical laboratory scientists in California. This workforce shortage is adversely impacting CA laboratories' abilities to meet testing demand in a timely manner. The staffing challenges have been recognized by the California Department of Public Health (CDPH) Clinical Laboratory Technology Advisory Committee (CLTAC) which in 2022 formed the Laboratory Workforce Subcommittee tasked to study the issue and develop recommendations to improve the workforce shortage. Their report makes various recommendations which include updating licensing requirements and developing accelerated pathways to licensure. [This bill] would update licensing rules by expanding the activities that unlicensed personnel that meet Federal (CLIA) standards can perform under supervision of licensed personnel/physicians in order to meet testing demands. To provide an accelerated path to licensure, the bill would allow eighteen or more months of this experience as unlicensed personnel to count toward qualification for licensure.”

The *California Clinical Laboratories Association (CCLA)* (co-sponsor) writes in support that this bill “will address critical workforce shortages of clinical laboratory personnel. CCLA is pleased to see that this bill expands the activities the unlicensed laboratory personnel can perform within a clinical laboratory, under the supervision of licensed personnel. Importantly, the bill also allows this work experience to be counted as qualification toward clinical laboratory licensure. This will ‘level the playing field’ as compared to out of state personnel who are able to count these hours towards licensure.”

#### **ARGUMENTS IN OPPOSITION:**

The *California Association for Medical Laboratory Technology, California Labor Federation, California Nurses Association, California State Council of Service Employees International Union (SEIU California), California Teamsters Public Affairs Council, Engineers and Scientists of California Local 20, IFPTE AFL-CIO & CLC, International Federation of Professional and Technical Employees, Local 20, United Food and Commercial Workers Western States Council, and United Nurses Associations of California/Union of Health Care Professionals* all write in opposition:

We have a number of concerns about the new personnel regime laid out in [this bill]. For example, one of the many concerning provisions of [this bill] would allow unlicensed staff to perform a range of tasks that may affect patient results, including instrument preventive maintenance, specimen collection and labeling, transcribing results, and performing waived testing. Under [this bill], these activities could all be done without the supervision from a trained clinical lab scientist, despite the licensure implications falling on the supervising professional. This is extremely concerning as transcription errors have the potential to cause significant patient harm.

Likewise, another provision of [this bill] would allow unlicensed staff to physically add test reactants to a specimen. We would argue that this provision allows for unlicensed personnel to perform analytical activity in contravention of licensure requirements under federal CLIA regulations. All the while, adding reactants to specimens is where sample mix-up errors are most common, particularly when personnel are working with more than one sample at a time.

#### **POLICY ISSUES FOR CONSIDERATION:**

- 1) *Influence of Employer.* Under CLIA, the laboratory director is responsible for the overall direction of a laboratory. However, the opposition raises concerns about an employer's influence over a supervisor tasked with supervising an unlicensed person.
- 2) *Preventive Maintenance.* This bill would allow unlicensed personnel to perform preventive maintenance of instruments and equipment under indirect supervision, meaning a supervisor is not directly supervising them at the time the maintenance is performed. The opposition notes that there are some preventive maintenance functions that an unlicensed could never perform.
- 3) *Reagent Safety.* This bill would allow unlicensed personnel to prepare reagents under indirect supervision. The opposition notes that there are dangerous combinations of chemicals or other hazards.
- 4) *Transcription.* This bill would allow unlicensed personnel to transcribe results under indirect supervision. The opposition notes that there could be transcription errors.
- 5) *Spot, tablet, or stick tests.* This bill would allow unlicensed personnel to add reagents to qualitative and semiquantitative “spot, tablet, or stick” tests under indirect supervision so long as a physician or licensee reads the results. The opposition notes that there are tests that are time sensitive and would not make sense for the unlicensed person to perform the test and have the physician or licensee to rush and read the result.

#### **IMPLEMENTATION ISSUES:**

*18-Month Experience Qualification.* According to CDPH staff, this bill “would require CDPH to accept experience obtained as unlicensed laboratory personnel toward clinical laboratory scientist and limited clinical laboratory scientist licensure. It would be difficult for CDPH to implement this because the duties authorized for unlicensed personnel do not meet the requirements for experience and training acceptable for CLS licensure in other state statutes.”



**AMENDMENTS:**

To address the above concerns:

- 1) Clarify that the laboratory director is ultimately responsible for the supervision, training, and performance of the unlicensed person.
- 2) Delete section 2 of the bill regarding the 18 month license requirement.
- 3) Clarify that unlicensed personnel must have documented training to ensure that they have:
  - a) The skills and working knowledge for performing preventive maintenance
  - b) A working knowledge of reagent safety requirements related to chemical, biochemical, and electrical hazards and biohazardous materials.
  - c) A working knowledge of the medical terminology necessary for the transcription of results.
- 4) Put spot, tablet, or stick tests back under direct supervision.
- 5) Clarify that specimen collection and related duties do not include activities that require a license or certificate.
- 6) Require transcribed results to be verified by the licensee reporting the results (existing law allows unlicensed personnel to do it without any verification).
- 7) Delete waived testing.
- 8) Prohibit immunohematology except when assisting a licensee under direct supervision.
- 9) Make technical and conforming changes.

On page 6, after line 15:

(19) (A) “Supervision and control” means *direction, management, and awareness of the activity of unlicensed laboratory personnel by a physician and surgeon, or by a person licensed under this chapter other than a trainee, who must be physically present in the laboratory and readily available for consultation during the entire time that the unlicensed laboratory personnel are engaged in the duties specified in Section 1269.*

(B) *The laboratory director shall designate the supervisor and shall maintain overall responsibility for the supervision and performance of the unlicensed laboratory personnel.*

~~a qualified supervisor who is a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) or a person licensed under Chapter 3 (commencing with Section 1200), other than a certified phlebotomy technician or a licensed trainee, is designated by the laboratory director to provide supervision,~~

~~and is physically present onsite at the location where the unlicensed person is working. The supervisor shall be available for consultation as needed.~~

On page 6, after line 38:

Strike section 2 of the bill.

On page 10, after line 6:

**1269.** (a) *(1)* Unlicensed laboratory personnel may perform any of the activities identified in subdivision (b) under the direct and constant supervision of, or any of the activities identified in subdivision (c) under the supervision and control of, a physician and surgeon, or a person licensed under this chapter other than a trainee, in a clinical laboratory upon meeting all of the following criteria:

~~(+)~~ *(A)* Have earned a high school diploma, or its equivalent, as determined by HCFA under CLIA.

~~(+)~~ *(B)* Have documentation of training appropriate to ensure that the individual has all of the following skills and abilities:

~~(+)~~ *(i)* The skills required for proper specimen collection, including patient preparation, labeling, handling, preservation or fixation, processing or preparation, and transportation and storage of specimens.

~~(+)~~ *(ii)* The skills required for assisting a ~~licensed~~ physician and surgeon or personnel licensed under this chapter, other than trainees, in a licensed clinical laboratory.

~~(+)~~ *(iii)* The skills *and working knowledge* required for performing preventive ~~maintenance~~, *maintenance* and troubleshooting.

~~(+)~~ *(iv)* A working knowledge of reagent ~~stability and storage~~, *stability, storage, and safety requirements related to chemical, biochemical, and electrical hazards and biohazardous materials.*

~~(+)~~ *(v)* The skills required for assisting in the performance of quality control procedures, and an understanding of the quality control policies of the laboratory.

~~(+)~~ *(vi)* An awareness of the factors that influence test results.

*(vii) A working knowledge of the medical terminology necessary for the transcription of results.*

~~(+)~~ *The skills to perform waived testing.*

*(2) The laboratory director shall maintain responsibility for the performance of unlicensed laboratory personnel and any delegated supervision or training of the unlicensed personnel.*

(b) (1) The activities that may be performed under direct and constant supervision are:

~~(1) (A) (i) Assisting a licensed physician and surgeon or personnel licensed under this chapter, other than trainees, in a licensed clinical laboratory. laboratory with the performance of moderate or high-complexity testing.~~

*(ii) In the case of qualitative and semiquantitative "spot, tablet, or stick" tests, the personnel may add the test reagent to the specimen or vice versa, but the results must be read by a physician and surgeon or person licensed under this chapter.*

~~(2) (B) Assisting in troubleshooting.~~

~~(3) (C) Assisting in the performance of quality control procedures.~~

(c) ~~An unlicensed Unlicensed~~ laboratory ~~personnel-personnel, other than a trainee,~~ may, under the supervision and control of a physician and surgeon or person licensed under this chapter, do all of the following activities:

(1) Perform biological specimen collection, including patient preparation, specimen labeling, handling, preservation or fixation, processing or preparation, transportation, and storage of

~~specimens. specimens if the collection activities do not require a certificate or license under this division.~~

(2) Perform preventive maintenance.

(3) Preparation and storage of reagents and culture media.

(4) Transcribe results that have been previously recorded, either manually by a physician and surgeon or personnel licensed under this chapter, or automatically by a testing ~~instrument. instrument, with documented verification by the physician and surgeon or licensed personnel who reports the test.~~

~~(5) Perform waived testing, but the results shall be read by a physician and surgeon or person licensed under this chapter.~~

~~(6) When any of the following manual methods are employed, the activities shall be limited as follows:~~

~~(A) In the case of qualitative and semiquantitative "spot, tablet, or stick" tests, the personnel may add the test reagent to the specimen or vice versa, but the results must be read by a physician and surgeon or person licensed under this chapter.~~

~~(B) In the case of microbiological tests, the unlicensed laboratory personnel may make~~ (5) Make primary or subsequent inoculations of test material onto appropriate culture media, stain slide preparations for microscopic examination, and subculture from liquid ~~media. media for microbiological tests.~~

(d) Unlicensed laboratory personnel shall not do any of the following:

(1) Record test results, ~~but they may transcribe results that have been previously recorded, either manually by a physician and surgeon or personnel licensed under this chapter, or automatically by a testing instrument. except as authorized under paragraph (4) of subdivisiion (c).~~

(2) Perform any test or part thereof that involves the quantitative measurement of the specimen or test reagent, or any mathematical calculation relative to determining the results or the validity of a test procedure, unless they are assisting a ~~licensed~~ physician and surgeon or personnel licensed under this chapter, other than trainees, in a licensed clinical laboratory.

*(3) Perform any phase of clinical laboratory tests or examinations in the specialty of immunohematology beyond initial collection and centrifugation, unless they are assisting a licensed physician and surgeon or personnel licensed under this chapter, other than trainees, in a licensed clinical laboratory.*

(3) Release results of waived, moderate, or high-complexity testing.

~~(e) When any of the following manual methods are employed, the activities of unlicensed laboratory personnel shall be limited as follows:~~

~~(1) In the case of qualitative and semi-quantitative "spot, tablet, or stick" tests, the personnel may add the test reagent to the specimen or vice versa, but the results must be read by a physician and surgeon or person licensed under this chapter.~~

~~(2) In the case of microbiological tests the unlicensed laboratory personnel may make primary inoculations of test material onto appropriate culture media, stain slide preparations for microscopic examination, and subculture from liquid media.~~

(f) When any of the following mechanical or electronic instruments are employed, unlicensed laboratory personnel shall not perform any of the following activities:

(1) Standardizing or calibrating the instrument or assessing its performance by monitoring results of appropriate standards and control.

(2) Reading or recording test results, except ~~that the personnel may transcribe results that have been previously recorded automatically by a testing instrument. as authorized under paragraph (4) of subdivisiion (c).~~

#### **REGISTERED SUPPORT:**

Quest Diagnostics Incorporated (co-sponsor)  
California Clinical Laboratory Association (co-sponsor)  
California Life Sciences

#### **REGISTERED OPPOSITION:**

California Association for Medical Laboratory Technology  
California Labor Federation  
California Nurses Association  
California State Council of Service Employees International Union (SEIU California)

California Teamsters Public Affairs Council  
Democratic Club of Claremont  
Engineers and Scientists of California Local 20, IFPTE AFL-CIO & CLC  
International Federation of Professional and Technical Employees, Local 20  
The United Food and Commercial Workers Western States Council  
United Nurses Associations of California/Union of Health Care Professionals  
One Individual CLS

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301