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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 5. Medicine [2000 - 2529.8.1] (*Chapter 5 repealed and added by Stats. 1980, Ch. 1313, Sec. 2.*)

ARTICLE 12. Enforcement [2220 - 2319] (*Article 12 added by Stats. 1980, Ch. 1313, Sec. 2.*)

2220. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

- (a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.
- (b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.
- (c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

(Amended by Stats. 2012, Ch. 799, Sec. 12. (SB 1575) Effective January 1, 2013.)

2220.01. (a) (1) The director shall appoint an independent enforcement monitor no later than March 1, 2022. The director may retain a person for this position by a personal services contract. The Legislature finds, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The enforcement monitor shall not have previously been employed by, under contract with, in any financial relationship with, or affiliated with an organization that represents patient or physician and surgeon interests, including, but not limited to, a professional association, lobbyist employer, advocacy organization, or party that has appeared before the board or the Legislature.

(3) (A) The director shall supervise the enforcement monitor and may terminate or dismiss the enforcement monitor from this position.

(B) If the enforcement monitor is terminated or dismissed, the director shall appoint a replacement monitor within two months.

(4) The monitoring duty of the enforcement monitor shall be on a continuing basis for a period of no more than two years from the date of the initial enforcement monitor's appointment.

(b) The enforcement monitor shall monitor and evaluate the board's enforcement efforts with specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees and persons in order to protect the public, which may include, but not be limited to, the following:

(1) The board's disciplinary system and procedures.

(2) The consistency of complaint processing and investigation.

(3) The timeliness of the disciplinary process, including an evaluation of the board's compliance with subdivision (b) of Section 129, and Sections 2220.08 and 2319.

(4) Compliance with Section 2229, including deviations from the Manual of Model Disciplinary Orders and Disciplinary Guidelines in the board's application of sanctions or discipline.

(5) Sanctions or discipline disproportionately applied to physicians and surgeons of color.

(6) Resources allocated for enforcement efforts.

(7) Any area that may lead to cost savings and greater effectiveness of the board's enforcement efforts.

(c) The enforcement monitor shall not exercise authority over the board's management or staff, but the board and its staff shall cooperate with the enforcement monitor and shall provide data, information, and files as requested by the enforcement monitor to perform all of the enforcement monitor's duties.

(d) The director shall assist the enforcement monitor in the performance of the enforcement monitor's duties, and the enforcement monitor shall have the same investigative authority as the director.

(e) The director may specify additional duties of the enforcement monitor for the purposes of this section.

(f) (1) The enforcement monitor shall submit to the department and the Legislature, pursuant to Section 9795 of the Government Code, an initial written report of the enforcement monitor's findings and conclusions no later than January 1, 2023, and a final written report no later than July 1, 2023. The enforcement monitor shall be available to make oral reports to the department or the Legislature if requested to do so. The enforcement monitor may also provide additional information to either the department or the Legislature at the enforcement monitor's discretion or at the request of either the department or the Legislature. The enforcement monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions made in their reports to the department or the Legislature with which the board may disagree.

(2) The enforcement monitor shall make any report required by this paragraph available to the public and the media.

(g) The board shall pay for all of the costs associated with the employment of the enforcement monitor.

(Added by Stats. 2021, Ch. 649, Sec. 16. (SB 806) Effective January 1, 2022.)

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California and the California Board of Podiatric Medicine shall prioritize their investigative and prosecutorial resources to ensure that physicians and surgeons and doctors of podiatric medicine representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon or the doctor of podiatric medicine represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon or a doctor of podiatric medicine involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(7) Repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

(Amended by Stats. 2017, Ch. 775, Sec. 72. (SB 798) Effective January 1, 2018.)

2220.08. (a) Except for reports received by the board pursuant to Section 801.01 or 805 that may be treated as complaints by the board and new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation or who is on probation, any complaint determined to involve quality of care, before referral to a field office for further investigation, shall meet the following criteria:

(1) It shall be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required.

(2) It shall include the review of the following, which shall be requested by the board:

(A) Relevant patient records.

(B) The statement or explanation of the care and treatment provided by the physician and surgeon.

(C) Any additional expert testimony or literature provided by the physician and surgeon.

(D) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

(Amended by Stats. 2013, Ch. 515, Sec. 14. (SB 304) Effective January 1, 2014.)

2220.1. (a) For purposes of this section, "patient representative" means the spouse or domestic partner of the patient, a person responsible for the care of the patient, or the patient's next of kin.

(b) (1) Before a complaint within the jurisdiction of the board pertaining to the quality-of-care that a licensee provided to their patient may be closed, the board shall conduct an interview with the complainant, the patient, or the patient's representative, if one is identified in the complaint.

(2) This subdivision shall not apply to complaints that are submitted anonymously or without the contact information of the complainant, patient, or a patient representative.

(c) If the board's request for an interview is declined by the complainant, patient, or a patient representative identified in the complaint, or the board has not received a response within 30 calendar days, the board may close the complaint, if otherwise warranted.

(d) If, after the complaint is closed, the complainant, patient, or patient representative provides additional information pertinent to that complaint, the board may reopen the matter, subject to the provisions of Section 2230.5.

(e) The Legislature finds and declares that the board requires additional staff positions to implement this section. Therefore, this section shall only become operative six months following the allocation of positions to the board for the implementation of these provisions in the annual Budget Act.

(Added by Stats. 2023, Ch. 294, Sec. 11. (SB 815) Effective January 1, 2024. Conditionally operative as prescribed by its own provisions.)

2220.2. (a) For purposes of this section, "patient representative" means the spouse or domestic partner of the patient, a person responsible for the care of the patient, or the patient's next of kin.

(b) (1) At the time that a complaint is referred for a field investigation, the relevant complainant, patient, or patient representative shall be provided with the opportunity to provide a statement relative to the harm they experienced.

(2) The complainant, patient, or patient representative shall have up to 60 days following receipt of the notification described in paragraph (1) to provide the statement to the board.

(3) Notwithstanding Section 2330, the statement shall be considered by the board, or a panel of the board, for the purposes of adjudicating the case to which the statement pertains.

(c) This section shall not apply to the Osteopathic Medical Board of California.

(Added by Stats. 2023, Ch. 294, Sec. 12. (SB 815) Effective January 1, 2024.)

2220.5. (a) The Medical Board of California is the only licensing board that is authorized to investigate or commence disciplinary actions relating to physicians and surgeons who have been issued a certificate pursuant to Section 2050.

(b) For purposes of this section, "investigate or commence disciplinary actions" shall mean written, oral, or telephonic communication with a physician or surgeon concerning his or her violation of the Medical Practice Act or any other provision of this division.

(c) Written complaints that are subject to Section 43.96 of the Civil Code, relating to the professional conduct or professional competence of physicians and surgeons, shall be processed in accordance with that section.

(Amended by Stats. 2009, Ch. 309, Sec. 3.5. (AB 1535) Effective January 1, 2010.)

2220.6. The board shall investigate any licensee against whom an information or indictment has been filed that alleges a violation of Section 550 of the Penal Code or Section 1871.4 of the Insurance Code, if the district attorney does not otherwise object to initiating an investigation.

(Added by Stats. 2000, Ch. 867, Sec. 7. Effective January 1, 2001.)

2220.7. (a) A physician and surgeon shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after filing the action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A physician and surgeon who violates this section is subject to disciplinary action by the board.

(Added by Stats. 2006, Ch. 565, Sec. 7. Effective January 1, 2007.)

2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government

Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of their application, except that the board, in its discretion and for good cause demonstrated, may permit reapplication after not less than one year has elapsed from the effective date of the denial.

(e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.

(Amended by Stats. 2019, Ch. 849, Sec. 3. (SB 425) Effective January 1, 2020.)

2221.05. (a) Notwithstanding subdivision (a) of Section 2221, the board may issue a physician's and surgeon's certificate to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a certificate or require probationary status under Section 2221, and may concurrently issue a public letter of reprimand.

(b) A public letter of reprimand issued concurrently with a physician's and surgeon's certificate shall be purged three years from the date of issuance.

(c) A public letter of reprimand issued pursuant to this section shall be disclosed to an inquiring member of the public and shall be posted on the board's Internet Web site.

(d) Nothing in this section shall be construed to affect the board's authority to issue an unrestricted license.

(Added by Stats. 2008, Ch. 247, Sec. 2. Effective January 1, 2009.)

2221.1. (a) The board and the California Board of Podiatric Medicine shall investigate and may take disciplinary action, including, but not limited to, revocation or suspension of licenses, against physicians and surgeons and all others licensed or regulated by the board, or by the California Board of Podiatric Medicine, whichever is applicable, who, except for good cause, knowingly fail to protect patients by failing to follow infection control guidelines of the applicable board, thereby risking transmission of blood-borne infectious diseases from the physician and surgeon or other health care provider licensed or regulated by the applicable board to patients, from patients, and from patient to physician and surgeon or other health care provider regulated by the applicable board. In so doing, the boards shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board and the California Board of Podiatric Medicine shall consult with the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California to encourage appropriate consistency in the implementation of this section.

(b) Subdivision (a) does not apply to an organ transplant performed within the standard of care and in compliance with subdivision (d) of Section 1644.5 of the Health and Safety Code.

(c) The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to follow infection control guidelines and of the most recent scientifically recognized safeguards for minimizing the transmission of blood-borne infectious diseases.

(Amended by Stats. 2017, Ch. 561, Sec. 2. (AB 1516) Effective January 1, 2018.)

2222. The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

(Amended by Stats. 1993, Ch. 1267, Sec. 19. Effective January 1, 1994.)

2224. (a) The board may delegate the authority under this chapter to conduct investigations and inspections and to institute proceedings to the executive director of the board or to other personnel as set forth in Section 2020. The board shall not delegate its authority to take final disciplinary action against a licensee as provided in Section 2227 and other provisions of this chapter. The board shall not delegate any authority of the Senior Assistant Attorney General of the Health Quality Enforcement Section or any powers vested in the administrative law judges of the Office of Administrative Hearings, as designated in Section 11371 of the Government Code.

(b) Notwithstanding subdivision (a), the board shall delegate to its executive director the authority to adopt a decision entered by default, a stipulation for surrender of a license, and automatic revocations.

(Amended by Stats. 2023, Ch. 294, Sec. 13. (SB 815) Effective January 1, 2024.)

2225. (a) Notwithstanding Section 2263 and any other law making a communication between a physician and surgeon or a doctor of podiatric medicine and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents, and representatives of the board or the California Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and shall not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the California Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a doctor of podiatric medicine is limited to records of patients who have complained to the board or the California Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the California Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied if relevant to an investigation of a licensee.

(c) (1) Notwithstanding subdivision (b) or any other law, in any investigation that involves the death of a patient, the board may inspect and copy the medical records of the deceased patient without the authorization of the beneficiary or personal representative of the deceased patient or a court order solely for the purpose of determining the extent to which the death was the result of the physician and surgeon's conduct in violation of the Medical Practice Act, if the board provides a written request to either the physician and surgeon or the facility where the medical records are located or the care to the deceased patient was provided, that includes a declaration that the board has been unsuccessful in locating or contacting the deceased patient's beneficiary or personal representative after reasonable efforts. Nothing in this subdivision shall be construed to allow the board to inspect and copy the medical records of a deceased patient without a court order when the beneficiary or personal representative of the deceased patient has been located and contacted but has refused to consent to the board inspecting and copying the medical records of the deceased patient.

(2) The Legislature finds and declares that the authority created in the board pursuant to this section, and a physician and surgeon's compliance with this section, are consistent with the public interest and benefit activities of the federal Health Insurance Portability and Accountability Act (HIPAA).

(d) In all cases in which documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(e) If documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the California Board of Podiatric Medicine, the documents shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(f) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(Amended by Stats. 2016, Ch. 303, Sec. 3. (AB 2745) Effective January 1, 2017.)

2225.3. The board, the California Board of Podiatric Medicine, and the Attorney General, shall return any original documents received pursuant to Section 2225 to the licensee from whom they were obtained within seven calendar days.

(Added by Stats. 1993, Ch. 1267, Sec. 21. Effective January 1, 1994.)

2225.5. (a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. For health care facilities that have electronic health records, failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled upon the service of an order to show cause pursuant to Section 11188 of the Government Code, until such time as the subpoenaed records are produced, including during any period the licensee is out of compliance with the court order and during any related appeals, or until the court declines to issue an order mandating release of records to the board.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals, or until the court declines to issue an order mandating release of records to the board.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of their license.

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

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

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

(Amended by Stats. 2023, Ch. 294, Sec. 14. (SB 815) Effective January 1, 2024.)

2225.7. When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the Board of Pharmacy shall provide the board, or its authorized representative, with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved if the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

(Added by Stats. 2023, Ch. 294, Sec. 15. (SB 815) Effective January 1, 2024.)

2226. The Division of Medical Quality or the Senior Assistant Attorney General of the Health Quality Enforcement Section may inspect a licensed general or specialized hospital and require reports from them to determine if the hospital has adopted and is complying with the provisions of Sections 2282 and 2283. They may inspect medical staff and patient hospital medical records subject to the provisions of Section 2225. Notwithstanding Section 2224, the division's authority under this section shall be delegated only to a licensed physician and surgeon.

(Amended by Stats. 1990, Ch. 1597, Sec. 11.)

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

(Amended by Stats. 2009, Ch. 505, Sec. 6. (AB 1070) Effective January 1, 2010.)

2227.3. (a) The board may delegate to its executive director the authority to issue an administrative confidential letter of advice to a licensee to resolve a complaint for an alleged minor violation of this chapter that is not related to patient care. The letter of advice may include an agreement by the licensee to complete one or more relevant educational courses approved by the board, or its designee, or take other remedial action to resolve the complaint.

(b) The complaint and confidential letter of advice shall be maintained for three years from the date the complaint was received, and if no further complaint against the licensee is received, the complaint and confidential letter of advice shall be purged.

(c) A licensee's failure to take the remedial action within the timeframe agreed upon constitutes unprofessional conduct.

(d) The board shall adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement this section.

(Added by Stats. 2021, Ch. 649, Sec. 17. (SB 806) Effective January 1, 2022.)

2227.5. The board shall keep a copy of a complaint it receives concerning the unprofessional conduct of a licensee for seven years or until the statute of limitations for filing an accusation against a licensee has expired, whichever period is shorter, if the board finds after an investigation that there is insufficient evidence to proceed with disciplinary action.

(Added by Stats. 2002, Ch. 816, Sec. 1. Effective January 1, 2003.)

2228. The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

- (a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.
- (b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.
- (c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.
- (d) Providing the option of alternative community service in cases other than violations relating to quality of care.

(Amended by Stats. 2007, Ch. 678, Sec. 19. Effective January 1, 2008.)

2228.1. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board and the Podiatric Medical Board of California shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information internet website, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information internet website.

- (1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.
- (2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.
- (3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.
- (4) The length of the probation and end date.
- (5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(Amended by Stats. 2021, Ch. 649, Sec. 18. (SB 806) Effective January 1, 2022.)

2228.5. (a) A physician and surgeon shall not automatically deny treatment or medication to a qualified patient based solely on a positive drug screen for tetrahydrocannabinol (THC) or report of medical cannabis use without first completing a case-by-case evaluation of the patient that includes, but is not limited to, a determination that the qualified patient's use of medical cannabis is medically significant to the treatment or medication.

(b) The use of medical cannabis that has been recommended by a licensed physician and surgeon shall not constitute the use of an illicit substance in the evaluation described in subdivision (a).

(c) No physician and surgeon shall be punished, or denied any right or privilege, for having administered treatment or medication to a qualified patient within the requirements of this section and consistent with the standard of care.

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

(1) "Medically significant" means that a physician and surgeon has made a clinical determination that may include, but is not limited to, any of the following:

(A) The treatment or medication is contraindicated or is likely, or expected, to cause an adverse reaction or physical or mental harm to the qualified patient if administered or used in conjunction with THC or medical cannabis, based on the known clinical characteristics of the patient and the known characteristics and history of the patient's treatment or medication regimen.

(B) The treatment or medication is expected to be ineffective based on the known clinical characteristics of the qualified patient and the known characteristics and history of the patient's treatment or medication regimen.

(C) The treatment or medication, when administered or used in conjunction with THC or medical cannabis, is not clinically appropriate for the qualified patient because the treatment or medication is expected to do any of the following, as determined by a physician and surgeon:

(i) Worsen a comorbid condition.

(ii) Decrease the capacity to maintain a reasonable functional ability in performing daily activities.

(iii) Pose a significant barrier to adherence to, or compliance with, the qualified patient's drug regimen or plan of care.

(D) Any other clinically or medically relevant determination.

(2) "Qualified patient" has the same meaning as defined in Section 11362.7 of the Health and Safety Code.

(Added by Stats. 2022, Ch. 232, Sec. 1. (AB 1954) Effective January 1, 2023.)

2229. (a) Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, the division, or the California Board of Podiatric Medicine, shall, wherever possible, take action that is calculated to aid in the rehabilitation of the

licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division, the California Board of Podiatric Medicine, and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

(Amended by Stats. 1993, Ch. 1267, Sec. 24. Effective January 1, 1994.)

2230. (a) All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

(b) For purposes of this article, "agency itself," as used in the Administrative Procedure Act, means any panel appointed by the board pursuant to Section 2008. The decision or order of a panel imposing any disciplinary action pursuant to this chapter and the Administrative Procedure Act shall be final.

(Amended by Stats. 2007, Ch. 678, Sec. 20. Effective January 1, 2008.)

2230.5. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(Amended by Stats. 2001, Ch. 617, Sec. 1. Effective January 1, 2002.)

2231. An administrative law judge as designated in Section 11371 of the Government Code may utilize the procedures in Section 11515 of the Government Code concerning any matters which may be officially or judicially noticed.

(Added by Stats. 1990, Ch. 1597, Sec. 16.)

2232. (a) (1) Except as provided in subdivision (c), the board shall automatically revoke a license under either of the following circumstances:

(A) The licensee, at any time after January 1, 1947, has been convicted in any court in or outside of this state of any offense that, if committed or attempted in this state, based on the elements of the convicted offense, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290 of the Penal Code.

(B) The licensee, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the related conviction has been appealed.

(2) The board shall notify the licensee of the license revocation and of their right to elect to have a hearing as provided in subdivision (b).

(b) Upon revocation of the physician's and surgeon's certificate, the holder of the certificate may request a hearing within 30 days of the revocation. The proceeding shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

(e) If the related conviction of the certificate holder is overturned on appeal, the revocation ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(f) The other provisions of this article setting forth a procedure for the revocation of a physician's and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

(Amended by Stats. 2022, Ch. 453, Sec. 2. (AB 1636) Effective January 1, 2023.)

2232.5. (a) (1) Notwithstanding Section 2236, the board or its designee shall automatically suspend a license following a conviction of a felony by a licensee, where the conviction involves a violation of one or more of the statutes identified in subdivision (b) whether in the course of the licensee's practice as a physician and surgeon or otherwise.

(2) The suspension shall remain in effect until the time for appeal has elapsed if no appeal has been taken, or until judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the board.

(3) The board or its designee may decline to impose or may set aside the suspension when it appears to be in the best interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession.

(b) (1) Sexual abuse, misconduct, or relations with a patient pursuant to Section 726 or sexual exploitation as defined in subdivision (a) of Section 729.

(2) Offenses described in subdivisions (c) and (d) of Section 290 of the Penal Code.

(3) Serious felonies as defined in Section 1192.7 of the Penal Code.

(4) Selling, transporting, furnishing, administering, giving, possessing with intent to sell, or offering to sell, furnish, administer, or give to any person, any fentanyl or fentanyl laced product without a lawful prescription.

(c) (1) Following the conviction of a felony as described in subdivision (b), the board or its designee shall automatically revoke a license at such time as the time for appeal has elapsed with no appeal having been taken, or the judgment of conviction having been affirmed on appeal, or the judgment of conviction having otherwise become final.

(2) If the related conviction of the licensee is overturned on appeal, no revocation order shall be issued as to that conviction, and any suspension order issued pursuant to the above shall be rescinded, unless any such order is based on a stipulated settlement. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction, including, but not limited to, the underlying conduct alleged in the criminal case.

(d) (1) The licensee may request a hearing within 30 days of the automatic suspension order described in subdivision (a) and the automatic revocation order described in subdivision (c). The proceeding shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in paragraph (2).

(2) The Legislature finds and declares that the conviction of any felony identified in subdivision (b) is substantially related to the practice of medicine. An administrative law judge shall not permit or give any weight to expert testimony regarding whether the conviction is substantially related to the practice of medicine. The only purpose of an administrative hearing shall be to determine whether the discipline imposed shall be a suspension, revocation, or other action under the circumstances of the case.

(Added by Stats. 2023, Ch. 294, Sec. 16. (SB 815) Effective January 1, 2024.)

2233. The board may, by stipulation or settlement with the affected physician and surgeon, issue a public letter of reprimand after it has conducted an investigation or inspection as provided in this article, rather than filing or prosecuting a formal accusation. The public letter of reprimand may, at the discretion of the board, include a requirement for specified training or education. The affected physician and surgeon shall indicate agreement or nonagreement in writing within 30 days of formal notification by the board of its

intention to issue the letter. The board, at its option, may extend the response time. Use of a public reprimand shall be limited to minor violations and shall be issued under guidelines established by regulations of the board.

(Amended by Stats. 2014, Ch. 285, Sec. 3. (AB 1886) Effective January 1, 2015.)

2234. The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
- (b) Gross negligence.
- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
 - (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
 - (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
- (d) Incompetence.
- (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
- (f) Any action or conduct that would have warranted the denial of a certificate.
- (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board no later than 30 calendar days after being notified by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.
- (h) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the board or the Department of Consumer Affairs, Health Quality Investigation Unit.
- (i) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

(Amended by Stats. 2023, Ch. 294, Sec. 17. (SB 815) Effective January 1, 2024.)

2234.1. (a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a patient is alternative or complementary medicine, including the treatment of persistent Lyme Disease, if that treatment or advice meets all of the following requirements:

- (1) It is provided after informed consent and a good-faith prior examination of the patient, and medical indication exists for the treatment or advice, or it is provided for health or well-being.
- (2) It is provided after the physician and surgeon has given the patient information concerning conventional treatment and describing the education, experience, and credentials of the physician and surgeon related to the alternative or complementary medicine that he or she practices.
- (3) In the case of alternative or complementary medicine, it does not cause a delay in, or discourage traditional diagnosis of, a condition of the patient.
- (4) It does not cause death or serious bodily injury to the patient.

(b) For purposes of this section, "alternative or complementary medicine," means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

(c) Since the National Institute of Medicine has reported that it can take up to 17 years for a new best practice to reach the average physician and surgeon, it is prudent to give attention to new developments not only in general medical care but in the actual treatment of specific diseases, particularly those that are not yet broadly recognized in California.

(Amended by Stats. 2005, Ch. 621, Sec. 28.5. Effective January 1, 2006.)

2235. Upon referral from the division, the Senior Assistant Attorney General of the Health Quality Enforcement Section shall initiate action against any licensee who obtains a certificate by fraud or misrepresentation, including a reciprocity certificate which is based upon a certificate or license obtained by fraud or mistake. The division shall take action against any licensee whose certificate was issued by mistake.

(Amended by Stats. 1990, Ch. 1597, Sec. 17.)

2236. (a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

(Amended by Stats. 1994, Ch. 1206, Sec. 19. Effective January 1, 1995.)

2236.1. (a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Division of Medical Quality shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of the physician and surgeon's incarceration, and if so, the duration of that suspension. The division shall notify the physician and surgeon of the license suspension and of the right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a physician and surgeon, the Division of Medical Quality shall suspend the license until the time for appeal has elapsed, if an appeal has not been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the division. The issue of substantial relationship shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the division, in the discretion of the division.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 2237, or a conviction of Section 187, 261, 288, or former Section 262, of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon and a hearing shall not be held on this issue. Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(d) (1) Discipline may be ordered in accordance with Section 2227, or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw the plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the division, in the discretion of the division. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at the licensee's option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a physician and surgeon. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. This subdivision does not prohibit the division from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(f) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

(Amended by Stats. 2021, Ch. 626, Sec. 1. (AB 1171) Effective January 1, 2022.)

2236.2. (a) Notwithstanding Article 9 (commencing with Section 700) of Chapter 1 of Division 2 or any other provision of law, a physician and surgeon's certificate shall be automatically placed on inactive status during any period of time that the holder of the certificate is incarcerated after conviction of a misdemeanor.

(b) A physician and surgeon's certificate placed on inactive status pursuant to subdivision (a) shall be returned by the board to its prior or appropriate status within five business days of receiving notice that the physician and surgeon is no longer incarcerated. The board shall adopt regulations that specify the type of notice required to be submitted to the board.

(c) The reason for the inactive status described in subdivision (a) shall be disclosed on the board's Internet Web site.

(Added by Stats. 2011, Ch. 169, Sec. 1. (AB 1267) Effective January 1, 2012.)

2237. (a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(Amended by Stats. 1984, Ch. 1635, Sec. 1.)

2238. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

(Amended by Stats. 1984, Ch. 1635, Sec. 2.)

2239. (a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(Amended by Stats. 1998, Ch. 878, Sec. 10. Effective January 1, 1999.)

2240. (a) A physician and surgeon who performs a medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the death of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing on a form prescribed by the board, that occurrence to the board within 15 days after the occurrence.

(b) A physician and surgeon who performs a scheduled medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the transfer to a hospital or emergency center for medical treatment for a period exceeding 24 hours, of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing, on a form prescribed by the board that occurrence, within 15 days after the occurrence. The form shall contain all of the following information:

(1) Name of the patient's physician in the outpatient setting.

- (2) Name of the physician with hospital privileges.
- (3) Name of the patient and patient identifying information.
- (4) Name of the hospital or emergency center where the patient was transferred.
- (5) Type of outpatient procedures being performed.
- (6) Events triggering the transfer.
- (7) Duration of the hospital stay.
- (8) Final disposition or status, if not released from the hospital, of the patient.
- (9) Physician's practice specialty and ABMS certification, if applicable.

(c) The form described in subdivision (b) shall be constructed in a format to enable the physician and surgeon to transmit the information in paragraphs (5) to (9), inclusive, to the board in a manner that the physician and surgeon and the patient are anonymous and their identifying information is not transmitted to the board. The entire form containing information described in paragraphs (1) to (9), inclusive, shall be placed in the patient's medical record.

(d) The board shall aggregate the data and publish an annual report on the information collected pursuant to subdivisions (a) and (b).

(e) On and after January 1, 2002, the data required in subdivision (b) shall be sent to the Department of Health Care Access and Information instead of the board. The Department of Health Care Access and Information may revise the reporting requirements to fit state and national standards, as applicable. The board shall work with the Department of Health Care Access and Information in developing the reporting mechanism to satisfy the data collection requirements of this section.

(f) The failure to comply with this section constitutes unprofessional conduct.

(Amended by Stats. 2022, Ch. 511, Sec. 10. (SB 1495) Effective January 1, 2023.)

2241. (a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to a person with substance use disorder under the physician and surgeon's treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to a person with substance use disorder for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person they know or reasonably believe is using or will use the drugs or substances for a nonmedical purpose.

(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under their instruction and supervision, under the following circumstances:

- (1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.
- (2) Treatment of persons with substance use disorder in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.
- (3) Treatment of persons with substance use disorder as provided for by Section 11217.5 of the Health and Safety Code.

(d) (1) For purposes of this section and Section 2241.5, "person with substance use disorder" means a person whose actions are characterized by craving in combination with one or more of the following:

- (A) Impaired control over drug use.
- (B) Compulsive use.
- (C) Continued use despite harm.

(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not a person with substance use disorder within the meaning of this section or Section 2241.5.

(Amended by Stats. 2023, Ch. 21, Sec. 1. (AB 1130) Effective January 1, 2024.)

2241.3. Notwithstanding any other provision of law, nothing shall preclude a physician and surgeon from prescribing the use of a phototherapy device to a patient of any age. For purposes of this section, the term "phototherapy device" shall have the same meaning as in Section 22702.

(Added by Stats. 2011, Ch. 664, Sec. 1. (SB 746) Effective January 1, 2012.)

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under their treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of a person with substance use disorder.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of their purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

(Amended by Stats. 2023, Ch. 21, Sec. 2. (AB 1130) Effective January 1, 2024.)

2241.6. The Division of Medical Quality shall develop standards before June 1, 2002, to assure the competent review in cases concerning the management, including, but not limited to, the undertreatment, undermedication, and overmedication of a patient's pain. The division may consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines.

(Added by Stats. 2001, Ch. 518, Sec. 3. Effective January 1, 2002.)

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of the patient's practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

(Amended by Stats. 2019, Ch. 741, Sec. 1. (AB 1264) Effective October 11, 2019.)

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

(Amended by Stats. 2015, Ch. 719, Sec. 4. (SB 643) Effective January 1, 2016.)

2242.2. Notwithstanding any other law, a physician and surgeon, a nurse practitioner acting within the scope of Section 2837.103 or 2837.104, a registered nurse acting in accordance with Section 2725.2, a certified nurse-midwife acting within the scope of Section 2746.51, a nurse practitioner acting within the scope of Section 2836.1, a physician assistant acting within the scope of Section 3502.1, and a pharmacist acting within the scope of Section 4052.3 may use a self-screening tool that will identify patient risk factors for the use of self-administered hormonal contraceptives by a patient, and, after an appropriate prior examination, prescribe, furnish, or dispense, as applicable, self-administered hormonal contraceptives to the patient. Blood pressure, weight, height, and patient health history may be self-reported using the self-screening tool that identifies patient risk factors.

(Amended by Stats. 2022, Ch. 413, Sec. 2. (AB 2684) Effective January 1, 2023.)

2243. Upon referral by the National Health Services Corps to the Attorney General of the United States of any physician or surgeon who fails to provide service as a general practitioner or physician and surgeon as required pursuant to the grant agreement entered into between the physician and surgeon and the National Health Services Corps program (42 U.S.C. Sec. 254d), or the federal loan insurance program (42 U.S.C. Sec. 294), the board, upon notification by the Attorney General of the United States, shall review the facts and circumstances of the default and take appropriate disciplinary action where the board determines that the licensee has committed unprofessional conduct in violation of Section 2234.

(Added by renumbering Section 2430 by Stats. 1995, Ch. 708, Sec. 11.7. Effective January 1, 1996.)

2244. A physician and surgeon who collects biological specimens for clinical testing or examination shall secure or ensure that his or her employees, agents, or contractors secure those specimens in a locked container when those specimens are placed in a public location outside of the custodial control of the licensee, or his or her employees, agents, or contractors, pursuant to the requirements of Section 681.

Commencing July 1, 2000, the board may impose a fine against a licensee not to exceed the sum of one thousand dollars (\$1,000) for a violation of this section.

This section shall not apply when the biological specimens have been received by mail in compliance with all applicable laws and regulations.

(Added by Stats. 1999, Ch. 922, Sec. 1. Effective January 1, 2000.)

2245. (a) The Medical Board of California on a quarterly basis shall review the data provided pursuant to Section 14028 of the Welfare and Institutions Code by the State Department of Health Care Services and the State Department of Social Services in order to determine if any potential violations of law or excessive prescribing of psychotropic medications inconsistent with the standard of care exist and, if warranted, shall conduct an investigation.

(b) The State Department of Health Care Services shall disseminate the treatment guidelines on an annual basis through its existing communications with Medi-Cal providers, such as the department's Internet Web site or provider bulletins.

(c) If, after an investigation, the Medical Board of California concludes that there was a violation of law, the board shall take disciplinary action, as appropriate, as authorized by Section 2227.

(d) If, after an investigation, the Medical Board of California concludes that there was excessive prescribing of psychotropic medications inconsistent with the standard of care, the board shall take action, as appropriate, as authorized by Section 2227.

(e) (1) Notwithstanding Section 10231.5 of the Government Code, commencing July 1, 2017, the Medical Board of California shall report annually to the Legislature, the State Department of Health Care Services, and the State Department of Social Services the results of the analysis of data described in Section 14028 of the Welfare and Institutions Code.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(f) On or before January 1, 2022, and in conjunction with the consultation with the State Department of Social Services and the State Department of Health Care Services required by subdivision (a) of Section 14028 of the Welfare and Institutions Code, the Medical Board of California shall conduct an internal review of its data review, investigative, and disciplinary activities undertaken pursuant to this section for the purpose of determining the efficacy of those activities and shall revise its procedures relating to those activities, if determined to be necessary.

(g) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

(Added by Stats. 2016, Ch. 840, Sec. 2. (SB 1174) Effective January 1, 2017. Repealed as of January 1, 2027, by its own provisions.)

2246. Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(Added by Stats. 2002, Ch. 1085, Sec. 22. Effective January 1, 2003.)

2247. (a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

(Added by Stats. 2003, Ch. 777, Sec. 1. Effective January 1, 2004. Section operative January 1, 2005, by its own provisions.)

2248. This section shall be known as, and may be cited as, the Grant H. Kenyon Prostate Cancer Detection Act.

(a) If a physician and surgeon, during a physical examination, examines a patient's prostate gland, the physician and surgeon shall provide information to the patient about the availability of appropriate diagnostic procedures, including, but not limited to, the prostate antigen (PSA) test, if any of the following conditions are present:

- (1) The patient is over 50 years of age.
- (2) The patient manifests clinical symptomatology.
- (3) The patient is at an increased risk of prostate cancer.
- (4) The provision of the information to the patient is medically necessary, in the opinion of the physician and surgeon.

(b) Violation of subdivision (a) constitutes unprofessional conduct and is not subject to Section 2314.

(c) This section shall not apply to a physician and surgeon working on a trauma case as defined in Section 1798.160 of the Health and Safety Code.

(Amended by Stats. 2012, Ch. 76, Sec. 1. (AB 1621) Effective January 1, 2013.)

2248.5. (a) A standardized written summary in layman's language and in a language understood by patients shall be approved by the State Department of Health Services. The department may approve the use of an existing publication from a recognized cancer authority as the written summary. Commencing on January 1, 2003, and every three years thereafter, the department shall review its approval of the use of an existing publication from a recognized cancer authority as the written summary to ensure that the approved written summary comprises timely, new, and revised information regarding prostate cancer treatment options as the department determines is necessary. The written summary shall be printed or made available by the Medical Board of California to physicians and surgeons, concerning the advantages, disadvantages, risks, and descriptions, of procedures with regard to medically viable and efficacious alternative methods of treatment of prostate cancer. Physicians and surgeons are urged to make the summary available to patients when appropriate.

(b) The board shall post this summary on its Web site for public use.

(c) If the State Department of Health Services updates this summary, the board shall make the updated summary available to its licensees and update its Web site to contain the updated summary.

(Added by Stats. 2002, Ch. 531, Sec. 1. Effective January 1, 2003.)

2249. (a) A physician and surgeon primarily responsible for providing a patient an annual gynecological examination shall provide that patient during the annual examination in layperson's language and in a language understood by the patient a standardized summary containing a description of the symptoms and appropriate methods of diagnoses for gynecological cancers. This section does not preclude the use of existing publications or pamphlets developed by nationally recognized cancer organizations or by the State Department of Health Services pursuant to Section 138.4 of the Health and Safety Code.

(b) A physician and surgeon who violates this section may be cited and assessed an administrative fine. No citation shall be issued and no fine shall be assessed upon the first complaint against a physician and surgeon who violates this section. Upon the second and subsequent complaints against a physician and surgeon who violates this section, a citation may be issued and an administrative fine may be assessed.

(c) Notwithstanding any other provision of law, all fines collected pursuant to this section shall be credited to the Contingent Fund of the Medical Board of California to be used by the Office of Women's Health within the State Department of Health Services for outreach services that provide information to women about gynecological cancers, but shall not be expended until they are appropriated by the Legislature in the Budget Act or another statute.

(d) Section 2314 shall not apply to this section.

(Amended by Stats. 2002, Ch. 664, Sec. 4. Effective January 1, 2003.)

2250. The willful failure to comply with the requirements of Article 6 (commencing with Section 14191) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and the regulations promulgated thereunder, relating to informed consent for sterilization procedures, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2251. The prescribing, dispensing, administering, or furnishing of liquid silicone for the purpose of injecting such substance into a human breast or mammary constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2252. The violation of Chapter 4 (commencing with Section 109250) of Part 4 of Division 104 of the Health and Safety Code, or any violation of an injunction or cease and desist order issued under those provisions, relating to the treatment of cancer, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023, Sec. 6. Effective September 29, 1996.)

2253. (a) Failure to comply with the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code) constitutes unprofessional conduct.

(b) (1) Except as provided in paragraph (2), a person is subject to Section 2052 if the person performs an abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon.

(2) A person shall not be subject to Section 2052 if the person performs an abortion by medication or aspiration techniques in the first trimester of pregnancy, and at the time of so doing, has a valid, unrevoked, and unsuspended license or certificate obtained in accordance with the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Osteopathic Act (Article 21 (commencing with Section 2450) of Chapter 5), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)) or the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500)), that authorizes the person to perform the functions necessary for an abortion by medication or aspiration techniques.

(c) In order to perform an abortion by aspiration techniques pursuant to paragraph (2) of subdivision (b), a person shall comply with Section 2725.4 or 3502.4.

(d) The Medical Board of California and the Osteopathic Medical Board of California shall not suspend or revoke the certificate of a physician and surgeon solely for performing an abortion if they performed the abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(e) Notwithstanding any other law, including, but not limited to, Sections 141, 480, 490, 2221, 2305, 2234, and 2236, the Medical Board of California and the Osteopathic Medical Board of California, as applicable, shall not deny an application for licensure as a physician and surgeon, or suspend, revoke, or otherwise impose discipline upon a physician and surgeon licensed in this state under either of the following circumstances:

(1) The physician and surgeon is licensed to practice medicine in another state and was disciplined in that state solely for performing an abortion in that state.

(2) The physician and surgeon is licensed to practice medicine in another state and was convicted in that state for an offense related solely to the performance of an abortion in that state.

(Amended by Stats. 2022, Ch. 565, Sec. 1. (AB 2626) Effective September 27, 2022.)

2254. The violation of Section 123440 of the Health and Safety Code, relating to research on aborted products of human conception, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023, Sec. 8. Effective September 29, 1996.)

2255. The violation of any provision of Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, relating to the unlawful referral of patients to extended care facilities, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2256. Any intentional violation of Sections 5326.2 to 5326.8, inclusive, of the Welfare and Institutions Code, relating to the rights of involuntarily confined inpatients, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2257. The violation of Section 109275 of the Health and Safety Code, relating to informed consent for the treatment of breast cancer, constitutes unprofessional conduct.

(Amended by Stats. 1996, Ch. 1023, Sec. 9. Effective September 29, 1996.)

2258. The violation of Section 1708.5 of the Health and Safety Code, relating to the use of laetrile or amygdalin with respect to cancer therapy, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.9.)

2259. (a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing silicone implants used in cosmetic, plastic, reconstructive, or similar surgery, before the physician and surgeon performs the surgery. A physician and surgeon may substitute, in place of the standardized written summary for silicone implants, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based

upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties of physicians and surgeons, including duties relating to informed consent. However, no physician and surgeon shall be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information on silicone implants intended for the layperson, the state department shall develop a standardized written summary to inform the patient of the risks and possible side effects of silicone implants as used in cosmetic, plastic, reconstructive, or similar surgery. In developing these summaries, the state department shall do all of the following:

(1) Use only language that is simple and readily understood by a layperson.

(2) Include a disclaimer that the state in no way endorses any procedures, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.

(3) Provide only information approved by the federal Food and Drug Administration.

(f) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summaries prepared pursuant to subdivision (e), and shall distribute copies of the summaries, upon request, to physicians and surgeons. The Medical Board of California shall make the summaries available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summaries. Physicians and surgeons performing surgical procedures described in subdivision (a) shall purchase the summaries from the Medical Board of California for distribution to their patients, as required in this section. Any person or entity may purchase the summaries if he, she, or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summaries incurred by the State Department of Health Services, through an interagency agreement entered into between the Medical Board of California and the State Department of Health Services for that purpose.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of silicone implants provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purposes of this section, "silicone implant" means any implant containing silicone, including implants using a silicone gel or silicone shell. This definition includes implants using a saline solution with a silicone shell.

(j) A physician and surgeon shall not be responsible for complying with this section until the written summaries are published pursuant to subdivision (g).

(Added by Stats. 1992, Ch. 1140, Sec. 1. Effective January 1, 1993.)

2259.5. (a) A physician and surgeon shall give each patient a copy of the standardized written summary, as developed pursuant to subdivision (e), describing collagen injections used in cosmetic, plastic, reconstructive, or similar surgery, before the physician and surgeon performs the surgery. A physician and surgeon may substitute, in place of the standardized written summary for collagen injections, written information authorized for use by the federal Food and Drug Administration prepared by the manufacturer based upon the physician package insert. The furnishing of a copy of the standardized written summary or written information shall constitute compliance with the requirements of this section.

(b) Prior to the performance of surgery, the physician and surgeon shall note on the patient's chart that he or she has given the patient the standardized written summary or written information required by this section.

(c) The failure of a physician and surgeon to comply with this section constitutes unprofessional conduct. The provision of the standardized written summary or written information shall not alter, diminish, or modify existing duties relating to informed consent. However, no physician and surgeon shall be liable as a distributor of a standardized written summary or written information alleged to contain erroneous or incomplete information.

(d) The facility where the surgery is performed shall not be responsible for enforcement of, or verification of, compliance with the requirements of this section.

(e) If the State Department of Health Services determines that the federal Food and Drug Administration has not authorized written information intended for the layperson on collagen injections used in cosmetic, plastic, reconstructive, or similar surgery, the state department shall develop a standardized written summary to inform the patient of the risks and possible side effects of collagen injections as used in cosmetic, plastic, reconstructive, or similar surgery. In developing this summary, the state department shall do all of the following:

- (1) Use only language that is simple and readily understood by a layperson.
- (2) Include a disclaimer that the state in no way endorses any procedure, nor does the state claim to provide an exhaustive analysis of all the potential benefits or risks associated with any procedure.
- (3) Identify the type of animal used to produce the collagen and identify the situations where the federal Food and Drug Administration has given its approval for the procedure.
- (4) Provide only information approved by the federal Food and Drug Administration.

(f) The State Department of Health Services shall update the written summary described in subdivision (e) as determined necessary by the state department to protect the public health and safety.

(g) The Medical Board of California shall publish the standardized written summary prepared pursuant to subdivision (e) and shall distribute copies of the summary, upon request, to physicians and surgeons. The Medical Board of California shall make the summary available for a fee not exceeding, in the aggregate, the actual costs to the State Department of Health Services and the Medical Board of California for developing, updating, publishing, and distributing the summary. A physician and surgeon performing surgical procedures described in subdivision (a) shall purchase the summary from the Medical Board of California for distribution to his or her patients, as required in this section. Any person or entity may purchase the summary if he, she, or it desires. The Medical Board of California shall fund the State Department of Health Services for the actual cost of developing and updating the summary incurred by the State Department of Health Services, through an interagency agreement entered into between the Medical Board of California and the State Department of Health Services.

The Medical Board of California and the State Department of Health Services may distribute the written information described in subdivision (a) if a manufacturer of collagen provides the board and state department with a sufficient number of copies of this information, as determined by the state department.

(h) Section 2314 shall not apply to this section.

(i) For purposes of this section, "collagen" includes, but is not limited to, any substance derived from animal protein, or combined with animal protein, that is implanted into the body for purposes of cosmetic, plastic, reconstructive, or similar surgery. However, "collagen" does not include absorbable gelatin medical devices intended for application to bleeding surfaces as a hemostatic or any other medical device used for purposes other than beautifying, promoting attractiveness, or altering the appearance of any part of the human body.

(j) A physician and surgeon shall not be responsible for complying with this section until the written summary is published pursuant to subdivision (g).

(Added by Stats. 1992, Ch. 1140, Sec. 2. Effective January 1, 1993.)

2259.7. The Medical Board of California shall adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital, as defined in Section 1250 of the Health and Safety Code. In adopting those regulations, the Medical Board of California shall take into account the most current clinical and scientific information available. A violation of those extraction and postoperative care standards constitutes unprofessional conduct.

(Added by Stats. 1999, Ch. 631, Sec. 4. Effective January 1, 2000.)

2259.8. (a) Notwithstanding any other provision of law, an elective cosmetic surgery procedure may not be performed on a patient unless the patient has received, within 30 days prior to the elective cosmetic surgery procedure, and confirmed as up-to-date on the day of the procedure, an appropriate physical examination by, and written clearance for the procedure from, any of the following:

- (1) The physician and surgeon who will be performing the surgery.
- (2) Another licensed physician and surgeon.
- (3) A certified nurse practitioner, in accordance with a certified nurse practitioner's scope of practice, unless limited by protocols or a delegation agreement.
- (4) A licensed physician assistant, in accordance with a licensed physician assistant's scope of practice, unless limited by protocols or a delegation agreement.

(b) The physical examination described in subdivision (a) shall include the taking of an appropriate medical history.

(c) An appropriate medical history and physical examination done on the day of the procedure shall be presumed to be in compliance with subdivisions (a) and (b).

(d) "Elective cosmetic surgery" means an elective surgery that is performed to alter or reshape normal structures of the body in order to improve the patient's appearance, including, but not limited to, liposuction and elective facial cosmetic surgery.

(e) Section 2314 shall not apply to this section.

(Added by Stats. 2009, Ch. 509, Sec. 3. (AB 1116) Effective January 1, 2010.)

2260. (a) A physician and surgeon who removes sperm or ova from a patient shall, before the sperm or ova are used for a purpose other than reimplantation in the same patient or implantation in the spouse of the patient, obtain the written consent of the patient as provided in subdivision (b).

(b) The consent required by subdivision (a) shall conform to all of the following requirements:

(1) The consent shall be in writing and shall contain the following statement: I (name of donor) do hereby donate (type and number, if applicable, of sperm or ova), to (name of clinic or other donee) for (specify purpose).

(2) The consent shall contain a statement by the donor that specifies the disposition of any unused donated material.

(3) The consent shall be signed by the patient and by the physician and surgeon who removes the sperm or ova.

(4) The physician and surgeon shall retain the original consent in the medical record of the patient and give a copy of the consent to the patient.

(5) The consent shall contain a notification to the patient that the written consent is an important document that should be retained with other vital records.

(6) If the procedure to remove the sperm or ova is performed in a hospital, the physician and surgeon shall provide a copy of the consent to the hospital.

(c) Nothing in this section shall affect the obligation of a physician and surgeon under current law to obtain the informed consent of a patient before performing a medical procedure on the patient that may significantly affect the patient's reproductive health or ability to conceive, or both.

(d) A violation of this section constitutes unprofessional conduct. Section 2314 shall not apply to this section.

(e) A physician and surgeon who fails, for the second time, to obtain any consent required in subdivision (a) or (b) before transferring sperm or ova from a provider of sperm or ova to a recipient, shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the individual whose required consent was not obtained. A separate penalty shall be assessed for each individual from whom the consent was not obtained. The penalties in this section shall be available in addition to any other remedies that may be available under other provisions of law.

(Amended by Stats. 2004, Ch. 183, Sec. 4. Effective January 1, 2005.)

2260.5. A violation of Section 24185 of the Health and Safety Code, relating to human cloning, constitutes unprofessional conduct.

(Amended by Stats. 2002, Ch. 821, Sec. 1. Effective January 1, 2003.)

2261. Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2262. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

(Amended by Stats. 1986, Ch. 655, Sec. 4.)

2263. The willful, unauthorized violation of professional confidence constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2264. The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2266. The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients for at least seven years after the last date of service to a patient constitutes unprofessional conduct.

(Amended by Stats. 2023, Ch. 294, Sec. 18. (SB 815) Effective January 1, 2024.)

2271. Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2272. Any advertising of the practice of medicine in which the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2273. (a) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct.

(b) A licensee shall have the licensee's license revoked for a period of 10 years, or shall stipulate to surrender of the license for 10 years, upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.

(Amended by Stats. 2021, Ch. 649, Sec. 20. (SB 806) Effective January 1, 2022.)

2274. (a) The use by any licensee of any certificate, of any letter, letters, word, words, term, or terms either as a prefix, affix, or suffix indicating that he or she is entitled to engage in a medical practice for which he or she is not licensed constitutes unprofessional conduct.

(b) Nothing in this section shall be construed to prohibit a physician and surgeon from using the designations specified in this section if he or she has been issued a retired license under Section 2439.

(Amended by Stats. 2004, Ch. 695, Sec. 10. Effective January 1, 2005.)

2275. Any person who held a physician's and surgeon's certificate under the jurisdiction of the Osteopathic Medical Board of California and a degree of doctor of medicine issued by a medical school located in the state at any time prior to September 30, 1962, and approved by either the Osteopathic Medical Board of California or the Medical Board of California at the time such degree was issued, who applied in writing to the Medical Board of California for permission to utilize his or her degree of doctor of medicine, shall be authorized to use the term or suffix "M.D." and the use shall not constitute unprofessional conduct, so long as the person advised both boards, in writing, that he or she has elected to use the term or suffix "M.D." and further has elected not to use the term or suffix "D.O." In the event of such election, the use of the term or suffix "D.O." constitutes unprofessional conduct within the meaning of this chapter.

(Amended by Stats. 1991, Ch. 359, Sec. 11.7.)

2276. Unless the holder of any certificate provided for in this chapter has been granted the degree of doctor of osteopathy after the completion of a full course of study as prescribed by an approved osteopathic medical school in accordance with the provisions of this chapter, the use of the term or suffix "D.O." constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2277. Unless the holder of any certificate provided for in this chapter has been granted the degree of doctor of podiatric medicine after the completion of a full course of study as prescribed by a school or college of podiatric medicine in accordance with the provisions of this chapter, the use of the term or suffix "D.P.M." constitutes unprofessional conduct.

(Amended by Stats. 1999, Ch. 655, Sec. 25. Effective January 1, 2000.)

2278. Unless a person authorized under this chapter to use the title “doctor” or the letters or prefix “Dr.” holds a physician’s and surgeon’s certificate, the use of such title, letters, or prefix without further indicating the type of certificate held, constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2280. No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.

(Added by Stats. 1993, Ch. 1267, Sec. 28. Effective January 1, 1994.)

2281. A physician and surgeon or a student undertaking a course of professional instruction or a clinical training program, may not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient gave informed consent to the pelvic examination, or the performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination to be performed on the patient or, in the case of an unconscious patient, the pelvic examination is required for diagnostic purposes.

(Added by Stats. 2003, Ch. 644, Sec. 2. Effective January 1, 2004.)

2282. The regular practice of medicine in a licensed general or specialized hospital having five or more physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all the following, constitutes unprofessional conduct:

- (a) Provision for the organization of physicians and surgeons licensed to practice in this state who are permitted to practice in the hospital into a formal medical staff with appropriate officers and bylaws and with staff appointments on an annual or biennial basis.
- (b) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other licensed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits from professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.
- (c) Provision that the medical staff shall be self-governing with respect to the professional work performed in the hospital; that the medical staff shall meet periodically and review and analyze at regular intervals their clinical experience; and the medical records of patients shall be the basis for such review and analysis.
- (d) Provision that adequate and accurate medical records be prepared and maintained for all patients.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2282.5. (a) The medical staff’s right of self-governance shall include, but not be limited to, all of the following:

- (1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards.
- (2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.
- (3) Selecting and removing medical staff officers.
- (4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.
- (5) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.
- (6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld.

(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

- (1) Selecting and removing medical staff officers.
- (2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.
- (3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2004, Ch. 699, Sec. 2. Effective January 1, 2005. See similar section added by Stats. 2004, Ch. 848.)

2282.5. (a) The medical staff's right of self-governance shall include, but not be limited to, all of the following:

(1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards.

(2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.

(3) Selecting and removing medical staff officers.

(4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(5) The ability to retain and be represented by independent legal counsel at the expense of the medical staff, provided that medical staff at the University of California have the right to retain and be represented by independent legal counsel at the expense of the medical staff upon approval by the Regents of the University of California or their designee in accordance with the bylaws of the Regents, which approval shall not be unreasonably denied.

(6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld.

(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

(1) Selecting and removing medical staff officers.

(2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2004, Ch. 848, Sec. 2. Effective January 1, 2005.)

2283. The regular practice of medicine in a licensed general or specialized hospital having less than five physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all of the following, constitutes unprofessional conduct:

(a) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other licensed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits for professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.

(b) Provision that adequate and accurate medical records be prepared and maintained for all patients.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2284. (a) A licensed physician and surgeon or a licensed podiatrist, or a group of physicians and surgeons or podiatrists, or a medical or podiatry corporation shall not share in any fee charged by an acupuncturist or receive any consideration from or on behalf

of such acupuncturist for any referral or diagnosis.

(b) A licensed physician and surgeon or podiatrist shall not employ more than one acupuncturist.

(c) A group of physicians and surgeons or podiatrists, or a medical or podiatry corporation, shall not employ more than one acupuncturist for every 20 practitioners in such group or corporation.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

(d) Any medical school approved by the division or a faculty practice plan connected with the medical school.

(Amended by Stats. 2003, Ch. 607, Sec. 6. Effective January 1, 2004.)

2286. It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2287. The purchase, sale, or barter, or offering to purchase, sell, or barter any medical or podiatric degree, or any degree, diploma, certificate, affidavit, transcript, or other evidence made or purporting to be made, pursuant to any laws regulating the licensure of persons under this chapter, or any preceding medical practice act or for use in connection with the granting of any certificates or diplomas or the purchase, procurement, or altering in any material regard, with fraudulent intent, a diploma, certificate, affidavit, transcript, or other evidence required for issuing any certificate or diploma that has been purchased, fraudulently issued, counterfeited, or materially altered constitutes unprofessional conduct. The attempt to or conspiring to violate this section also constitutes unprofessional conduct.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2288. The impersonation of any applicant or acting as proxy for any applicant in any examination required under this chapter for a certificate constitutes unprofessional conduct.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2289. The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2290. The provisions of Article 4 (commencing with Section 580) of Chapter 1, relating to frauds of medical records, degrees, diplomas, certificates, and transcripts are not affected by the provisions of this article and, so far as any act is a crime within their scope, such provisions control over the provisions of this article.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2290.5. (a) For purposes of this division, the following definitions apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

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

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

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

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2.

(E) An associate professional clinical counselor or clinical counselor trainee functioning pursuant to Section 4999.46.3.

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

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

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

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

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

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

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

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

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.

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

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

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

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

(Amended by Stats. 2022, Ch. 520, Sec. 1. (AB 1759) Effective January 1, 2023.)

2291. It is unprofessional conduct for any licensee not a member or authorized official of the board, or of the California Board of Podiatric Medicine in the case of a doctor of podiatric medicine, to sign or issue or cause to be signed or issued any certificate authorized by this chapter.

(Amended by Stats. 1986, Ch. 655, Sec. 5.)

2292. (a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by a medical expert designated by the division or the Board of Podiatric Medicine, as applicable, there is reasonable cause to believe that the licensee is unable to practice medicine with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by

one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking it, and, assuming it is determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

(c) Upon referral from the division, the matter shall be drafted and presented by the Senior Assistant Attorney General of the Health Quality Enforcement Section or his or her designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the physician who shall have the opportunity to file written opposition to the petition within 30 days after service. Service of the petition and any orders shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(d) A panel of the division shall review the petition and any opposition paper from the physician, or the panel of the division, or an administrative law judge to whom the petition is assigned by the division, may hold a hearing in accordance with the provisions of the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The physician shall have the right to be represented at that hearing by the person of his or her choice. If the panel of the division or administrative law judge is satisfied that reasonable cause exists as to the circumstances specified in subdivision (a), the division or panel shall issue an order compelling the physician to undergo an examination of professional competency as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served on the physician shall constitute unprofessional conduct for purposes of disciplinary proceedings.

(Amended by Stats. 1993, Ch. 1267, Sec. 29. Effective January 1, 1994.)

2293. (a) The professional competency examination shall be in the form of an oral clinical examination to be administered by three physician examiners selected by the division or its designee, who shall test for medical knowledge specific to the physician's specialty or specific suspected deficiency. The examination shall be audio recorded.

(b) A failing grade from two of the examiners shall constitute a failure of an examination. In the event of a failure, the board shall supply a true and correct copy of the audio recording of the examination to the unsuccessful examinee.

(c) Within 45 days following receipt of the audio recording of the examination, a physician who fails the examination may request a hearing before the administrative law judge as designated in Section 11371 of the Government Code to determine whether he or she is entitled to take a second examination.

(d) If the physician timely requests a hearing concerning the right to reexamination under subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon a finding that the examination or procedure is unfair or that one or more of the examiners manifest bias toward the examinee, a reexamination shall be ordered.

(e) If the examinee fails the examination and is not afforded the right to reexamination, the division may take action pursuant to Section 2230 by directing that an accusation be filed charging the examinee with incompetency under subdivision (d) of Section 2234. The modes of discipline are set forth in Sections 2227 and 2228.

(f) Findings and conclusions reported by the examiners may be received in the administrative hearing on the accusation. The passing of the examination shall constitute prima facie evidence of present competence in the area of coverage of the examination.

(g) Competency examinations shall be conducted under a uniform examination system, and for that purpose the division may make arrangements with organizations furnishing examination material as deemed desirable.

(Amended by Stats. 2009, Ch. 88, Sec. 1. (AB 176) Effective January 1, 2010.)

2294. (a) If the division proceeds pursuant to the provisions of Sections 2292 and 2293 and the physician passes the professional competency examination administered, the division shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(b) If the division determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or outside medical consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(c) If no further proceedings are conducted to determine the physician's fitness to practice during a period of five years from the date of the petition under Section 2292, then the agency shall purge and destroy all records pertaining to the proceedings.

(Amended by Stats. 1985, Ch. 1070, Sec. 2.)

2305. The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

(Amended by Stats. 1995, Ch. 708, Sec. 9. Effective January 1, 1996.)

2306. If a licensee's right to practice medicine is suspended, he or she shall not engage in the practice of medicine during the term of such suspension. Upon the expiration of the term of suspension, the certificate shall be reinstated by the Division of Medical Quality, unless the licensee during the term of suspension is found to have engaged in the practice of medicine in this state. In that event, the division shall revoke the licensee's certificate to engage in the practice of medicine.

(Added by Stats. 1980, Ch. 1313, Sec. 2.)

2307. (a) Except as provided in subdivision (i), a person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least five years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after three years.

(2) At least two years for early termination of probation or after more than one-half of the probation term has elapsed, whichever is greater.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board shall automatically reject a petition for early termination or modification of probation if the board files a petition to revoke probation while the petition for early termination or modification of the probation is pending. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of three years from the effective date of the prior decision following a hearing under this section.

(h) This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from doctors of podiatric medicine licensed in any state who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.

(i) (1) The board shall not reinstate the certificate of a person under any of the following circumstances:

(A) The person's certificate has been surrendered because the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726 or sexual exploitation as defined in subdivision (a) of Section 729.

(B) The person's certificate has been revoked based on a finding by the board that the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726 or sexual exploitation as defined in subdivision (a) of Section 729.

(C) The person was convicted in a court in or outside of this state of any offense that, if committed or attempted in this state, based on the elements of the convicted offense, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290 of the Penal Code, and the person engaged in the offense with a patient or client, or with a former patient or client if the relationship was terminated primarily for the purpose of committing the offense.

(D) The person has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the conviction has been appealed, and the person engaged in the offense with a patient or client, or with a former patient or client if the relationship was terminated primarily for the purpose of committing the offense.

(2) A plea or a verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

(3) This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(j) Nothing in this section shall be deemed to alter Sections 822 and 823.

(Amended by Stats. 2023, Ch. 294, Sec. 20. (SB 815) Effective January 1, 2024.)

2307.5. (a) The board may establish a fee to be paid by a person seeking a license reinstatement or modification of penalty pursuant to Section 2307.

(b) The fee established shall not exceed the board's reasonable costs to process and adjudicate a petition submitted pursuant to Section 2307.

(c) The board shall adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement this section.

(Added by Stats. 2023, Ch. 294, Sec. 21. (SB 815) Effective January 1, 2024.)

2310. (a) If a physician and surgeon possesses a license or is otherwise authorized to practice medicine (1) in any state other than California or (2) by any agency of the federal government and that license or authority is suspended or revoked outright and is reported to the National Practitioners Data Bank, the physician and surgeon's certificate shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The division shall notify the physician and surgeon of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(c) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the division. A physician and surgeon may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the physician and surgeon's license or authority to practice medicine is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge or panel by the physician and surgeon that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.

If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the physician and surgeon's license or authority to practice medicine, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a physician and surgeon who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a physician's and surgeon's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a physician and surgeon whose license has been surrendered whose only discipline is a medical staff disciplinary action at a federal hospital not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the physician and surgeon remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the physician and surgeon by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the physician or surgeon may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(Added by Stats. 1997, Ch. 514, Sec. 1. Effective January 1, 1998.)

2311. Whenever any person has engaged in or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board or of 10 or more persons licensed as physicians and surgeons or as podiatrists in this state, may issue an injunction or other appropriate order restraining the conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Amended by Stats. 2007, Ch. 678, Sec. 21. Effective January 1, 2008.)

2312. The Division of Medical Quality shall seek to obtain an injunction against any physician and surgeon within its jurisdiction if the division has reasonable cause to believe that allowing such person to continue to engage in the practice of medicine would endanger the public health, safety, or welfare.

(Repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

2313. The board shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board to enjoin licensees pursuant to Sections 125.7, 125.8, and 2311, the circumstances in each case that prompted the board to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the board, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of complaint forms received; number of Section 805 and Section 805.01 reports by type; number of Section 801.01 and Section 803 reports; coroner reports received; number of convictions reported to the board; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the board and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the board of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the board for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

"Action," for purposes of this section, includes proceedings brought by, or on behalf of, the board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(d) The total number of reports received pursuant to Sections 805 and 805.01 by the type of peer review body reporting and, where applicable, the type of health care facility involved and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports.

(e) The number of malpractice settlements in excess of thirty thousand dollars (\$30,000) reported pursuant to Section 801.01. This information shall be grouped by specialty practice and shall include the total number of physicians and surgeons practicing in each specialty. For the purpose of this subdivision, "specialty" includes all specialties and subspecialties considered in determining the risk categories described in Section 803.1.

(Amended by Stats. 2012, Ch. 162, Sec. 1. (SB 1171) Effective January 1, 2013.)

2314. (a) Unless it is otherwise expressly provided, any person, whether licensed under this chapter or not, who violates any provision of this article is guilty of a misdemeanor.

(b) A person, whether licensed under this chapter or not, who violates Section 2273 is punishable pursuant to subdivision (b) of Section 2315.

(Amended by Stats. 1991, Ch. 116, Sec. 3.)

2315. (a) Except as otherwise provided by law, any person found guilty of a misdemeanor for a violation of this chapter shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200) or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment.

(b) A violation of Section 2273 is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year. A second or subsequent conviction is punishable by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or by a fine not exceeding ten thousand dollars (\$10,000) or by both the fine and imprisonment.

(Amended by Stats. 2011, Ch. 15, Sec. 12. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

2316. If a licensed physician and surgeon who provides expertise to the board in the evaluation of an applicant or a licensee is, as a result of providing that expertise, the subject of a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member, with board approval, the Office of the Attorney General shall represent the physician and surgeon in that disciplinary proceeding regarding any allegation brought against the physician and surgeon as a direct result of providing that expertise to the board.

(Added by Stats. 2010, Ch. 451, Sec. 2. (AB 1767) Effective January 1, 2011.)

2317. If a person, not a regular employee of the board, is hired, under contract, or retained under any other arrangement, paid or unpaid, to provide expertise or nonexpert testimony to the Medical Board of California or to the California Board of Podiatric Medicine, including, but not limited to, the evaluation of the conduct of an applicant or a licensee, and that person is named as a defendant in an action for defamation, malicious prosecution, or any other civil cause of action directly resulting from opinions rendered, statements made, or testimony given to, or on behalf of, the committee or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall be liable for any judgment rendered against that person, except that the board shall not be liable for any punitive damages award. If the plaintiff prevails in a claim for punitive damages, the defendant shall be liable to the board for the full costs incurred in providing representation to the defendant. The Attorney General shall be utilized in those actions as provided in Section 2020.

(Amended by Stats. 2007, Ch. 678, Sec. 22. Effective January 1, 2008.)

2318. In addition to any immunity afforded by Sections 43.8 and 47 of the Civil Code, if applicable, any person, including, but not limited to, a physician and surgeon, hospital, health facility as defined in Section 1250 of the Health and Safety Code, nursing home, convalescent home, peer review body as defined in Section 805, medical society, professional association, patient, nurse, or other healing arts licensee who provides information to the board, to the California Board of Podiatric Medicine, or to the Department of Justice indicating that a board licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness, shall not be liable for any damages in any civil action on account of the communication of that information to the board. The immunities afforded by this section shall not affect the availability of any absolute privilege which may be afforded by Section 47 of the Civil Code.

(Added by Stats. 1990, Ch. 1597, Sec. 22.)

2319. (a) The board shall set as a goal the improvement of its disciplinary system by January 1, 1992, so that an average of no more than six months will elapse from the receipt of complaint to the completion of an investigation.

(b) Notwithstanding subdivision (a), the goal for cases which, in the opinion of the board, involve complex medical or fraud issues or complex business or financial arrangements should be no more than one year to investigate.

(Added by Stats. 1990, Ch. 1597, Sec. 23.)