

Assembly Bill No. 1922

CHAPTER 25

An act to amend Section 809 of the Business and Professions Code, relating to healing arts.

[Approved by Governor June 6, 2008. Filed with Secretary
of State June 6, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1922, Hernandez. Healing arts practitioners: peer review.

Existing law provides various due process rights for specified healing arts licentiates who are the subject of a final proposed disciplinary action of a peer review body. Existing law defines the term "licentiate" for purposes of those provisions as a physician and surgeon, podiatrist, clinical psychologist, or dentist.

This bill would revise that definition to also include a marriage and family therapist and a clinical social worker.

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

SECTION 1. Section 809 of the Business and Professions Code is amended to read:

809. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 (Chapter 117 (commencing with Section 11101) Title 42, United States Code), to encourage physicians to engage in effective professional peer review, but giving each state the opportunity to "opt-out" of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to "opt-out" of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review that is not conducted fairly results in harm both to patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners

who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of Chapter 117 (commencing with Section 11101) of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrate public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or purposes of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to Subchapter II (commencing with Section 11131) of Chapter 117 of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, “healing arts practitioner” or “licentiate” means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist; and “peer review body” means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.