



PODIATRIC MEDICAL BOARD OF CALIFORNIA
September 13, 2019

SUBJECT: LEGISLATIVE PROGRAM REPORT

ACTION: RECEIVE AND FILE

VIII C 1,2

RECOMMENDATION

Discussion and possible action regarding bills in the Legislative Program Report.

ISSUES

This report summarizes recent activities of the Board as to legislative and regulatory matters.

1. LEGISLATION PROGRAM UPDATE – 2019

The following proposed legislative bills are directly related to PMBC:

AB 5 (Gonzalez), Worker status: employees and independent contractors.

Current Text: Amended: 8/30/2019

Last Amended: 8/30/2019

Status: 9/3/2019-Read second time. Ordered to third reading.

Location: 9/3/2019-S. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for

wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes. This bill would state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello). The bill would exempt specified occupations from the application of Dynamex, and would instead provide that these occupations are governed by Borello. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry. This bill contains other related provisions and other existing laws. (Attachment A)

AB 407 (Santiago), Fluoroscopy and radiography permit or certification and continuing education: exceptions

Current Text: Amended: 7/1/2019

Last Amended: 7/1/2019

Status: 8/30/2019-In committee: Held under submission.

Location: 8/12/2019-S. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary:

The Radiologic Technology Act makes it unlawful for any licentiate of the healing arts

to administer or use diagnostic, mammographic, or therapeutic X-ray on human beings in this state, unless that person is certified by the State Department of Public Health and acting within the scope of that certification. The act requires the department to prescribe minimum qualifications for granting a fluoroscopy permit and continuing education requirements for the holders of that permit. This bill would, notwithstanding the above-described requirement to be certified to administer or use diagnostic, mammographic, or therapeutic X-ray on human beings in this state, authorize a physician and surgeon or a doctor of podiatric medicine to provide fluoroscopy and radiography services and supervise radiologic technologists prior to receiving a Fluoroscopy X-ray Supervisor and Operator's permit or certification, if the physician and surgeon or the doctor of podiatric medicine submits to the department evidence of completing radiation safety training provided by a facility accredited by the Centers for Medicare and Medicaid Services, as specified. (Attachment B)

AB 678 (Flora), MediCal: podiatric services

Current Text: Enrolled: 9/3/2019

Last Amended: 7/8/2019

Status: 8/30/2019-Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 75. Noes 0.).

Location: 8/30/2019-A. ENROLLMENT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Current law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including podiatric services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Current law provides that prior authorization for podiatric services provided on an outpatient or inpatient basis is not required if specified conditions are met, including an urgent or emergency need for services at the time of service. This bill would repeal these provisions and would instead prohibit the requirement of prior authorization for podiatric services provided by a doctor of podiatric medicine if a physician and surgeon rendering the same services would not be required to provide prior authorization. (Attachment C)

SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct

Current Text: Amended: 6/27/2019

Last Amended: 6/27/2019

Status: 9/3/2019-Read second time. Ordered to third reading.

Location: 9/3/2019-A. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered	
1st House				2nd House								

Summary:

Current law requires the Medical Board of California and specified other boards responsible for the licensure, regulation, and discipline of health care practitioners to separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board, including prescribed historical information for each licensee. Current law makes the contents of any central file that are not public records confidential, except that the licensee or their counsel or a representative are authorized to inspect and have copies made of the licensee's complete file other than the disclosure of the identity of an information source. Current law authorizes a board to protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. This bill would delete the specification that the summary be comprehensive. (Attachment D)

2. REGULATORY PROGRAM UPDATE – 2019

Discussion of Regulations:

Amendments to Title 16, Professional and Vocational Regulations, Division 13.9, Section 1399.659: Suspension, Revocation of Certificate to Practice

This matter has been reviewed by the Department of Consumer Affairs and it is currently with the Business, Consumer Services and Housing Agency. It will be filed with the Office of Administrative Law once the final review process is complete.

Amendments to Title 16, Professional and Vocational Regulations. Division 13.9, Section 1399.650 to 1399.732: Regulations to Reflect Board's Name Change

AB 2457 (Irwin), Podiatry, Title Change: Regulations to reflect board's name change. The filing of nonsubstantive changes were approved by the Office of Administrative Law on August 28, 2019. The changes reflect the change in title from "Board of Podiatric Medicine" to "Podiatric Medical Board of California," effective July 1, 2019. (Attachment E)

Attachments:

-Attachment A: AB 5 (Gonzalez), Worker status: employees and independent contractors; as amended 8/30/19.

-Attachment B: AB 407 (Santiago), Fluoroscopy and radiography permit or certification and continuing education: exceptions; as amended 7/1/19 and PMBC Letter of Support dated 6/26/19.

-Attachment C: AB 678 (Flora), Medi-Cal: podiatric services; enrolled 9/3/19 and PMBC Letter of Support dated 6/26/19.

-Attachment D: SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct; as amended 6/27/19.

-Attachment E: AB 2457 (Irwin) Podiatry, Title Change. Regulatory, Office of Administrative Law Approval 8/28/19.

Prepared by: Kathleen Cooper



Kathleen Cooper, Legislative Analyst



Brian Naslund, Executive Officer



California
LEGISLATIVE INFORMATION

AB-5 Worker status: employees and independent contractors.(2019-2020)

Date Published: 08/30/2019 09:00 PM

BILL START

AMENDED IN SENATE AUGUST 30, 2019

AMENDED IN SENATE JULY 11, 2019

AMENDED IN ASSEMBLY MAY 24, 2019

AMENDED IN ASSEMBLY MAY 01, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 5

Introduced by Assembly Member Gonzalez

December 03, 2018

An act to ~~amend Section 7500.2 of the Business and Professions Code, to~~ amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend ~~Section 621.5~~ *Sections*

606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an ~~employee, or is an employee of a person who holds or is required to obtain a valid state contractor’s license.~~ *employee.*

This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that ~~the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all~~ *for purposes of the provisions of the Labor Code and Code, the Unemployment Insurance Code, except if a and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation or business. The bill, notwithstanding this provision, would provide that any statutory exemption exception from employment status or from a particular obligation related to employment or where a statutory grant of employment status or a particular right related to employment applies. The bill would exempt specified professions from these provisions and instead provide that the employment relationship test for those professions or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 if certain requirements are met. (Borello). The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these occupations are governed by *Borello*.* These exempt ~~professions~~ *occupations* would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, *commercial fishermen*, workers providing ~~hairstyling or barbering~~ *licensed barber or cosmetology* services, ~~electrologists, estheticians, workers providing natural hair braiding, licensed repossession agencies who meet requirements described below,~~ and ~~those~~ *others* performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023.

~~This bill would also expand the definition of employee, for purposes of unemployment insurance provisions, to include individuals who are defined as employees pursuant to the above-described provision of the Labor Code codifying the “ABC” test.~~ *redefine the definition of “employee” described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity’s business.* Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. *The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill’s provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill’s enactment.*

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing a state-mandated local program.

~~Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services. Existing law defines a repossession agency to include any person who engages in the business or accepts employment to locate or recover collateral. Existing law permits a licensed repossession agency to only transact business with another person or entity as an independent contractor.~~

~~This bill, to ensure that independent contractor status is met, would require the repossession agency to be both free from the control and direction of the hiring person or entity, as specified, and perform work that is outside the usual course of the hiring person or entity’s business.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

DIGEST KEY

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

BILL TEXT

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

SECTION 1.

The Legislature finds and declares all of the following:

(a) On April 30, 2018, the California Supreme Court issued a unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th ~~903~~, *903* (*Dynamex*).

(b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers' compensation, Social Security, unemployment, and disability insurance.

(c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.

(d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in *Dynamex-Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th ~~903~~, and would clarify the decision's application in state law.

(e) The Dynamex decision interpreted one of the three alternative definitions of "employ," the "suffer or permit" definition, from the wage orders of the Industrial Welfare Commission (IWC). Nothing in this act is intended to affect the application of alternative definitions from the IWC wage orders of the term "employ," which were not addressed by the holding of Dynamex.

~~SEC. 2. Section 7500.2 of the Business and Professions Code is amended to read:
7500.2.~~

~~(a) A repossession agency means and includes any person who, for any consideration whatsoever, engages in business or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to, collateral registered under the provisions of the Vehicle Code which is subject to a security agreement, except for any person registered pursuant to Article 7 (commencing with Section 7506).~~

~~(b) A repossession agency licensed pursuant to this chapter shall only transact business with another person or entity as an independent contractor. To ensure that this requirement is met, both of the following shall be satisfied:~~

~~(1) The repossession agency shall be free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.~~

~~(2) The work that the repossession agency performs shall be outside the usual course of the hiring person or entity's business.~~

~~(c) A repossession agency shall not allow a person or entity other than the qualified certificate holder, as provided in Section 7505.1, or the owner or officer of the repossession agency, to manage the day-to-day operations, operate, control, or transact business covered by this act, except as provided in Section 7503.3.~~

~~SEC. 3.~~ **SEC. 2.**

Section 2750.3 is added to the Labor Code, to read:

~~2750.3.~~

~~(a) Except where a statutory exemption from employment status or an exemption from a particular obligation related to employment applies or where a statutory grant of employment status or a particular right related to employment applies, for~~
2750.3.

(a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

~~(1)~~

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

~~(2)~~

(B) The person performs work that is outside the usual course of the hiring entity's business.

~~(3)~~

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

*(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello).*

~~(b) This section~~ *Subdivision (a) and the holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (Dynamex), do not apply to the following occupations as defined in the paragraphs below, and instead, for these occupations only, the employment relationship shall be governed by the test adopted by the California Supreme Court in the case of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*S. G. Borello & Sons, Inc.*), or Section 7500.2 of, or subdivision (b) of Section 10032 of, the Business and Professions Code, as set forth in paragraphs (5) and (7) below. instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello. The exemptions in this subdivision for health care occupations shall not apply to facilities owned or operated by the state or the University of California.*

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) to ships, partnership, or professional corporation as defined in Section 13401 of the Corporations Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, veterinarian, private investigator, or accountant.

~~(3)~~

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

~~(4)~~

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

~~(5) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code shall have their relationship governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then classification shall be governed as follows: (1) for purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code; (2) for purposes of workers compensation by Section 3200 and following; and (3) for all other purposes in the Labor Code by the test adopted by the California Supreme Court in the case of S. G. Borello and Sons, Inc. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors under the Borello test.~~

~~(6) A worker providing hairstyling or barbering services, an electrologist, an esthetician, or worker providing natural hair braiding, who is free from direction or control both under the contract for the performance of the work and in fact. For purposes of this subparagraph, "free from direction or control" includes, but is not limited to, the worker meets all of the following criteria:~~

~~(A) Sets their own rates for services performed, provided the rate is equal to or greater than two times the minimum wages for hours worked and is paid directly by their clients.~~

~~(B) Sets their own hours of work and has sole discretion to decide which clients from who they will provide services.~~

~~(C) Has their own book of business and schedules their own appointments.~~

~~(D) Uses their own funds to purchase requisite supplies used in connection with providing services.~~

~~(E) Maintains their own business license in connection with the services offered to clients.~~

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of “employment” in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(c) (1) Subdivision (a) and the holding in Dynamex do not apply to a contract for “professional services” as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual’s residence, that is separate from the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual’s own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An “individual” includes an individual providing services through a sole proprietorship or other business entity.

(B) “Professional services” means services that meet any of the following:

(i) Marketing.

(ii) Administrator of human resources.

(iii) Travel agent services provided by either of the following: (I) a person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of

subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) Services provided by a still photographer or photojournalist who do not provide content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a "submission" is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by the publication or stock photography company and published or posted for sale.

(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.

(xi) Services provided by a licensed esthetician, licensed electrologist, licensed barber, or licensed cosmetologist. This subparagraph does not apply to a manicurist, unless the manicurist also is a licensed cosmetologist. However, the individual shall:

(I) Set their own rates and be paid directly by clients.

(II) Set their own hours of work and have sole discretion to decide the number of clients and which clients for whom they will provide services.

(III) Have their own book of business and schedules their own appointments.

(IV) Maintain their own business license for the services offered to clients.

(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for purposes of workers compensation by Section 3200 et seq.; and (C) for all other purposes

in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

~~(7)~~

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions ~~Code. Code,~~ for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

~~(8) The relationship between a business entity and an individual performing work pursuant to contract with another business entity to provide services to the contracting business, if the contracting business entity demonstrates that all the following criteria are satisfied:~~

(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The *business* service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The *business* service provider is providing services *directly* to the contracting business rather than to customers of the contracting business.

(C) The contract with the *business* service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the *business* service provider to have a business license or business tax registration, the *business* service provider has the required business license or business tax registration.

(E) The *business* service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The *business* service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The *business* service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The *business* service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The *business* service provider has no other financial relationships with the contracting business.

~~(J) The *business* service provider can negotiate its own rates, provided that the rate is equal to or greater than two times the minimum wage for hours worked. rates.~~

(K) The *business* service provider can set its own hours and location of work.

(L) The *business* service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to ~~Section 7000 and following Chapter 9 (commencing with Section 7000) of Division 3~~ of the Business and Professions Code.

~~(c)(1) This section and the holding in Dynamex do not apply to a contract for professional service and instead the employment relationship shall be governed by the test adopted by the California Supreme Court in the case of S. G. Borello & Sons, Inc., if the hiring entity demonstrates that all of the following factors are satisfied:~~

~~(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity.~~

~~(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.~~

~~(C) The individual has the ability to use their own employees in the completion of the work, where reasonable, and has the authority to hire and fire other persons who assist in providing the services. Nothing in this section requires an individual to hire an employee.~~

~~(D) The individual has the ability to engage in other contracts for services than with the hiring entity.~~

~~(E) Both the individual and the hiring entity have the ability to negotiate compensation for the services performed.~~

~~(F) Outside of project completion dates and reasonable business hours, the individual has the ability to set their own hours.~~

~~(G) For services that do not reasonably have to be performed at a specific location, the individual can determine where to perform the services under the contract.~~

~~(H) The individual is customarily engaged in the same type of work performed under the contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.~~

~~(I) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.~~

~~(2) For purposes of this subdivision:~~

~~(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.~~

~~(B)(i) "Professional services" means services that meet any of the following:~~

~~(I) Require an active license from the State of California and involve the practice of one of the following recognized professions: law, dentistry, architecture, engineering, podiatrists, veterinarian, private investigation, or accounting.~~

~~(II) Require possession of an advanced degree that customarily involves a prolonged course of specialized intellectual instruction and study in the field of marketing or the administration of human resources from an accredited university, college, or professional school, as distinguished from a general academic education.~~

~~(III) Work that is performed by a freelance writer who does not provide content to any one publication more than 25 times per year, if that person actually sets all of the following:~~

~~(ia) Hours.~~

~~(ib) Locations.~~

~~(ic) Rate of pay for work provided, except that rate shall be equal to or greater than two times the minimum wage for hours worked.~~

~~(IV) Fine artists, professional grant writers, and graphic designers if that person actually sets the hours, locations, and rates of pay for work provided.~~

~~(ii) "Professional services" does not include professionals engaged in the fields of health care and medicine.~~

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

~~(d) This section~~

(f) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the ~~employment relationship determination of whether the individual is an employee of the contractor~~ shall be governed by ~~the test adopted by the California Supreme Court in the case of S. G. Borello & Sons, Inc., Section 2750.5 and by Borello~~, if the contractor demonstrates that all the following criteria are satisfied:

~~(1) The individual is free from the control and direction of the contractor in connection with the performance of the work, both under the contract for the performance of the work and in fact.~~

~~(2)~~

(1) The subcontract is in writing.

~~(3)~~

(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.

~~(4)~~

(3) If the ~~work is performed~~ subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

~~(5)~~

(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

~~(6)~~

(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

~~(7)~~

*(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, *legally authorized indemnity obligations*, performance bonds, or warranties relating to the labor or services being provided.*

~~(8)~~

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

~~(e) The addition of this section to the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.~~

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.

(g) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the determination whether the service provider is an employee of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.

(D) The service provider delivers services to the client under service provider's name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.

(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

(G) The service provider maintains a clientele without any restrictions from the referral agency and is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) "Client" means a person or business that engages a service contractor through a referral agency.

(C) "Referral agency" is a business that connects service providers with clients that provide graphic design, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, web design, picture hanging, pool cleaning, and yard cleanup.

(D) "Referral agency contract" is the agency's contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) "Service contractor" means a person or business who agrees to the referral agency's contract and uses the referral agency to connect with clients.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) (1) The addition of subdivision (a) to this section of the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), and (g) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of this section of the Labor Code shall apply to work performed on or after January 1, 2020.

~~SEC. 4. Section 3351 of the Labor Code is amended to read:
3351.~~

~~"Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:~~

~~(a) Aliens and minors.~~

~~(b) All elected and appointed paid public officers.~~

~~(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.~~

~~(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.~~

~~(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.~~

~~(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.~~

~~(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.~~

~~(h) It is the intent of the Legislature to amend the law to address workers' compensation and the holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903. SEC. 5. Section 621.5 of the Unemployment Insurance Code is amended to read: 621.5.~~

~~(a) "Employee" also means any individual who is an employee, pursuant to Section 2750.5 of the Labor Code, of a person who holds a valid state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.~~

~~(b) When subdivision (a) does not apply, "employee" also means any individual who is an employee, pursuant to Section 2750.5 of the Labor Code, of a person who is required to obtain a valid state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.~~

~~(c) "Employee" also means any individual who is an employee pursuant to Section 2750.3 of the Labor Code.~~

SEC. 3.

Section 3351 of the Labor Code, as amended by Section 33 of Chapter 38 of the Statutes of 2019, is amended to read:

3351.

"Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors

may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2750.3. This subdivision shall not apply retroactively.

SEC. 4.

Section 606.5 of the Unemployment Insurance Code is amended to read:

606.5.

(a) Whether an individual or entity is the employer of specific employees shall be determined ~~under common law rules applicable in determining the employer-employee relationship,~~ pursuant to subdivision (b) of Section 621, except as provided in subdivisions (b) and (c).

(b) As used in this section, a “temporary services employer” and a “leasing employer” is an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

(1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.

(2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

(3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.

(4) Assigns or reassigns the worker to perform services for a client or customer.

(5) Sets the rate of pay of the worker, whether or not through negotiation.

(6) Pays the worker from its own account or accounts.

(7) Retains the right to hire and terminate workers.

(c) If an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or a temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to perform services for a customer or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

(d) In circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

SEC. 5.

Section 621 of the Unemployment Insurance Code is amended to read:

621.

“Employee” means all of the following:

(a) Any officer of a corporation.

(b) Any individual ~~who, under the usual common law rules applicable in determining the employer-employee relationship,~~ *providing labor or services for remuneration* has the status of an ~~employee.~~ *employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:*

(1) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The individual performs work that is outside the usual course of the hiring entity's business.

(3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of those services are to be performed personally by that individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for ~~his or her~~ *their* principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his or her~~ *their* principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person that are required to be returned to that person or a ~~person designated by him or her~~ *designee thereof*.

(2) An individual shall not be included in the term “employee” under the provisions of this subdivision if that individual has a substantial investment in facilities used in connection with the performance of those services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

(f) Any member of a limited liability company that is treated as a corporation for federal income tax purposes.

SEC. 6.

No provision of this measure shall permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to this measure's enactment.

~~SEC. 6.~~ **SEC. 7.**

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AB 407 – Fluoroscopy and Radiography Permit



California

LEGISLATIVE INFORMATION

AMENDED IN SENATE JULY 01, 2019

AMENDED IN SENATE JUNE 17, 2019

AMENDED IN ASSEMBLY APRIL 11, 2019

AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

AB-407 Fluoroscopy and radiography permit or certification and continuing education: exceptions.(2019-2020)

SECTION 1.

Section 107110 of the Health and Safety Code is amended to read:

107110.

(a) It shall be unlawful for any licentiate of the healing arts to administer or use diagnostic, mammographic, or therapeutic X-ray on human beings in this state after January 1, 1972, unless that person is certified pursuant to subdivision (e) of Section 114870, Section 114872, or Section 114885, and is acting within the scope of that certification.

(b) Notwithstanding subdivision (a), a physician and surgeon or a doctor of podiatric medicine, who complies with subdivision (c), may provide fluoroscopy and radiography services and may supervise radiologic technologists prior to receiving a Fluoroscopy X-ray Supervisor and Operator's permit or certification.

(c) A physician and surgeon or a doctor of podiatric medicine, who has completed the radiation safety training provided by a facility accredited by the Centers for Medicare and Medicaid Services' Conditions for Coverage relating to radiation safety, shall submit evidence that they have completed the facility's radiation safety training to the State Department of Public Health within 60 days of completing the training. That training shall serve in lieu of passing the Fluoroscopy X-ray Supervisor and Operator's permitting or certification test required by the State Department of Public Health.

(d) After receiving evidence that the radiation safety training is complete, along with a copy of their valid license and any required and reasonable permit or certification fee, the State Department of Public Health shall issue the physician and surgeon or the doctor of podiatric medicine a Fluoroscopy X-ray Supervisor and Operator's permit or certification without requiring a permitting or certification examination.

SEC. 2.

AB 407 – Fluoroscopy and Radiography Permit

Section 114870 of the Health and Safety Code is amended to read:

114870.

The department shall do all of the following:

(a) Upon recommendation of the committee, adopt regulations as may be necessary to accomplish the purposes of this chapter.

(b) (1) Provide for certification of radiologic technologists, without limitation as to procedures or areas of application, except as provided in Section 106980. Separate certificates shall be provided for diagnostic radiologic technology, for mammographic radiologic technology, and for therapeutic radiologic technology. If a person has received accreditation to perform mammography from a private accreditation organization, the department shall consider this accreditation when deciding to issue a mammographic radiologic technology certificate.

(2) Provide, upon recommendation of the committee, that a radiologic technologist who operates digital radiography equipment devote a portion of ~~his or her~~ *their* continuing education credit hours to continuing education in digital radiologic technology.

(c) (1) (A) Provide, as may be deemed appropriate, for granting limited permits to persons to conduct radiologic technology limited to the performance of certain procedures or the application of X-rays to specific areas of the human body, except for mammography, prescribe minimum standards of training and experience for these persons, and prescribe procedures for examining applicants for limited permits. The minimum standards shall include a requirement that persons granted limited permits under this subdivision shall meet those fundamental requirements in basic radiological health training and knowledge similar to those required for persons certified under subdivision (b) as the department determines are reasonably necessary for the protection of the health and safety of the public.

(B) Provide that an applicant for approval as a limited permit X-ray technician in the categories of chest radiography, extremities radiography, gastrointestinal radiography, genitourinary radiography, leg-podiatric radiography, skull radiography, and torso-skeletal radiography, as these categories are defined in Section 30443 of Title 17 of the California Code of Regulations, shall have at least 50 hours of education in radiological protection and safety. The department may allocate these hours as it deems appropriate.

(2) Provide that a limited permit X-ray technician in the categories of chest radiography, extremities radiography, gastrointestinal radiography, genitourinary radiography, leg-podiatric radiography, skull radiography, and torso-skeletal radiography, as these categories are defined in Section 30443 of Title 17 of the California Code of Regulations, may perform digital radiography within their respective scopes of practice after completion of 20 hours or more of instruction in digital radiologic technology approved by the department. This requirement shall not be construed to ~~does not~~ preclude limited permit X-ray technicians in the categories of dental laboratory radiography and X-ray bone densitometry from performing digital radiography upon meeting the educational requirements determined by the department.

(3) Provide, upon recommendation of the committee, that a limited permit X-ray technician who has completed the initial instruction described in paragraph (2) devote a portion of ~~his or her~~ *their* required continuing education credit hours to additional continuing instruction in digital radiologic technology.

AB 407 – Fluoroscopy and Radiography Permit

(d) Provide for the approval of schools for radiologic technologists. Schools for radiologic technologists shall include 20 hours of approved instruction in digital radiography. The department may exempt a school from this requirement as it deems appropriate.

(e) Provide, upon recommendation of the committee, for certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, prescribe minimum standards of training and experience for these licentiates of the healing arts, and prescribe procedures for examining applicants for certification. This certification may limit the use of X-rays to certain X-ray procedures and the application of X-rays to specific areas of the human body.

(f) (1) Provide for certification of any physician and surgeon to operate, and supervise the operation of, a bone densitometer, if that physician and surgeon provides the department a certificate that evidences training in the use of a bone densitometer by a representative of a bone densitometer machine manufacturer, or through any radiologic technology school. The certification shall be valid for the particular bone densitometer the physician and surgeon was trained to use, and for any other bone densitometer that meets all of the criteria specified in subparagraphs (A) to (C), inclusive, if the physician and surgeon has completed training, as specified in subparagraph (A) of paragraph (2), for the use of that bone densitometer. The physician and surgeon shall, upon request of the department, provide evidence of training, pursuant to subparagraph (A) of paragraph (2), for the use of any bone densitometer used by the physician and surgeon. The activity covered by the certificate shall be limited to the use of an X-ray bone densitometer to which all of the following is applicable:

(A) The bone densitometer does not require user intervention for calibration.

(B) The bone densitometer does not provide an image for diagnosis.

(C) The bone densitometer is used only to estimate bone density of the heel, wrist, or finger of the patient.

(2) The certificate shall be accompanied by a copy of the curriculum covered by the manufacturer's representative or radiologic technology school. The curriculum shall include, at a minimum, instruction in all of the following areas:

(A) Procedures for operation of the bone densitometer by the physician and surgeon, and for the supervision of the operation of the bone densitometer by other persons, including procedures for quality assurance of the bone densitometer.

(B) Proper radiation protection of the operator, the patient, and third parties in proximity to the bone densitometer.

(C) Provisions of Article 5 (commencing with Section 106955) of Chapter 4 of Part 1 of Division 104.

(D) Provisions of Chapter 6 (commencing with Section 114840) of Part 9 of Division 104.

(E) Provisions of Group 1 (commencing with Section 30100) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(F) Provisions of Group 1.5 (commencing with Section 30108) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

AB 407 – Fluoroscopy and Radiography Permit

(G) Provisions of Article 1 (commencing with Section 30252) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(H) Provisions of Article 2 (commencing with Section 30254) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(I) Provisions of Article 3 (commencing with Section 30275) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(J) Provisions of Article 4 (commencing with Section 30305) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(K) Provisions of Subchapter 4.5 (commencing with Section 30400) of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(3) (A) Notwithstanding any other ~~provision of~~ law, this subdivision shall constitute all the requirements that must be met by a physician and surgeon in order to operate, and supervise the operation of, a bone densitometer. The department may adopt regulations consistent with this section in order to administer the certification requirements.

(B) No person may be supervised by a physician and surgeon in the use of a bone densitometer unless that person possesses the necessary license or permit required by the department.

(C) Nothing in this subdivision shall affect the requirements imposed by the committee or the department for the registration of a bone densitometer machine, or for the inspection of facilities in which any bone densitometer machine is operated.

(D) This subdivision shall not apply to a licentiate of the healing arts who is certified pursuant to subdivision (e) or pursuant to Section 107111.

(E) The department shall charge a fee for a certificate issued pursuant to this subdivision to the extent necessary to administer certification. The fee shall be in an amount sufficient to cover the department's costs of implementing this subdivision and shall not exceed the fee for certification to operate or supervise the operation of an X-ray machine pursuant to subdivision (e). The fees collected pursuant to this subparagraph shall be deposited into the Radiation Control Fund established pursuant to Section 114980.

(g) Upon recommendation of the committee, exempt from certification requirements those licentiates of the healing arts who have successfully completed formal courses in schools certified by the department and who have successfully passed a roentgenology technology and radiation protection examination approved by the department and administered by the board that issued ~~his or her~~ *their* license.

(h) (1) No later than July 1, 2019, the department shall require an applicant to provide either the individual taxpayer identification number or social security number for purposes of applying for or the renewal of a certificate, license, or permit issued under this section or regulations promulgated pursuant thereto.

(2) The individual taxpayer identification or the social security number shall serve to establish the identification of persons affected by state tax laws and for purposes of establishing compliance with subsection (a) of Section 666 of Title 42 of the United States Code, Section 60.15 of Title 45 of the Code of Federal Regulations, Section 17520 of the Family Code, and Section 11105 of the Penal Code, and to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

AB 407 – Fluoroscopy and Radiography Permit

(3) The department shall not do either of the following:

(A) Require an applicant to disclose citizenship status or immigration status for purposes of the application or renewal of a certificate, license, or permit issued under this section or regulations promulgated pursuant thereto.

(B) Deny certification to an otherwise qualified and eligible applicant based solely on ~~his or her~~ citizenship status or immigration status.

(4) If the department utilizes a national examination to issue a certificate, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of the department may release an individual's taxpayer identification number or social security number to an examination or certifying entity, only for the purpose of verification of certification or examination status.

(i) A physician and surgeon or a doctor of podiatric medicine, who works in a setting that is in compliance with the Centers for Medicare and Medicaid Services' Conditions for Coverage relating to radiation safety, satisfies the requirement for fluoroscopy and radiography continuing education as set forth in subdivision (b) of Section 30403 of Title 17 of the California Code of Regulations.



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • PODIATRIC MEDICAL BOARD OF CALIFORNIA
2005 Evergreen St., Suite 1300, Sacramento, CA 95815
P (916) 263-2647 | F (916) 263-2651 | www.bpm.ca.gov



June 26, 2019

The Honorable Miguel Santiago
P.O. Box 942849
Sacramento, CA 94249-0053

**RE: AB 407 Fluoroscopy Permit or Certification and Continuing Education:
Exceptions – BPM Position: Support**

Dear Assembly Member Santiago,

On behalf of the Board of Podiatric Medicine (BPM), I write to register BPM's support of AB 407, as amended on 6.21.19. Fluoroscopy is an important diagnostic tool that doctors of podiatric medicine use to provide proper positioning for bone fractures.

This Board's purpose is to protect members of the public as to the provision of podiatric medical services in California. Currently, all personnel in the operating room must undergo annual education and training in fluoroscopy radiation safety to meet the accreditation standards needed to be accredited by the Joint Commission. This proposed legislation will allow doctors of podiatric medicine to use fluoroscopy by complying with the facilities' radiation safety requirements as mandated by the Centers for Medicare and Medicaid Services' (CMS) radiation safety standards.

This Board is confident that the required training for those providing fluoroscopy services will protect the public and provide for the efficient provision of podiatric medical care.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Naslund".

Brian Naslund, Executive Officer

cc: Hon. Jim Wood, Chair, Assembly Health Committee
Hon. Members of the Assembly Health Committee
Hon. Members of the Senate Health Committee
Ryan Tacher, Legislative Analyst, Department of Consumer Affairs
Jon Hultman, DPM, Executive Director, California Podiatric Medical Association



California
LEGISLATIVE INFORMATION

AB-678 Medi-Cal: podiatric services.(2019-2020)

ENROLLED SEPTEMBER 03, 2019

PASSED IN SENATE AUGUST 15, 2019

PASSED IN ASSEMBLY AUGUST 30, 2019

AMENDED IN SENATE JULY 08, 2019

AMENDED IN ASSEMBLY APRIL 09, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 678

Introduced by Assembly Member Flora

February 15, 2019

An act to repeal and add Section 14133.07 of, the Welfare and Institutions Code, relating to
Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 678, Flora. Medi-Cal: podiatric services.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including podiatric services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program

provisions. Existing law provides that prior authorization for podiatric services provided on an outpatient or inpatient basis is not required if specified conditions are met, including an urgent or emergency need for services at the time of service.

This bill would repeal these provisions, and would instead prohibit the requirement of prior authorization for podiatric services provided by a doctor of podiatric medicine if a physician and surgeon rendering the same services would not be required to provide prior authorization. The bill would clarify that a doctor of podiatric medicine acting within their scope of practice and providing specified services is subject to the same Medi-Cal billing and services policies as required for a physician and surgeon, including a maximum numerical service limitation in any one calendar month.

DIGEST KEY

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

BILL TEXT

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

SECTION 1.

Section 14133.07 of the Welfare and Institutions Code is repealed.

SEC. 2.

Section 14133.07 is added to the Welfare and Institutions Code, to read:

14133.07.

(a) A doctor of podiatric medicine shall not be required to submit prior authorization for podiatric services rendered in either an outpatient or inpatient basis if a physician and surgeon providing the same services would not be required to submit prior authorization to the department.

(b) A doctor of podiatric medicine acting within their scope of practice and providing services pursuant to subdivision (a) is subject to the same Medi-Cal billing and services policies as required for a physician and surgeon, including, but not limited to, a maximum numerical service limitation in any one calendar month.



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
 DEPARTMENT OF CONSUMER AFFAIRS • PODIATRIC MEDICAL BOARD OF CALIFORNIA
 2005 Evergreen St., Suite 1300, Sacramento, CA 95815
 P (916) 263-2647 | F (916) 263-2651 | www.bpm.ca.gov



June 26, 2019

The Honorable Heath Flora
 P.O. Box 942849
 Sacramento, CA 94249-0012

RE: AB 678 – Medi-Cal: Podiatric Services: BPM Position: Support

Dear Assembly Member Flora,

On behalf of the Board of Podiatric Medicine (BPM), I write to register BPM's support of AB 678, as amended on 4.9.19. The Board's position on this proposed legislation is that the restoration of podiatric medical services to those participating in the Medi-Cal program will assist those California residents in need of diabetic wound care of the lower limb and better utilize the strengths and specialized training provided by podiatric medical doctors in the State of California.

Recent studies show that access to podiatric medical care can prevent complications for patients and provide savings for healthcare delivery systems. The removal of barriers to the provision of podiatric medical services in California will predictably prevent amputations due to diabetic vascular issues and this will ultimately benefit all the citizens of California.

The mission of this Board is to protect the public and to regulate podiatric medical services in the State of California. AB 678 will assist the licensees of this Board in providing much needed lower limb wound care to the population in California that participates in Medi-Cal.

Sincerely,

Brian Naslund, Executive Officer

cc: Hon. Jim Wood, Chair, Assembly Health Committee
 Hon. Members of the Assembly Health Committee
 Hon. Members of the Senate Health Committee
 Ryan Tacher, Legislative Analyst, Department of Consumer Affairs
 Jon Hultman, DPM, Executive Director, California Podiatric Medical Association

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**



California
LEGISLATIVE INFORMATION

**SB-425 Health care practitioners: licensee's file: probationary
physician's and surgeon's certificate: unprofessional
conduct.** (2019-2020)

Date Published: 06/27/2019 09:00 PM

BILL START

AMENDED IN ASSEMBLY JUNE 27, 2019

AMENDED IN ASSEMBLY JUNE 17, 2019

AMENDED IN SENATE MAY 21, 2019

AMENDED IN SENATE APRIL 30, 2019

AMENDED IN SENATE APRIL 11, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 425

Introduced by Senator Hill

February 21, 2019

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

An act to amend Sections 800, 2221, and 2234 of, and to add Section 805.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, Hill. Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct.

Existing law requires the Medical Board of California and specified other boards responsible for the licensure, regulation, and discipline of health care practitioners to separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board, including prescribed historical information for each licensee. Existing law makes the contents of any central file that are not public records confidential, except that the licensee or their counsel or a representative are authorized to inspect and have copies made of the licensee's complete file other than the disclosure of the identity of an information source. Existing law authorizes a board to protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material.

This bill would delete the specification that the summary be comprehensive.

Existing law establishes a peer review process for certain healing arts licentiates, as defined, and requires the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic to report specified information, including the denial or revocation of staff privileges, as defined, for a medical disciplinary cause or reason, within 15 days of the denial or revocation to the relevant state licensing agency. Existing law makes a violation of this reporting requirement punishable by a civil fine.

This bill would require any health care facility, as defined, or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to report any allegation of sexual abuse or sexual misconduct, as defined, made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the relevant state licensing agency within 15 days of receiving the written allegation and would require the relevant agency to investigate the circumstances underlying a received report. The bill would require such a report to be kept confidential and, with certain exceptions, such a report would not be subject to discovery or disclosure in a disciplinary hearing. The bill would make a willful failure to file the report by a health care facility or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation, as specified. The bill would also prohibit a person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity from incurring civil or criminal liability as a result of making a ~~report if made in good faith.~~ *report.*

The Medical Practice Act establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons.

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

The act authorizes the board to 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 act authorizes the board in its sole discretion to issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions.

This bill would require the board to disclose a probationary physician's and surgeon's certificate and the operative statement of issues to an inquiring member of the public and to post the certificate and statement on the board's internet website for 10 years from issuance.

The act requires the board to take action against any licensee who is charged with unprofessional conduct and provides that unprofessional conduct includes the repeated failure by a certificate holder who is the subject of an investigation by the board, in the absence of good cause, to attend and participate in an interview by the board.

This bill would delete the condition that the failure to attend and participate in an interview by the board be repeated. The bill would also delete an obsolete provision.

DIGEST KEY

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

BILL TEXT

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

SECTION 1.

Section 800 of the Business and Professions Code is amended to read:

800.

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

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

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

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

- (3) Any public complaints for which provision is made pursuant to subdivision (b).
- (4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licensee pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.
- (5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.
- (b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.
- (2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.
- (3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.
- (c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or the licensee's counsel or representative, may inspect and have copies made of the licensee's complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.
- (2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.
- (3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.
- (4) These disclosures shall effect no change in the confidential status of these records.

SEC. 2.

Section 805.8 is added to the Business and Professions Code, to read:

805.8.

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

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

(1) "Agency" means the relevant state licensing agency with regulatory jurisdiction over a healing arts licensee listed in paragraph (2).

(2) "Healing arts licensee" or "licensee" means a licensee licensed under Division 2 (commencing with Section 500) or any initiative act referred to in that division. "Healing arts licensee" or "licensee" also includes a person authorized to practice medicine pursuant to Sections 2064.5, 2113, and 2168.

(3) "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.

(4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.

(5) "Sexual misconduct" means inappropriate contact or communication of a sexual nature.

(b) A health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the agency within 15 days of receiving the written allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(c) The report provided pursuant to subdivision (b) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided subdivision in (c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) A willful failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed one hundred thousand dollars (\$100,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. **If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California.** The fine shall be paid to that agency, but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licensee. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(e) Except as provided in subdivision (c), any failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed fifty thousand dollars (\$50,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; whether there has been a prior failure to file a report required under this section; and whether a report was filed with another state agency or law enforcement. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural ~~hospital~~ *hospital*, as defined in Section 124840 of the Health and Safety Code.

(f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity shall not incur any civil or criminal liability as a result of making a report required by this ~~section if made in good faith.~~ *section.*

(g) The agency shall investigate the circumstances underlying a report received pursuant to this section.

SEC. 3.

Section 2221 of the Business and Professions Code is amended to read:

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.

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

(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.

SEC. 4.

Section 2234 of the Business and Professions Code is amended to read:

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. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

**SB-425 Health care practitioners: licensee's file:
probationary physician's and surgeon's certificate: unprofessional conduct**

**State of California
Office of Administrative Law**

In re:
Podiatric Medical Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections:

Amend sections: 1399.651, 1399.653,
1399.663, 1399.667,
1399.679, 1399.681,
1399.700, 1399.703,
1399.720

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**


OAL Matter Number: 2019-0719-02

OAL Matter Type: Nonsubstantive (N)

The Podiatric Medical Board of California (Board) submitted this action without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to change the Board's name from Board of Podiatric Medicine to Podiatric Medical Board of California in the Board's regulations. The Board's name was changed by the Legislature in A.B. 2457 (Stats.2018, c. 102), effective July 1, 2019.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: August 28, 2019



Richard L. Smith
Senior Attorney

For: Kenneth J. Pogue
Director

NOTICE PUBLICATION/REGULATIONS SUBMISSION

NONSUBSTANTIVE

(See instructions on reverse)

ATTACHMENT E

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2019-0719-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Podiatric Medicine Podiatric Medical Board of California			AGENCY FILE NUMBER (if any)

2019 JUL 23 P 12: 23

OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Title Change		TITLE(S) 16	FIRST SECTION AFFECTED 1399.650	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Kathleen Cooper	TELEPHONE NUMBER 916-263-0315	FAX NUMBER (Optional) 916-263-2651
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Title Change for Board of Podiatric Medicine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1399.650, 1399.651, 1399.653, 1399.663, 1399.667, 1399.679, 1399.681, 1399.700, 1399.703, 1399.720
TITLE(S) 16	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
N/A

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	--	--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) Christopher Schultz, Director, Department Consumer Affairs.		

7. CONTACT PERSON Kathleen Cooper	TELEPHONE NUMBER (916) 263-0315	FAX NUMBER (Optional) (916) 263-2651	E-MAIL ADDRESS (Optional) kathleen.cooper@dca.ca.gov
--------------------------------------	------------------------------------	---	---

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 7/23/19
TYPED NAME AND TITLE OF SIGNATORY BRIAN K. NASLUND E.O.	

For use by Office of Administrative Law (OAL) only