NURSING PRACTICE
COMMITTEE MEETING

Los Angeles Airport Marriott
5855 West Century Blvd.
Los Angeles, CA 90045
(310) 641-5700

AGENDA

October 4, 2017

THIS MEETING WILL IMMEDIATELY FOLLOW THE CONCLUSION OF THE INTERVENTION/DISCIPLINE COMMITTEE MEETING

Wednesday, October 4, 2017

10.0 Call to Order/Roll Call /Establishment of a Quorum
10.0.1 Review and Vote on Whether to Approve Previous Meeting’s Minutes:
  ➢ August 9, 2017

10.1 Information and Possible Action Regarding: Comprehensive Addiction and Recovery Act (CARA), Public Law 114-198 Required Training of Nurse Practitioners and Physicians Assistants and Adding Section 2836.4 to Business and Professions Code

10.2 Information and Possible Action Regarding: Medical Board of California’s Draft Guidelines for the Recommendation of Cannabis for Medical Purposes.

10.3 Information: Update on the Application Process for the Advance Practice Advisory Committee

10.4 Public Comment for Items Not on the Agenda

10.5 Adjournment

NOTICE:

All times are approximate and subject to change. Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. The meeting may be canceled without notice. For verification of the meeting, call (916) 574-7600 or access the Board’s Web Site at http://www.rn.ca.gov. Action may be taken on any item listed on this agenda, including information only items.

Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Administration Unit at (916) 574-7600 or email webmasterbrn@dca.ca.gov, or send a written request to the Board of Registered Nursing at 1747 N. Market Blvd., Ste. 150, Sacramento, CA 95834. (Hearing impaired: California Relay Service: TDD phone # (800) 326-2297). Providing your request at least five (5) business days before the meeting will help to ensure the availability of the requested accommodation. Board members who are not members of this committee may attend meetings as observers only, and may not participate or vote. Action may be taken on any item listed on this agenda, including information only items. Items may be taken out of order for convenience, to accommodate speakers, or maintain a quorum.
October 4, 2017

Los Angeles Airport Marriott
5855 West Century Blvd
Los Angeles, CA 90045
(310) 641-5700

MEMBERS PRESENT
Michael Jackson, MSN, BSN, RN, CEN, MICN
Elizabeth Woods, RN, FNP
Trande Phillips, RN,
Cynthia Klein, RN

STAFF PRESENT: Janette Wackerly, MBA, BSN, RN, SNEC, Staff Liaison

October 4, 2017
Meeting called to order by Michael Jackson, RN Chair at 12:45 PM
Member introductions: Michael Jackson RN, Cynthia Klein, RN, Elizabeth Woods, RN

10.0 Review and Vote on Whether to Approve Previous Meeting Minutes August 9, 2017

<table>
<thead>
<tr>
<th>Motion: Trande Phillips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second: Michael Jackson</td>
</tr>
<tr>
<td>TP: Yes</td>
</tr>
</tbody>
</table>

10.1 Attached in the April 5th, 2017 Nurse-Midwifery Advisory Committee meeting agenda and draft meeting minutes. Nurse-Midwifery Advisory Committee members were noticed by email regarding September 7, 2017 Board Meeting, and whether it is a possible date for an informational session related to Nurse-Midwifery Practice. The Nurse-Midwifery members to determine if September 7, 2017 is an acceptable date for their next Nurse-Midwifery Committee Advisory meeting following the Board Meeting.

The attachment does not require an action by the Practice Committee.
**Public Comment:** BJ Snell PhD, CNM introduce as chair of board’s Nurse-Midwifery Advisory Committee. BJ Snell reported on: Membership of the Nurse-Midwifery Advisory Committee, Mission statement approved by committee members. Request to inform the board members regarding CNM practice and education, Enforcement process questions for CNM from complaint to outcome. CNM practice requires physician and surgeon supervision and physician and surgeon supervision not available at home births. Physician and surgeon supervision not defined in statute or regulation. Statutory change for 2746.5 supervision by physician and surgeon. Statutory change for change for 2746.52 episiotomies and repair of lacerations.

10.2 The Board of Registered Nursing wishes to inform registered nurses about question concerning the scope of RN practices in medical spas. The use of prescriptive medical devices and injections for cosmetic purposes in the practice of medicine. There are no separate laws governing medical cosmetic treatment and procedures and the RN’s and physicians will be held to their licensing standards. (Business and Professions code 2725 Nursing Practice Act) Please review the Medical Board of California available documents at the Medical Board website.

Frequently Asked Questions- Cosmetic Treatments Use of Mid-Level Practitioners for Laser, Dermbrators, Botox, and Other Treatments  
http://www.mbc.ca.gov/Licensees/Cosmetic_Treatments_FAQ.aspx

The Bottom Line: The Business of Medicine- Medical Spas  
http://www.mbc.ca.gov/Licensees/medical_spas-business.pdf

<table>
<thead>
<tr>
<th>Motion: Trande Phillips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second: Michael Jackson</td>
</tr>
<tr>
<td>TP: Yes</td>
</tr>
</tbody>
</table>

10.3 • Advance Practice Registered Nurse Committee Call for Interested Parties  
• Procedures for the Advance Practice Registered Nurse Committee  
• Advance Practice Registered Nurse Committee Member Application  
• Advance Practice Registered Nurse Committee Appointment

The purpose of the advanced practice committee is to provide recommendations to the Board on issues involving nursing advanced practice. The advanced practice registered nurses are nurse practitioner, nurse anesthetist, nurse-midwives and clinical nurse specialists.

The goals of the advanced practice committee:
1. Clarify and articulate sufficiency of the four advanced practice roles and recommend changes to the Nursing Practice Act and rules
2. Develop recommendations for joint statements related to scope of practice and advanced practice nurse functions
3. Review national trends in the regulation of advance practice nurses and make recommendations to the board.
4. Collaborate with other Board committees on matters of mutual interest

Suggestion for committee members to include 4 NPs, 2 CRNA, 2 CNS, and 2 CNM. The committee members are requested to have diverse and rich backgrounds. Members include nurses from various areas of nursing agencies and health care setting throughout the state. Each member may serve a maximum of two consecutive terms.

Suggestion for committee meetings to be held semi-annually in Sacramento in person and by WebEx.

The Senate Committee on Business, Professions and Economic Development and the Assembly Business and Professions Committee recommends the BRN should establish an Advanced Practice Committee, separate from the Nursing Practice Committee, whose goal is to survey existing laws and regulations and determine what is lacking for regulation of APRNs. The BRN should seek legislation, promulgate regulations, and develop advisories to ensure APRNs have sufficient guidance in all practice settings.

**Public Comment:** Susan Phillips DNP, FNP, RN representing Action Coalition stating all four, APRN, all work together.

BJ Snell PhD. RN asking why difference in number amongst groups NP 4, 2 CRNA, 2 CNM, 2 CNS.

E. Brown CNS asking why difference in number amongst group NP 4, 2 CRNA, 2 CNM, 2 CNS.

10.4 Public Comment for Items Not on the Agenda

No Public Comment under 10.4

10.5 Adjournment at 1:10 pm

Submitted by: Janette Wackerly, MBA, BSN, RN, SNEC Supervising Nursing Education Consultant
Accepted by: Trande Phillips, RN NP Liaison
AGENDA ITEM: 10.1  
DATE: October 4, 2017

ACTION REQUESTED: Information and Possible Action Regarding: Comprehensive Addiction and Recovery Act (CARA), Public Law 114-198 
Required Training of Nurse Practitioners and Physicians Assistants and Adding Section 2836.4 to Business and Professions Code

REQUESTED BY: Elizabeth Woods, RN, FNP

BACKGROUND: Legislation enacted during 2017 session, Senate Bill 554 (Stone) Chapter 242, signed by the Governor on September 11, 2017 becoming effective January 1, 2018 and is an act to add Section 2836.4 NP Nurse Practitioner and 3502.1.5 Physician Assistant. Buprenorphine ordering or furnishing by a nurse practitioner when done in compliance with the provisions of the Comprehensive Addition Recovery Act (Public Law 114-198) enacted July 22. 2016

CARA Act
On July 22, 2016, President Obama signed the Comprehensive Addiction and Recovery Act (CARA) into law as Public Law 114-198. One of CARA’s important provisions expands access to substance use treatment services and overdose reversal medications—including the full spectrum of services from prevention to medication-assisted treatment (MAT) and recovery support—by extending the privilege of prescribing buprenorphine in office-based settings to qualifying nurse practitioners (NPs) and physician assistants (PAs) until Oct. 1, 2021.

Proposed Learning Objectives
CARA requires that NPs and PAs complete 24 hours of training to be eligible for a prescribing waiver. SAMHSA has created a list of recommended learning objectives for the trainings. While we cannot require that the organizations listed in the CARA Act use these learning objectives, we are sharing them with the stakeholders. Access the Proposed Learning Objectives for the NP and PA Waiver Training – 2017 (PDF | 196 KB).

Sign Up for Courses
NPs and PAs are required to obtain no fewer than 24 hours of initial training addressing each of the topics in 21 USC
823(g)(2)(G)(ii)(IV) provided by one of the following organizations: The American Society of Addiction Medicine, American Academy of Addiction Psychiatry, American Medical Association, American Osteopathic Association, American Nurses Credentialing Center, American Psychiatric Association, American Association of Nurse Practitioners, American Academy of Physician Assistants, or any other organization that the Secretary of Health and Human Services determines is appropriate.

NPs and PAs may take the eight-hour DATA-waiver course for treatment of opioid use disorder, designed by national experts, that physicians currently take. The course is offered for free by SAMHSA through the Providers’ Clinical Support System for Medication Assisted Treatment (PCSS-MAT) (link is external). For the additional 16 hours, SAMHSA will also offer the training for free through the PCSS-MAT once it has been developed. NPs and PAs who have completed the required training and seek to become DATA-waiver for up to 30 patients will be able to apply to do so beginning in early 2017. For more information on the upcoming launch of the application and SAMHSA-sponsored training opportunities, sign up (link is external) for the Buprenorphine Waiver Management email list.

**Completing the Waiver NOI Form**
NPs and PAs who have completed the 24 hours of required training may seek to obtain a DATA 2000 waiver for up to 30 patients by completing the Waiver Notification Form. **Effective February 27, 2017,** SAMHSA will only accept electronic submissions of the NOI.

NPs and PAs may send copies of their training certificates to infobuprenorphine@samhsa.hhs.gov (link sends e-mail) or faxed them to 301-576-5237. These waiver applications are forwarded to the Drug Enforcement Administration (DEA), which will assign the NP or PA a special identification number. DEA regulations require this number to be included on all buprenorphine prescriptions for opioid dependency treatment, along with the NP’s or PA’s regular DEA registration number. SAMHSA shall review waiver applications within 45 days of receipt. If approved, NPs and PAs will receive a letter via email that confirms their waiver and includes their prescribing identification number.

**NEXT STEPS:**
Place on Board agenda.

**FISCAL IMPACT, IF ANY:**
None
PERSON(S) TO CONTACT: Janette Wackerly, MBA, BSN, RN
Supervising Nursing Education Consultant
Janette.Wackerly@dca.ca.gov
(916) 574-7686
Nurse Practitioners and Physician Assistant

Buprenorphine ordering or furnishing by an NP when done in compliance with the provisions of Comprehensive Addiction Recovery Act (Public Law 114-198) enacted July 22, 2016

Legislation enacted during the 2017 Session

Senate Bill 554 (Stone) Chapter 242 effective January 1, 2018 an act to add Section 2836.4 and 3502.1.5 to the Business and Professions Code, relating to healing arts.

Section 1. Section 2836.4 is added to the Business and Professions Code to read:

2836.4 Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering buprenorphine when done in compliance with the provisions of the Comprehensive Addiction Recovery Act (Public Law 114-198) as enacted on July 22, 2016, including the following:

(a) The requirement that the nurse practitioner complete not fewer than 24 hours of initial training provided by an organization listed in sub-sub clause (aa) of sub clause (II) of clause (iv) of subparagraph (G) of paragraph (2) of subdivision (g) of Section 823 of Title 21 of the United States Code, or any other organization that the United States Secretary of Health and Human Services determines is appropriate for the purposes of that sub-sub clause, that addresses the following:

1. Opioid maintenance and detoxification.
2. Appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder.
3. Initial and periodic patient assessments, including substance abuse monitoring.
4. Individual treatment planning, overdose reversal, and relapse prevention.
5. Counseling and recovery support services.
7. Diversion control.
8. Other best practices, as identified by the United States Secretary of Health and Human Services determines will demonstrate the ability of the nurse practitioner to treat and manage opiate-dependent patient.

(b) The alternative requirement that the nurse practitioner have other training or experience that the United States Secretary of Health and Human Services determines will demonstrate ability of the nurse practitioner to treat and manage opiate-dependent patients

(c) The requirement that the nurse practitioner be supervised by, or work in collaboration with, a licensed physician and surgeon.
Senate Bill No. 554

CHAPTER 242

An act to add Sections 2836.4 and 3502.1.5 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 11, 2017. Filed with Secretary of State September 11, 2017.]

LEGISLATIVE COUNSEL’S DIGEST


Existing federal law requires practitioners, as defined, who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment to obtain annually a separate registration with the United States Attorney General for that purpose. Existing federal law authorizes waiver of the registration requirement for a qualifying practitioner who submits specified information to the United States Secretary of Health and Human Services. Existing federal law, the Comprehensive Addiction Recovery Act of 2016, defines a qualifying practitioner for these purposes to include, among other practitioners, a nurse practitioner or physician assistant who, among other requirements, has completed not fewer than 24 hours of prescribed initial training, or has other training or experience as specified, and is supervised by, or works in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by state law to prescribe medications for the treatment of opioid use disorder in collaboration with or under the supervision of a physician.

Existing state law, the Nursing Practice Act, establishes the Board of Registered Nursing in the Department of Consumer Affairs for the licensure and regulation of nurse practitioners. The act authorizes a nurse practitioner to furnish or order drugs or devices under specified circumstances subject to physician and surgeon supervision.

This bill would prohibit construing the Nursing Practice Act or any provision of state law from prohibiting a nurse practitioner from furnishing or ordering buprenorphine when done in compliance with the provisions of the Comprehensive Addiction Recovery Act, as specified.

Existing state law, the Physician Assistant Practice Act, establishes the Physician Assistant Board within the jurisdiction of the Medical Board of California for the licensure and regulation of physician assistants. The act authorizes a physician assistant, while under the supervision of a licensed physician authorized to supervise a physician assistant, to administer or provide medication to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication, as specified.
This bill would prohibit construing the Physician Assistant Practice Act or any provision of state law from prohibiting a physician assistant from administering or providing buprenorphine to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order for buprenorphine to a person who may lawfully furnish buprenorphine when done in compliance with the provisions of the Comprehensive Addiction Recovery Act, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 2836.4 is added to the Business and Professions Code, to read:

2836.4. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering buprenorphine when done in compliance with the provisions of the Comprehensive Addiction Recovery Act (Public Law 114-198), as enacted on July 22, 2016, including the following:

(a) The requirement that the nurse practitioner complete not fewer than 24 hours of initial training provided by an organization listed in sub-subclause (aa) of subclause (II) of clause (iv) of subparagraph (G) of paragraph (2) of subdivision (g) of Section 823 of Title 21 of the United States Code, or any other organization that the United States Secretary of Health and Human Services determines is appropriate for the purposes of that sub-subclause, that addresses the following:

(1) Opioid maintenance and detoxification.
(2) Appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder.
(3) Initial and periodic patient assessments, including substance use monitoring.
(4) Individualized treatment planning, overdose reversal, and relapse prevention.
(5) Counseling and recovery support services.
(6) Staffing roles and considerations.
(7) Diversion control.
(8) Other best practices, as identified by the United States Secretary of Health and Human Services.

(b) The alternative requirement that the nurse practitioner have other training or experience that the United States Secretary of Health and Human Services determines will demonstrate the ability of the nurse practitioner to treat and manage opiate-dependent patients.

(c) The requirement that the nurse practitioner be supervised by, or work in collaboration with, a licensed physician and surgeon.

SEC. 2. Section 3502.1.5 is added to the Business and Professions Code, to read:

3502.1.5. Neither this chapter nor any other provision of law shall be construed to prohibit a physician assistant from administering or providing
buprenorphine to a patient, or transmitting orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish buprenorphine when done in compliance with the provisions of the Comprehensive Addiction Recovery Act (Public Law 114-198), as enacted on July 22, 2016, including the following:

(a) The requirement that the physician assistant complete not fewer than 24 hours of initial training provided by an organization listed in sub-subclause (aa) of subclause (II) of clause (iv) of subparagraph (G) of paragraph (2) of subdivision (g) of Section 823 of Title 21 of the United States Code, or any other organization that the United States Secretary of Health and Human Services determines is appropriate for the purposes of that sub-subclause, that addresses the following:

(1) Opioid maintenance and detoxification.
(2) Appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder.
(3) Initial and periodic patient assessments, including substance use monitoring.
(4) Individualized treatment planning, overdose reversal, and relapse prevention.
(5) Counseling and recovery support services.
(6) Staffing roles and considerations.
(7) Diversion control.
(8) Other best practices, as identified by the United States Secretary of Health and Human Services.

(b) The alternative requirement that the physician assistant have other training or experience that the United States Secretary of Health and Human Services determines will demonstrate the ability of the nurse practitioner to treat and manage opiate-dependent patients.

(c) The requirement that the physician assistant be supervised by, or work in collaboration with, a licensed physician and surgeon.
Qualify for Nurse Practitioners (NPs) and Physician Assistants (PAs) Waiver

Learn how nurse practitioners (NPs) and physician assistants (PAs) can train and apply to become DATA-waiver practitioners.

CARA Act

On July 22, 2016, President Obama signed the Comprehensive Addiction and Recovery Act (CARA) into law as Public Law 114-198. One of CARA's important provisions expands access to substance use treatment services and overdose reversal medications—including the full spectrum of services from prevention to medication-assisted treatment (MAT) and recovery support—by extending the privilege of prescribing buprenorphine in office-based settings to qualifying nurse practitioners (NPs) and physician assistants (PAs) until Oct. 1, 2021.

Proposed Learning Objectives

CARA requires that NPs and PAs complete 24 hours of training to be eligible for a prescribing waiver. SAMHSA has created a list of recommended learning objectives for the trainings. While we cannot require that the organizations listed in the CARA Act use these learning objectives, we are sharing them with the stakeholders. Access the Proposed Learning Objectives for the NP and PA Waiver Training — 2017 (PDF | 196 KB).

Sign Up for Courses

NPs and PAs are required to obtain no fewer than 24 hours of initial training addressing each of the topics in 21 USC §823(g)(2)(G)3)(IV) provided by one of the following organizations: The American Society of Addiction Medicine, American Academy of Addiction Psychiatry, American Medical Association, American Osteopathic Association, American Nurses Credentialing Center, American Psychiatric Association, American Association of Nurse Practitioners, American Academy of Physician Assistants, or any other organization that the Secretary of Health and Human Services determines is appropriate.

NPs and PAs may take the eight-hour DATA-waiver course for treatment of opioid use disorder, designed by national experts, that physicians currently take. The course is offered for free by SAMHSA through the Providers’ Clinical Support System for Medication Assisted Treatment (PCSS-MAT).

For the additional 16 hours, SAMHSA will also offer the training for free through the PCSS-MAT once it has been developed. NPs and PAs who have completed the required training and seek to become DATA-waiver for up to 30 patients will be able to apply to do so beginning in early 2017. For more information on the upcoming launch of the application and SAMHSA-sponsored training opportunities, sign up for the Buprenorphine Waiver Management email list.

DATA 2000 Waiver NOI

NPs and PAs who have completed the 24 hours of required training may seek to obtain a DATA 2000–waiver for up to 30 patients by completing a hardcopy of the Notification of Intent (NOI) (DOC | 64 KB) and sending to info@buprenorphine@samhsa.hhs.gov, along with copies of their training certificate(s).

Starting February 27, 2017 SAMHSA will only accept electronic submissions of the NOI. These waiver applications are forwarded to the DEA, which will assign the NP or PA a special identification number. DEA regulations require this number to be included on all buprenorphine prescriptions for opioid dependency treatment, along with the NP’s or PA’s regular DEA registration number.

SAMHSA shall review waiver applications within 45 days of receipt. If approved, NPs and PAs will receive a letter via email that confirms their waiver and includes their prescribing identification number.

Last Updated: 02/21/2017

### Medications to Treat OPIOID ADDICTION

- **Buprenorphine**
- **Methadone**
- **Naltrexone**

### Medication for OPIOID OVERDOSE

**Naloxone**
New Federal Regulations Increase Limit Rule to 275 Patients

Physicians who have prescribed buprenorphine to 100 patients for at least one year can now apply to increase their patient limits to 275 under new federal regulations. For more information, send an email to info@buprenorphine.samhsa.hhs.gov or call 866-BUP-CSAT (866-287-2728).

To be considered for the higher limit, complete the Online Request for Patient Limit Increase. SAMHSA reviews applications within 45 days of receipt.

To learn more about the new rule, review the following publications:

- SAMHSA's Letter on the Expansion of Access to Medication-Assisted Treatment for Opioid Use Disorder – 2016 (PDF | 234 KB)
- Understanding the Final Rule for a Patient Limit of 275 – 2016 (PDF | 163 KB), a guidance document to help determine your eligibility for the new, higher patient limit based on your credentials or features of your practice setting
- Medication-Assisted Treatment for Opioid Use Disorders, the final rule from the Federal Register

Related SAMHSA Resources

- Behavioral Health Treatments and Services
- Medical Records Privacy and Confidentiality
- Mental and Substance Use Disorders
- Prescription Drug Misuse and Abuse

Contact Us

For information on buprenorphine treatment, contact the SAMHSA Center for Substance Abuse Treatment (CSAT) at 866-BUP-CSAT (866-287-2728) or info@buprenorphine.samhsa.hhs.gov.
ACTION REQUESTED: Information and Possible Action Regarding: Medical Board of California’s Draft Guidelines for the Recommendation of Cannabis for Medical Purposes.

REQUESTED BY: Elizabeth Woods, RN, FNP

BACKGROUND: Medical Board voting at next Board meeting October 26-27, 2017 on California’ Draft Guidelines for Recommendation of Cannabis for Medical Purposes. (attached)

SB 643 (McGuire) Chaptered 719 Medical Marijuana approved by the Governor October 09,2015. SB 643 contains the provisions related to physicians recommending medical cannabis.

The bill creates a new section in law related to recommending medical cannabis, which states physician recommending cannabis to a patient for medical purpose without an appropriate prior medical examination and a medical indication, constitutes unprofessional conduct. This bill prohibits a physician from recommending cannabis to a patient unless that physician is the patient’s attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code (HSC). The HSC defines an “attending physician” as an who possesses a license in good standing to practice medicine or osteopathy issued by the Board or Board of Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnoses, counseling, or referral of a patient. The physician also must have conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

The above information is taken from the following attached: Medical Board of California, Legislative Analysis (Medical Board of California meeting February 8, 2017 Agenda Item 4)
Marijuana for Medical Purposes (statement adopted by full Medical Board on May 7, 2004 and amended in October 2014_) (Medical Board of California meeting February 8, 2017 Agenda Item 3)

NEXT STEPS: Place on Board agenda.

FISCAL IMPACT, IF ANY: None

PERSON(S) TO CONTACT: Janette Wackerly, MBA, BSN, RN Supervising Nursing Education Consultant Janette.Wackerly@dca.ca.gov (916) 574-7686
Medical Board of California's
Guidelines for the Recommendation of
Cannabis for Medical Purposes
August 2017

This statement was adopted by the full Medical Board on XXX, 2017.

PREAMBLE
The Medical Board of California (Board) developed these guidelines since cannabis is a
permissible treatment modality in California under qualifying circumstances. The Board wants
to assure physicians who choose to recommend cannabis for medical purposes to their patients,
as part of their regular practice of medicine, that they will not be subject to investigation or
disciplinary action by the Board if they arrive at the decision to make this recommendation in
accordance with accepted standards of medical responsibility. The mere receipt of a complaint
that the physician is recommending cannabis for medical purposes will not generate an
investigation absent additional information indicating that the physician is not adhering to
accepted medical standards.

These guidelines are not intended to mandate the standard of care. The Board recognizes that
deviations from these guidelines may occur and may be appropriate depending upon the unique
needs of individual patients. Medicine is practiced one patient at a time and each patient has
individual needs and vulnerabilities. Physicians should document their rationale for each
recommendation decision.

BACKGROUND
On November 5, 1996, the people of California passed Proposition 215. Through this Initiative
Measure, Section 11362.5 was added to the Health and Safety Code, and is also known as the
Compassionate Use Act of 1996 (Act). The purposes of the Act include, in part:

"To ensure that seriously ill Californians have the right to obtain and use cannabis for
medical purposes where the medical use is deemed appropriate and has been
recommended by a physician who has determined that the person's health would benefit
from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain,
spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides
relief; and

To ensure that patients and their primary caregivers who obtain and use cannabis for
medical purposes upon the recommendation of a physician are not subject to criminal
prosecution or sanction."
The Act provides that physicians will not be subject to investigation or disciplinary action by the Board if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility.

Although the Act allows the use of cannabis for medical purposes by a patient upon the recommendation of a physician, California physicians should bear in mind that cannabis is listed in Schedule I of the federal Controlled Substances Act. Based on the increasing number of states permitting the recommendation of cannabis in patient care, the U.S. Department of Justice updated its cannabis enforcement policy in August 2013 (James M. Cole, "Guidance Regarding Cannabis Enforcement [Memorandum]," Washington, DC: Department of Justice. (August 19, 2013)). This policy reiterates cannabis’s classification as an illegal substance under federal law, but advises states and local governments that authorize cannabis-related conduct to implement strong and effective regulatory and enforcement systems to address any threat state laws could pose to public safety, public health, and other interests. Should these state efforts be insufficient, the federal government may seek to challenge the regulatory structure itself and bring forward individual enforcement actions including criminal prosecutions, focused on those harms. In this context, the United States Department of Justice advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution.

GUIDELINES
The Board has adopted the following guidelines for the recommendation of cannabis for medical purposes.

Physician-Patient Relationship: The health and well-being of patients depends upon a collaborative effort between the physician and the patient. The relationship between a patient and a physician is complex and based on the mutual understanding of the shared responsibility for the patient’s health care. The physician-patient relationship is fundamental to the provision of acceptable medical care. Therefore, physicians should document that an appropriate physician-patient relationship has been established, prior to providing a recommendation, attestation, or authorization for cannabis to the patient. Consistent with the prevailing standard of care, physicians should not recommend, attest, or otherwise authorize cannabis for themselves or family members.

Pursuant to Business and Professions (B&P) Code section 2525.2, a physician shall not recommend cannabis for medical purposes to a patient, unless the physician is the patient’s , attending physician. Health and Safety (H&S) Code section 11362.7(a) defines an “attending physician” as a physician who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient. The physician must also have conducted a medical examination of the patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the use of cannabis for medical purposes is appropriate.

Patient Evaluation: A documented medical examination and collection of relevant clinical history commensurate with the presentation of the patient must be obtained before a decision is
made as to whether to recommend cannabis for a medical purpose. At minimum, the examination should include the patient's history of present illness; social history; past medical and surgical history; alcohol and substance use history; family history with emphasis on addiction, psychotic disorders, or mental illness; physical examination; documentation of therapies with inadequate response; and diagnosis requiring the cannabis recommendation. At this time, there is a paucity of evidence for the efficacy of cannabis in treating certain medical conditions. Recommending cannabis for any medical conditions, however, is at the professional discretion of the physician acting within the standard of care. The indication, appropriateness, and safety of the recommendation should be evaluated in accordance with standards of practice as they evolve over time.

The initial evaluation for the condition that cannabis is being recommended must meet the standard of care; accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication.

It is important to note that B&P Code section 2525.3 states that physicians recommending cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. The use of telehealth in compliance with B&P Code section 2290.5, and used in a manner consistent with the standard of care is permissible.

**Informed and Shared Decision Making:** The decision to recommend cannabis should be a shared decision between the physician and the patient. The physician should discuss the risks and benefits of the use of cannabis with the patient. Patients should be advised of the variability and lack of standardization of cannabis preparations, as well as the issue that it affects individuals differently. Patients should be reminded that cannabis use may result in cognitive changes that affect function, including driving, and that they should not drive, operate heavy machinery, or engage in any hazardous activity while under the influence of cannabis. As with any medication, patients may be charged with driving under the influence of drugs if they drive while impaired by the substance. If the patient is a minor or without decision-making capacity, the physician should ensure that the patient's parent, guardian or surrogate is fully informed of the risks and benefits of cannabis use, involved in the treatment plan, and consents to the patient's use of cannabis.

**Treatment Agreement:** Treatment plans with objectives should be established with the patient as early as possible in the treatment process and revisited regularly, so as to provide clear-cut, individualized objectives to guide the choice of therapies, both pharmacologic and non-pharmacologic. It also should specify measurable goals and objectives that will be used to evaluate treatment progress, such as relief of pain and improved physical and psychosocial function. The plan should document any further diagnostic evaluations, consultations or referrals, or additional therapies that have been considered. The treatment plan should also include an “exit strategy” for discontinuing cannabis use in the event tapering or termination of cannabis use becomes necessary.
A physician should document a written treatment plan that includes:

- Advice about other options for managing the terminal or debilitating medical condition (pursuant to the Act conditions include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief).
- Determination that the patient with a terminal or debilitating medical condition may benefit from the recommendation of cannabis.
- Advice about the potential risks of the medical use of cannabis and reminders to safeguard the cannabis, including but not limited to, the following:
  - The variability of quality and concentration of cannabis;
  - The risk of cannabis use disorder;
  - Potential adverse events, such as exacerbation of psychotic disorder, adverse cognitive effects for children and young adults, falls or fractures, and other risks;
  - Risks of using cannabis during pregnancy or breast feeding;
  - The need to safeguard all cannabis and cannabis-infused products from children, pets, or domestic animals; and
  - The reminder that the cannabis is for the patient’s use only and the cannabis must not be sold, donated, or otherwise supplied to another individual.
- Additional diagnostic evaluations or other planned treatments.
- A specific duration for the cannabis authorization for a period no longer than twelve months.
- A specific ongoing treatment plan as medically appropriate.

**Qualifying Conditions:** At this time, there is a lack of evidence for the efficacy of cannabis in treating certain medical conditions. Recommending cannabis for medical purposes is at the professional discretion of the physician. The indication, appropriateness, and safety of the recommendation should be evaluated in accordance with current standards of practice and in compliance with state laws, rules and regulations which specify qualifying conditions for which a patient may qualify for cannabis for medical purposes.

A patient need not have failed on all standard medications in order for a physician to recommend or approve the use of cannabis for medical purposes. The Compassionate Use Act names certain medical conditions for which cannabis may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his or her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of cannabis is as good, or better, than other treatment options that could be used for that individual patient.

**Ongoing Monitoring and Adapting the Treatment Plan:** The physician should regularly assess the patient’s response to the use of cannabis and overall health and level of function. This assessment should include any change in the overall medical condition, any change in the physical and psychosocial function, the efficacy of the treatment to the patient, the goals of the treatment, and the progress of those goals. Recommendations should be limited to the time
necessary to appropriately monitor the patient. There should be a periodic review documented at least annually or more frequently as warranted.

When a trial of cannabis for medical use is successful and the physician and patient decide to continue the use of cannabis, regular review and monitoring should be undertaken for the duration of treatment. Continuation, modification or termination of cannabis for medical use should be contingent on the physician’s evaluation of (1) evidence or the patient’s progress toward treatment objectives and (2) the absence of substantial risks or adverse events, such as diversion. A satisfactory response to treatment would be indicated by an increased level of function and/or improved quality of life. The physician should regularly assess the patient’s response to the use of cannabis.

**Consultation and Referral:** A patient who has a history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The physician should seek a consultation with, or refer the patient to, a pain management physician, psychiatrist, psychologist, and/or addiction or mental health specialist, as needed. The physician should determine that cannabis use is not masking symptoms of another condition requiring further assessment and treatment (e.g., substances use disorder, or other psychiatric or medical condition) or that such use will lead to a worsening of the patient’s condition.

**Medical Records:** Proper record keeping and maintenance should support the decision to recommend the use of cannabis for medical purposes. B&P Code section 2266 requires a physician to maintain adequate and accurate medical records. Medical records need to be complete and legible. In addition, each entry should be dated and signed. Any changes, additions, and/or removal to the medical record made at a later date should also be dated and either signed or initialed.

Information that should appear in the medical record includes, but is not limited to the following:

- The patient’s medical history, including a review of health risk factors and prior medical records as appropriate;
- Results of the physical examination, patient evaluation, diagnostic, therapeutic, and laboratory results;
- Other treatments and prescribed medications, including a review of the Controlled Substance Utilization Review and Evaluation System (CURES);
- Authorization, attestation or recommendation for cannabis, to include date, expiration, and any additional information required by state statute;
- Instructions to the patient, including discussions of risks and benefits, side effects and variable effects;
- Results of ongoing assessment and monitoring of patient’s response to the use of cannabis;
- A copy of a signed treatment agreement, including instructions on safekeeping and instructions on not sharing cannabis.

**Physician Conflicts of Interest:** B&P Code section 2525 includes a provision that makes it unlawful for a physician who recommends cannabis for a medical purpose to accept, solicit, or
off any form of remuneration from or to a facility, as defined, if the physician or his or her immediate family have a financial interest in that facility. A violation of this law is a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars or by civil penalties of up to five thousand dollars and constitutes unprofessional conduct.

"Financial Interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the licensee refers a person for a good or service. For further information on the full definition of "financial interest" see B&P Code section 650.01.

Additionally, B&P Code section 2525.4 indicates that it is unprofessional conduct for any attending physician recommending cannabis for medical purposes to be employed by, or enter into any other agreement with any person or entity dispensing cannabis for medical purposes.

Accordingly, a physician who recommends cannabis should not have a professional office located at a dispensary or cultivation center or receive financial compensation from or hold a financial interest in a dispensary or cultivation center. Nor should the physician be a director, officer, member, incorporator, agent, employee, or retailer of a dispensary or cultivation center. A cannabis clinic or dispensary may not directly or indirectly employ physicians to provide cannabis recommendations.
MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 643
Author: McGuire
Chapter: 719
Bill Date: July 13, 2015, Amended
Subject: Medical Marijuana
Sponsor: Author

DESCRIPTION OF CURRENT LEGISLATION:

This bill is part of a package of three bills that establish a regulatory framework for the cultivation, sale, and transport of medical cannabis by the Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs, the Department of Food and Agriculture, and other state entities. However, this analysis will only cover the portion of the bill related to the requirements on physicians recommending medical cannabis and the Medical Board of California (Board).

BACKGROUND:

In 1996, California voters approved the Compassionate Use Act (Proposition 215), which allowed Californians access to marijuana for medical purposes, and prohibited punitive action against physicians for making marijuana recommendations. SB 420 (Vasconcellos, Chapter 875, Statutes of 2003), the Medical Marijuana Program Act, included issuance of identification cards for qualified patients, and allowed patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes.

In 2014, AB 1894 (Ammiano) was amended on May 23, 2014 and the amendments basically included the same language as the language included in this bill. The Board took a support position on AB 1894.

ANALYSIS:

The portions of this bill that impact the Board are very similar to the provisions in AB 26 (Jones-Sawyer), AB 34 (Bonta and Jones-Sawyer), and the previous version of AB 266 (Bonta, Cooley, Jones-Sawyer, and Lackey). The three bills related to medical cannabis were re-written and now SB 643 contains the provisions related to physicians recommending medical cannabis.

This bill includes in the Board’s priorities cases that allege a physician has recommended cannabis to patients for medical purposes without a good faith prior examination and medical reason therefor.

This bill now creates a new section in law related to recommending medical cannabis, which states that physicians recommending cannabis to a patient for a medical
purpose without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. This bill prohibits a physician from recommending cannabis to a patient unless that physician is the patient’s attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code (HSC). The HSC defines an “attending physician” as an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Board or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient. The physician also must have conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

This bill also subjects physicians recommending cannabis to the definition of “financial interest” in Business and Professions Code Section (BPC) 650.01 and does not allow a physician to accept, solicit, or offer any form of remuneration from or to a licensed dispenser, producer, or processor of cannabis products in which the licensee or his or her immediate family has a financial interest. This bill does not allow a cannabis clinic or dispensary to directly or indirectly employ physicians to provide marijuana recommendations, a violation would constitute unprofessional conduct. This bill does not allow a person to distribute any form of advertising for physician recommendations for medical cannabis unless the advertisement contains a notice to consumers, as specified.

This bill requires the Board to consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research (CMCR) on developing and adopting medical guidelines for the appropriate administration and use of cannabis.

Lastly, this bill specifies that a violation of the new section of law regulating medical cannabis recommendations is a misdemeanor and punishable by up to one year and county jail and a fine of up to five thousand dollars or by civil penalties of up to five thousand dollars and shall constitute unprofessional conduct.

This bill gives the Board some much needed enforcement tools to more efficiently regulate physicians who recommend marijuana for a medical purpose. This bill expressly requires a physician to perform an appropriate prior examination before recommending marijuana for a medical purpose. This is an important amendment because the prescribing requirements in existing law do not necessarily apply to marijuana recommendations. This bill also makes marijuana recommendation cases a priority of the Board, which will help to ensure consumer protection. Lastly, this bill prohibits physicians from being employed by cannabis clinics or dispensaries, which will help to ensure that physicians are not making marijuana recommendations for financial or employment reasons.

**FISCAL:** Minimal and absorbable fiscal impact to the Board

**SUPPORT:** California Association of Code Enforcement Officers; California College & University Police Chiefs Association;
California League of Conservation Voters; California Native Plant Society; California Police Chiefs Association; California State Association of Counties; California State Parks Foundation; California Teamsters Public Affairs Council; California Trout; California Urban Streams Partnership; Clean Water Action; Defenders of Wildlife; League of California Cities; Pacific Forest Trust; Rural County Representatives of California; Trout Unlimited; The Nature Conservancy; The Trust for Public Land; UFCW Western States Council; and Urban Counties Caucus

**OPPOSITION:** None on File

**IMPLEMENTATION:**

- Newsletter article(s) and a stand-alone article on the new requirements for recommending medical cannabis
- Notify/train Board staff and Department of Consumer Affairs, Division of Investigation staff and the Attorney General’s Office, Health Quality Enforcement Section
- Update the Board’s current statement on recommending marijuana and consult and solicit input from the CMCR on needed revisions
- Update the Board’s website with the revised statement and the new requirements for recommending medical cannabis
Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[ Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of

MTF 4 - 4

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB643 2/1/2017
Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015-16 Regular Session are enacted and take effect on or before January 1, 2016.

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

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

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

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

(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Board of Vocational Nursing and Psychiatric Technicians.
(10) Respiratory Care Board of California.
(11) Physical Therapy Board of California.
(12) Physician Assistant Committee of the Medical Board of California.
(13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.

(17) Cemetery and Funeral Bureau.

(18) Bureau of Security and Investigative Services.

(19) Division of Investigation.

(20) Board of Psychology.

(21) California Board of Occupational Therapy.

(22) Structural Pest Control Board.

(23) Contractors' State License Board.

(24) Naturopathic Medicine Committee.

(25) Professional Fiduciaries Bureau.

(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Marijuana Regulation.

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

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).
(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

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

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

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

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

2. Violates Section 2241 regarding treatment of an addict.

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

4. Violates Section 2242.1 regarding prescribing on the Internet.

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

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

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

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

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

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

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

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

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

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

SEC. 6. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and
Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose
to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter
3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family
have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up
to five thousand dollars ($5,000) or by civil penalties of up to five thousand dollars ($5,000) and shall constitute
unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the
Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code,
on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the
Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical cannabis
to a patient, unless that person is the patient’s attending physician, as defined by subdivision (a) of Section
11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior
examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed
by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical
cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the
right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been
recommended by a physician who has determined that the person’s health would benefit from the use of medical
cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health
and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity
related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements
in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or
advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to
be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under
the direction and supervision of the director and at the pleasure of the Governor.

MTF 4 - 8

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB643
2/1/2017
(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:
19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

(1) Cultivation.
(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:
19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the Instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters: Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.
(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.6. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.
SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

1. The licensee receiving the product.
2. The transaction date.
3. The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.
4. (A) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:
   (A) The quantity, or weight, and variety of products shipped.
   (B) The estimated times of departure and arrival.
   (C) The quantity, or weight, and variety of products received.
   (D) The actual time of departure and arrival.
   (E) A categorization of the product.
   (F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensary.

5. (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.
6. (B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.
7. (C) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.
8. (D) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.
9. (E) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.
10. (F) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6254) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.
11. (G) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau’s collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.
SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

**Article 8. Licensed Transporters**

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

1. Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

2. Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

**Article 11. Taxation**

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.
(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law. —

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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 XII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015-16 Session are enacted and take effect on or before January 1, 2016.
Marijuana for Medical Purposes

This statement was adopted by the full Medical Board on May 7, 2004 and amended in October 2014.

On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, Section 11362.5 was added to the Health and Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

Furthermore, Health and Safety Code section 11362.5(c) provides strong protection for physicians who choose to participate in the implementation of the Act. "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."

The Medical Board of California developed this statement since marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend marijuana for medical purposes to their patients, as part of their regular practice of medicine, that they WILL NOT be subject to investigation or disciplinary action by the Medical Board if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending marijuana for medical purposes will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards.

These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

1. History and an appropriate prior examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of appropriate consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping and maintenance thereof that supports the decision to recommend the use of marijuana for medical purposes.

In other words, if physicians use the same care in recommending marijuana to patients as they would recommending or approving medications, they have nothing to fear from the Medical Board.

Here are some important points to consider when recommending marijuana for medical purposes:

1. Although it could trigger federal action, making a recommendation in writing to the patient will not trigger action by the Medical Board of California.
2. A patient need not have failed on all standard medications in order for a physician to recommend or approve the use of marijuana for medical purposes.

3. The physician should determine that marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.

4. The Act names certain medical conditions for which marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of marijuana is as good, or better, than other treatment options that could be used for that individual patient.

5. A physician who is not the primary treating physician may still recommend marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

6. The initial examination for the condition for which marijuana is being recommended must be an appropriate prior examination and meet the standard of care. Telehealth, in compliance with Business and Professions Code section 2290.5, is a tool in the practice of medicine and does not change the standard of care.

7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.

8. If a physician recommends or approves the use of marijuana for a medical purpose for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physicians may wish to refer to the following CMA documents:

- ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance
- "Physician Recommendation of Medical Cannabis", Guidelines of the Council on Scientific Affairs Subcommittee on Medical Marijuana Practice Advisory

Although the Compassionate Use Act allows the use of marijuana for medical purposes by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in Conant v. Walters (9th Cir.2002) F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss marijuana as a treatment option with their patients and make oral or written recommendation for marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining marijuana.
AGENDA ITEM: 10.3  
DATE: October 4, 2017

ACTION REQUESTED: Information: Update on the Application Process for the Advance Practice Advisory Committee

REQUESTED BY: Elizabeth Woods, RN, FNP

BACKGROUND: Update on call for applicants.

American Nurses Association of California  
Association of California Nurse Leaders  
California Action Coalition/Health Impact  
California Association Clinical Nurse Specialist  
California Association Nurse Anesthetist  
California Association Nurse Practitioners  
California Hospital Association  
California Nurse Midwives Association  
California Nurses Association  
SEIU Nurse Alliance of California

NEXT STEPS: Place on Board agenda.

FISCAL IMPACT, IF ANY: None

PERSON(S) TO CONTACT: Janette Wackerly, MBA, BSN, RN  
Supervising Nursing Education Consultant  
Janette.Wackerly@dca.ca.gov  
(916) 574-7686
AGENDA ITEM: 10.3  
DATE: October 4, 2017

ACTION REQUESTED: Information: Update on the Application Process for the Advance Practice Advisory Committee

REQUESTED BY: Elizabeth Woods, RN, FNP

BACKGROUND: Update on call for applicants.

American Nurses Association of California  
Association of California Nurse Leaders  
California Action Coalition/Health Impact  
California Association Clinical Nurse Specialist  
California Association Nurse Anesthetist  
California Association Nurse Practitioners  
California Hospital Association  
California Nurse Midwives Association  
California Nurses Association  
SEIU Nurse Alliance of California

NEXT STEPS: Place on Board agenda.

FISCAL IMPACT, IF ANY: None

PERSON(S) TO CONTACT:  
Janette Wackerly, MBA, BSN, RN  
Supervising Nursing Education Consultant  
Janette.Wackerly@dca.ca.gov  
(916) 574-7686
ADVANCED PRACTICE REGISTERED NURSE COMMITTEE
CALL FOR MEMBERS

Dr. Morris requests your participation for the Advance Practice Registered Nurse Committee (APRN) which is currently recruiting advanced practices nurses who are interested in volunteering to serve on the Advanced Practice Advisory Committee for a two-year term, beginning January 2018 through January 2020.

The plan is for the committee to have a rich and diverse membership, which includes practitioners from various setting and specialties throughout the State of California.

PURPOSE:
The purpose of the Advanced Practice Registered Nurse Committee is to provide recommendations to the California Board of Registered Nursing on issues involving advanced practice.

GOALS:
1. Clarify and articulate sufficiency of the four Advanced Practice Registered Nurse roles and recommend changes to the Nurse Practice Act and rules.
2. Develop recommendations for joint statements related to scope of practice and advanced practice nurse functions.
3. Review national trends in regulation of advanced practice nurses and make recommendations to the Board.
4. Collaborate with other Board committees on matters of mutual interest.

The committee meets a minimum of two times per year, on date to set for beginning and ending of the terms of appointment. The meetings are generally held from 1pm – 3pm in the library located in the Headquarters of the BRN California Board of Nursing at 1747 North Market Blvd., Suite 150 in Sacramento.

If you are interested in applying to serve as a volunteer on the CA Board of Registered Nursing Advanced Practice Registered Nurse Committee, please submit your application and resume by e-mail janette.wackerly@dca.ca.gov or U.S. mail to Janette Wackerly MBA, BSN, RN California Board of Registered Nursing, 1747 N. Market Blvd., Suite 150, Sacramento, CA 95834 by October 11, 2017. Telephone interviews will be scheduled as applications are received. The Board will review applications at the November 9, 2017 Board Meeting. First meeting is to be determined.
Advanced Practice Registered Nurse Committee Application

Please Print or Type:
Name: ______________________________________________________
Address: ____________________________________________________
Phone: (Work)_____________ (Home)___________(Cell)_____________
Email: _____________________ Fax______________________________

Category for which you are applying and your certificate number:
Clinical Nurse Specialists (CNS)___________________
Certified Nurse Midwife (CNM)___________________
Certified Registered Nurse Anesthetists (CRNA)__________
Nurse Practitioner (NP)______________________________

California License Number: RN______________
California license number must be active and current

Attach a current resume. Please answer the following question:

- Explain why you are interested in serving on the Advance Practice Registered Nurse Committee
- Describe your education and work as an Advance Practice provider.

I have read and understand the responsibilities, time commitments, and the reimbursement of the Advanced Practice Registered Nurse Committee Member.

Signature: _______________________     Date: _________________________

Submit Completed Application and Resume to:
Janette Wackerly, RN, BSN, MBA
Supervising Nursing Education Consultant
Board of Registered Nursing
PO Box 944210
Sacramento, CA 94244-2100
MEMORANDUM

TO: California Board of Registered Nursing
FROM: Dr. Joseph Morris
DATE: September 7, 2017
RE: Advanced Practice Registered Nurse Committee

2017-2019 Advanced Practice Registered Nurse Advisory Committee

The Process

According to California Board of Registered Nursing (BRN) Policy and Procedure, Advisory Committees Policies and Responsibilities (2011), Board committees are structured to provide an organized mechanism for nurses and other members of the public to jointly identify recommendations, which represent a variety of perspectives for BRN’s consideration or action. Protection of the public is the central focus of all recommendations. All committees are advisory in nature and their recommendations will represent the committee’s majority opinion regarding a recommendation. The Board will make appointment to committees. Call for committee members are solicited on the BRN web site. Volunteers complete an application process, provided a resume, and participated in an informal interview process that explored the applicant’s availability, understanding, and commitment to the committee’s charges.

Responsibilities

Candidates are presented to the Board for consideration and selection. BRN Board Members will retain responsibility for the final approval of committee members. In making an appointment, the Board will take into account the following: current expertise of members, expertise needed in relation to the committee charges, equity in geographic and work setting distribution. The Board may accept, reject, modify, or return recommendations back to the committee for further work. Board staff will act on behalf of the Board to carry out the work required. Committee members are responsible for regular attendance, active participation in the committee’s deliberations and work and promoting awareness within their agencies of the final decisions adopted. If the committee member is unable to participate in the majority of the meetings or is unable to complete the work on a consistent basis, the Chair will address committee members to resolve the issues. The Board retains full discretion to remove committee members. Committee Chairs and members will work in collaboration with other committees and staff when final recommendations to the Board require multiple viewpoints. All committees conduct an annual self-evaluation, which is utilized by the Board in determining the continuation of the committee appointment and assigned charges.

Member Selection

The Advanced Practice Advisory Committee consists of 10 members and one (1) Committee Chairs. For the 2018-2020 membership, the Board is seeking to fill ten (10) open positions. Board members recommend that Advanced Practice Registered Nurse Advisory Committee members based on population, practice area, specialty area, geographical location, years of experience.
The Proposed committee members may hold certification in more than one population foci. The proposed 2017-2019 committee members consist of:

- 2 Clinical Nurse Specialists (CNS),
- 4 Nurse Practitioners (NP),
- 2 Certified Nurse Midwife (CNM),
- 2 Certified Registered Nurse Anesthetists (CRNA),

Specialty Area
Specialty areas demonstrates the variety of practice locations and specialties for the recommended committee members.

Time Commitment
The committee meets a minimum of two times per year, on date to set for beginning and ending of the terms of appointment. The meetings are generally held from 1pm – 3pm in the library located in the Headquarters of the BRN California Board of Nursing at 1747 North Market Blvd., Suite 150 in Sacramento.

Geographical Diversity
The geographical diversity of recommended committee members includes:
The APRN Committee Members practice in the following locations within the state.