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**AB-1636 Physician's and surgeon's certificate: registered sex offenders.** (2021-2022)

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**Assembly Bill No. 1636**

**CHAPTER 453**

An act to amend Sections 480, 2232, and 2307 of the Business and Professions Code, relating to healing arts.

[ Approved by Governor September 22, 2022. Filed with Secretary of State September 22, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1636, Akilah Weber. Physician's and surgeon's certificate: registered sex offenders.

Existing law establishes various boards, as defined, within the Department of Consumer Affairs for the licensure and regulation of various professions and vocations. Existing law authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime or was subject to formal discipline within the preceding 7 years from the date of application based on professional misconduct that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made, as specified and subject to certain exceptions.

This bill would authorize a board to deny a license based on formal discipline that occurred earlier than 7 years preceding the date of application if the formal discipline was based on conduct that, if committed in this state by a licensed physician and surgeon, would have constituted an act of sexual abuse, misconduct, or relations with a patient or sexual exploitation, as specified.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons. Existing law requires the board to deny a physician's and surgeon's certificate to an applicant who is required to register as a sex offender, except as specified.

Existing law requires the board to automatically revoke the license of any person who has been required to register as a sex offender, as specified. Existing law exempts from that provision a person who has been relieved, as specified, of their duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law.

This bill would remove the above-described exemption from the provision relating to automatic revocation of a license of a registered sex offender. The bill, additionally, would require the board to automatically revoke a license if the licensee has been convicted, as specified, in any court in or outside of this state of an offense that, if committed or attempted in this state, based on the elements of the convicted offense, would have been punishable as an offense for which a specified provision of the Sex Offender Registration Act requires registration as a sex offender.

Under existing law, 5 years after the effective date of the revocation and 3 years after successful discharge from parole, probation, or both parole and probation, as specified, an individual whose license was revoked after January 1, 1947, and before January 1, 2005, for having been required to register as a sex offender is authorized to petition a superior court to hold a hearing to determine whether the individual no longer poses a possible risk to patients, as specified. If the court finds that the individual no longer poses a possible risk to patients and there are no other underlying reasons for which the board pursued disciplinary

action, existing law requires the court to order the board to reinstate the individual's license, as specified. Existing law authorizes the board to issue a probationary license to that person, as specified. If the court finds that the individual continues to pose a possible risk to patients, existing law requires the court to deny relief and prohibits the individual from filing a subsequent petition based on the same conviction.

This bill would remove the above-described provisions.

Existing law authorizes a person whose physician's and surgeon's certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation to petition the board for reinstatement or modification of penalty, as specified.

This bill would, as an exemption to the above-described provision, prohibit the board from reinstating a person's certificate that has been surrendered because the person committed an act of sexual abuse, misconduct, or relations with a patient or sexual exploitation, as specified, or the person's certificate has been revoked based on a finding by the board that the person committed one of those acts. The bill, additionally, would prohibit the board from reinstating a person's certificate if the person was 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 for which a specified provision of the Sex Offender Registration Act requires the offender to register as a sex offender, 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. The bill would prohibit the board from reinstating the certificate of a person who has been required to register as a sex offender, as specified, 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 480 of the Business and Professions Code is amended to read:

**480.** (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 6 (commencing with Section 6500) of Division 3.

(ii) Chapter 9 (commencing with Section 7000) of Division 3.

(iii) Chapter 11.3 (commencing with Section 7512) of Division 3.

(iv) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(v) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a

conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement. Formal discipline that occurred earlier than seven years preceding the date of application may be grounds for denial of a license only if the formal discipline was for conduct that, if committed in this state by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, would have constituted 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) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's internet website and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

**SEC. 2.** Section 2232 of the Business and Professions Code is amended to read:

**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.

**SEC. 3.** Section 2307 of the Business and Professions Code is amended to read:

**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 three 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 two years.

(2) At least two years for early termination of probation of three years or more.

(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 may deny without a hearing or argument any petition filed pursuant to this section within a period of two 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.