Exhibit
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AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Medical Board of California has proposed modifications to the text of CCR Section 1361 in Article 4 of Chapter 2, Division 13, in Title 16 relating to the *Manual of Disciplinary Guidelines and Model Disciplinary Orders*, that were the subject of a regulatory hearing on November 5, 2010. A copy of only the text being modified is enclosed. Any person who wishes to comment on the proposed modifications may do so by submitting written comments by the close of business on January 24, 2011 to the following:

Name:	Susan Cady, Enforcement Manager Medical Board of California
Address:	2005 Evergreen Street, Suite 1200 Sacramento, CA 95815
Telephone No.:	(916) 263-2389
Fax No.:	(916) 263-2387
E-Mail Address:	regulations@mbc.ca.gov

DATED: January 7, 2011

/ signed by /

Kevin A. Schunke
Regulations Coordinator

Medical Board of California

Modified Text

Changes to the originally proposed language are shown by double underline for the new text and underline with strikeout for the deleted text.
(For ease of locating the modified text, it also has been shaded.)

1. Amend section 1361 in Article 4 of Chapter 2, Division 13, to read as follows:

1361. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Disciplinary Guidelines and Model Disciplinary Orders" (~~10th Edition/2008~~ 11th Edition/~~2010~~ 2011) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Medical Board of California in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 2018, Business and Professions Code; and ~~Sections~~ Section 11400.20 ~~and 11400.21~~, Government Code. Reference: Sections 2227, 2228, 2229, and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

Modifications have been made to probationary conditions:

Title Page – non-substantive change to year

- #9
- #10
- #11
- Recommended Range of Penalties for Violations of Probation

State of California
State and Consumer Services Agency
MEDICAL BOARD OF CALIFORNIA
MANUAL OF MODEL DISCIPLINARY ORDERS
AND DISCIPLINARY GUIDELINES
11~~10~~th Edition
~~2008~~~~2010~~ 2011
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA

~~Richard Fantozzi, M.D.~~
Barbara Yaroslavsky,
President
~~Cesar Aristeiguita, M.D.~~
Frank Zerunyan,
Vice President
Hedy Chang,
Secretary

The Board produced this Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11~~10~~th Edition for the intended use of those involved in the physician disciplinary process: Administrative Law Judges, defense attorneys, physicians-respondents, trial attorneys from the Office of the Attorney General, and the Board's disciplinary panel members who review proposed decisions and stipulations and make final decisions. These guidelines are not binding standards.

The Federation of State Medical Boards and other state medical boards have requested and received this manual. All are welcome to use and copy any part of this material for their own work.

For additional copies of this manual, please write to the address below or visit http://www.medbd.ca.gov/publications/disciplinary_guide.pdf:

Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Phone (916) 263-2466

Revisions to the Manual of Model Disciplinary Orders and Disciplinary Guidelines~~,~~ are made periodically. Listed below are the most recent changes included in the 11~~10~~th edition approved by the Board following open discussion at a public meeting.

Summary of Changes
The former "Disciplinary Guidelines – Index" printed after the last "Standard Conditions" has been moved to the Table of Contents (a formatting change only) and has been renamed the "Recommended Range of Penalties for Violations" for clarity.

Model Condition Number:

9. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed ~~lawful prescription~~ medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, ~~and~~ strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine ~~within three (3) calendar days after being so notified~~. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

10. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine ~~within three (3) calendar days after being so notified~~. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be

filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

11. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. ~~Within 30 calendar days of this Decision,~~ ~~Prior to practicing medicine,~~ Prior to practicing medicine, respondent shall~~, at respondent's expense,~~ contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, ~~urine~~ biological fluid testing~~ a minimum of four times each month~~. The contract shall require results of the ~~urine~~ tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall ~~Failure to~~ maintain this laboratory or service contract during the period of probation ~~is a violation of probation~~.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. ~~Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation."~~

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine ~~within three (3) calendar days after being so notified~~. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board

within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

VIOLATION OF PROBATION

Minimum penalty: 30 day suspension

Maximum penalty: Revocation

The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. A violation of any of the following conditions of probation should result in, at minimum, a 60 day suspension:

1. Controlled Substances -Maintain Records and Access to Records and Inventories [8]
2. Biological Fluid Testing [11]
3. Professional Boundaries Program [17]

~~4. Clinical Training Program [18]~~

4 ~~5.~~ Psychiatric Evaluation [20]

5 ~~6.~~ Psychotherapy [21]

6 ~~7.~~ Medical Evaluation and Treatment [22]

7 ~~8.~~ Third Party Chaperone [25]

It is the expectation of the Medical Board of California that the appropriate penalty for a physician who did not successfully complete a clinical training program ordered as part of his or her probation is revocation.

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MEDICAL BOARD OF CALIFORNIA

FINAL STATEMENT OF REASONS

Hearing Date: November 5, 2010

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: 16 CCR 1361.5

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Non-technical, non-substantive changes from originally proposed language:

1. When the originally proposed language was typed, the name of the document ["Manual of Model Disciplinary Orders and Disciplinary Guidelines"] was transposed. A change has been created in the Order of Adoption to keep the language consistent with existing language.

2. The Board has deleted the names of the current officers. Since the terms of the Board members, and their terms as officers of the Board, fluctuate frequently, not listing the names allows the Manual to appear more current and accurate.

Following the public comment received during the Interested Parties meeting, amendments were made to Conditions 9 and 10 which relate to biological fluid testing. The changes authorize the Board to issue an immediate cease practice order based on a confirmed positive biological fluid test. Condition 11 was modified to require that the physician contract with a laboratory service for testing prior to practicing medicine. The recommended range of penalties was amended to reflect that the appropriate penalty for failing to successfully complete the clinical training program was revocation.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The board has determined that this regulatory proposal will not have any impact on small businesses because the regulations are applicable only to physicians and surgeons who are disciplined by the Medical Board and placed on probation.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses

The Medical Board received written comments from the California Medical Association and the comments of their representative at the public hearing were consistent with those provided in their letters. A public hearing was held on November 5, 2010 and the following comments were made regarding the proposed action:

1. Yvonne Choong, representing the California Medical Association, objected to Sections 9 and 10 (Controlled Substances/Alcohol – Abstain from Use) on the following grounds:

a. These sections may be unconstitutional in that they call for an automatic suspension of the license based on a positive biological fluid test without offering the physician a pre-deprivation hearing.

   This comment was accepted but no modification to the proposed action was made as further discussion was needed. An interested parties meeting was to be scheduled to allow for additional comments and discussion on this issue.

b. Section 16 (Professionalism Program) should be amended to specify that the course should be equivalent to the program offered by the Institute for Medical Quality (IMQ).

   This objection was rejected because the existing guidelines require that the professionalism course meet the requirements in Title 16, CCR Section 1358.1. The professionalism course was developed by IMQ to meet the requirements in regulation but the requirements defined in regulation are still the foundation used to evaluate any new professionalism course.

2. Ms. Anita Scuri, Department of Consumer Affairs, Supervising Legal Counsel proposed a change to the guidelines related to non-practice while on probation.

   Recommends that the notification requirement be added to the probationary terms a physician must comply with even if he/she is not practicing or residing in California.

   This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Notification; Obey All Laws and General Probation requirements.

3. Julie D'Angelo Fellmeth, representing the Center for Public Interest Law, objected to the proposed action indicating that the regulation as drafted was not consistent with the Uniform Standard Regarding Substance-Abusing Healing Arts Licensees developed by DCA pursuant to SB 1441 as the board was proposing a 3-day advance notice before requiring the licensee to "cease practice" based on a positive biological fluid test. The standard as developed by DCA required that the licensee immediately "cease practice".

   This comment was accepted but no modification to the proposed action was made as further discussion was needed. An interested parties meeting was to be scheduled to allow for additional comments and discussion on this issue.

4. Kimberly Kirchmeyer, representing the Department of Consumer Affairs, objected to Conditions 9 and 10 because of the absence of any required drug testing frequency. Ms. Kirchmeyer reported that a subcommittee of the Substance Abuse Coordination Committee was formed to review the frequency of required drug testing and the standards

recommended 104 drug tests during the first year of probation.

This objection was rejected because a number of members of the Subcommittee were concerned with requiring 104 tests and expressed the need to review and validate this number. The subcommittee had not resolved this issue by the date of the board's regulatory hearing. Staff Counsel recommended that the Board not include a specific number of required tests in the Disciplinary Guidelines since this issue is not yet resolved. As written the guidelines would allow the Board to set the testing frequency to comply with the uniform standards once finalized.

5. Stan Furmanski, M.D., suggested, in order to protect a physician's ex post facto rights the regulations should specify that the Board does not intend to apply the guidelines to any licensee who has an order or stipulation issued prior to the effective date of the new guidelines.

   This comment was accepted and it was explained that regulations cannot be applied retroactively. No modification to the proposed action was needed to accommodate the comment.

The hearing was closed and the Board recommended that an Interested Parties meeting be held to gather additional comments and resolve any conflicts with DCA's uniform standards. A meeting was publically noticed for January 6, 2011.

On January 6, 2011 an Interested Parties meeting was held and the Medical Board received written comments from the California Society of Addiction Medicine and an email from the Center for Public Interest Law; representatives for both attended the meeting and their comments at the public hearing were consistent with those provided in their letters. Meeting summary notes are attached. The following comments were made regarding the proposed action:

1. Ms. Gail Jara, representing the California Society for Addiction Medicine provided the following comments:

a. Conditions 9 and 10 (abstain from use of controlled substances and alcohol) should be combined rather than being imposed separately because clinical experience shows that individuals most often use several substances when one or the other is not available.

   This comment was rejected because under the current "recommended range of penalties", violations related to excessive use of either alcohol or controlled substances suggest including both Condition 9 and 10 which is consistent with the testimony provided and there may be situations where it is not appropriate to prohibit use of both alcohol <u>and</u> drugs.

b. Recommends that Condition 9 and 10 require that the positive biological fluid test be "confirmed" before the physician is ordered to cease practice citing that "false positives" from initial screening tests are not uncommon.

   This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: "If respondent has a <u>confirmed</u> positive biological fluid test for any substance..."

c. Recommends that Condition 20 which requires the physician to undergo a psychiatric examination be amended to add the requirement that the evaluator must participate in an orientation on clinical principles developed and conducted by CSAM and MBC before performing an evaluator and every 4 years thereafter.

This comment was rejected because psychiatric evaluations can be ordered for reasons other than suspected substance abuse and imposing a training/ orientation requirement on all evaluators is unnecessary and unduly burdensome. The existing language gives the board the authority to designate the physician who will perform the evaluation. The Board appreciates the input provided by CSAM on factors to consider when designating a psychiatrist to perform the psychiatric evaluation on a physician with substance abuse issues, however, no modification to the proposed action was needed to accommodate the comment.

d. Recommends that a requirement be added to ensure the evaluating psychiatric provides a written report to the board within 60 days and provides a copy of the report to the respondent.

   This comment was rejected because the purpose of the disciplinary guidelines is to provide standardized language and conditions that can be imposed on physician/respondents following disciplinary action and not to control the actions of evaluators. This recommendation is outside the scope of the disciplinary guidelines and no modification to the proposed action was made.

e. Recommends that Condition 21 ordering the physician to undergo psychotherapy be amended to require that the psychiatrist or psychotherapist have experience in the diagnosis and treatment of substance use disorders.

   This comment was rejected because psychotherapy can be ordered for reasons other than suspected substance abuse and imposing a requirement that the psychotherapist be trained in substance use disorders is unnecessary and unduly burdensome. The existing language gives the board the authority to approve the psychotherapist who will provide ongoing therapy. The Board appreciates the input provided by CSAM on factors to consider when approving a psychotherapist to provide treatment to a physician with substance abuse issues; however, no modification to the proposed action was needed to accommodate the comment.

f. Recommends that Condition 22 which requires the physician to undergo a medical evaluation and treatment be amended to add the requirement that the evaluator must participate in an orientation on the use of validated screening instruments for the diagnosis and treatment of substance use disorders.

   This comment was rejected because medical evaluations can be ordered for reasons other than suspected substance abuse and imposing a training/orientation requirement on all evaluators is unnecessary and unduly burdensome. The existing language gives the board the authority to designate the physician who will perform the evaluation. The Board appreciates the input provided by CSAM on factors to consider when designating a physician to perform the medical evaluation on a physician with substance abuse issues; however, no modification to the proposed action was needed to accommodate the comment.

g. Recommends that a requirement be added to ensure the medical evaluating physician includes documentation in the report to the Board detailing which screening instrument was used and the scores or responses of the respondent.

   This comment was rejected because the purpose of the disciplinary guidelines is to provide standardized language and conditions that can be imposed on physician/respondents

following disciplinary action and not to control the actions of the evaluators. This recommendation is outside the scope of the disciplinary guidelines and no modification to the proposed action was made.

2. Ms. Jessica Amgwerd, Deputy Attorney General recommended an amendment to Condition 9 and 10 to clarify the requirement that the physician report any new prescribed medication to the Probation Unit. Under the current language a physician may have a lawful prescription for the controlled substance which triggered a positive biological test but the guidelines allowed the physician 15 calendar days to notify the Board. Given the time delay, the physician may have a positive test result before the lawful prescription is reported to the board and, therefore, a cease practice order would be inappropriate.

   This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: "If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine.."

3. Julie D'Angelo Fellmeth, Center for Public Interest Law, summarized her email sent earlier that day and provided the following comments:

a. Objected to Conditions 9 and 10 which proposed a 3-day advance notice before requiring the licensee to "cease practice" based on a positive biological fluid test. Ms. Fellmeth indicated that the regulation as drafted was not consistent with the DCA's uniform standards which require that the licensee immediately "cease practice" after a positive test.

   This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to **immediately** cease the practice of medicine. This modification addresses the concern that the board's guidelines were inconsistent with the DCA uniform standard and the provisions of Business and Professions Code Section 315.2 requiring an immediate "cease practice" order based on a positive test.

b. Objected to Conditions 9 and 10 because of the absence of any required drug testing frequency standard. The Uniform Standards developed by DCA recommend 104 tests or twice per week during the first year of probation.

   This objection was rejected because the testing frequency standard proposed by the DCA SB 1441 Substance Abuse Coordination Committee is not finalized. The subcommittee meeting scheduled on September 27, 2010 to further discuss this standard was cancelled and has not been rescheduled. The subcommittee had not resolved this issue by the date of the board's regulatory hearing. The condition as proposed requires the licensee to submit to random, unannounced testing. The Board believes that by not identifying a specific testing frequency in this condition, the frequency can be determined by board policy and modified when a standard is finalized.

c. Objected to Condition 11 which gave the physician 30 days from the effective date of the decision to contract with a lab for biological fluid testing. The concern raised was that this allowed a substance-abusing probationer to practice medicine for 30 days with no biological fluid testing and it was recommended that drug testing arrangements should be a condition precedent to practicing medicine.

This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing.

4. The written comment from the California Medical Association objecting to Conditions 9 and 10 (Controlled Substances/Alcohol – Abstain from Use) which calls for the automatic suspension of the physician's license based on a positive biological fluid test was discussed. CMA noted that this action may be unconstitutional in that the license is suspended without offering the physician a pre-deprivation hearing.

   This recommendation/objection was rejected because the immediate cease practice order is consistent with the DCA uniform standard and the provisions of Business and Professions Code Section 315.2 requiring an immediate "cease practice" order based on a positive test. Business and Professions Code Section 315.2 became effective January 1, 2011, which provides specific authority to impose the immediate case practice order.

5. Mr. Kurt Heppler, the Board's Staff Counsel, proposed a change to the recommended range of penalties for violation of probation, by deleting the option of requiring that the physician complete a second, additional clinical training program when the physician has already failed the ordered clinical training program.

   This recommendation/objection was accepted and the proposed action was modified as follows to accommodate it: "It is the expectation of the Medical Board of California that an appropriate penalty for a physician who did not successfully complete a clinical training program ordered as part of his or her probation is revocation".

On January 7, 2011, the amended language was sent out for a 15-day notice and the Medical Board received written comments from the California Medical Association and Rehan Sheikh. A public hearing was held on January 28, 2011.

1. Veronica Ramirez, representing the California Medical Association, objected to Conditions 9 and 10 (Controlled Substances/Alcohol – Abstain from Use) on the following grounds:

   a. The guidelines refer to a "confirmed" positive biological fluid test as grounds for license suspension but would benefit from clarification as they fail to delineate who or what holds the authority to declare a "confirmed positive" test.

      This recommendation/objection was rejected because the process for confirming a positive urine test is defined the Board's contract with the approved lab and this terminology is consistent in the industry. The lab performs the test on the initial sample and if anything shows positive, the lab performs confirmation testing by gas chromatography/mass spectrometry to get the positive result and level of the positive. All positive tests results are then reviewed by a certifying scientist or a medical review officer before the result is reported to the Medical Board.

   b. Recommends allowing the respondent the right to obtain an evaluation of his/her positive test results by a certified medical review officer.

      This recommendation/objection was rejected because it does not provide adequate public protection. This recommendation focuses on building a defense should the physician's

positive test result in the filing of an administrative action. The Board's existing contract contains a provision which would allow the physician to discuss the positive test result with the lab's Medical Review Officer and a second sample is retained as a matter of standard practice so additional tests could be performed on the test sample if need. This recommendation is outside the scope of the disciplinary guidelines and no modification to the proposed action was made.

2. Mr. Rehan Sheikh, private citizen, objected to the proposed action on general principle indicating that the guidelines were not "binding" on the board and the board had "unlimited discretion" to propose any punishment on physicians. Mr. Sheikh also recommended that the disciplinary guidelines be amended to require that in lieu of disciplinary terms, a physician who is found guilty of unprofessional conduct may settle all disciplinary punishment by paying a $400 fine.

   This recommendation/objection was rejected because the suggestion of a $400 payment to resolve disciplinary matters is inconsistent with public protection.

Finding of Necessity

This regulation will not require licensees to submit a report.

Exhibit
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9. Controlled Substances- Abstain from Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of ~~or~~ receiving any lawfully prescribed ~~lawful prescription~~ medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, ~~and~~ strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

10. Alcohol - Abstain from Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A

decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

11. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon ~~the~~ request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test results may be received in evidence in any ~~may~~ proceedings between the Board and ~~the~~ respondent. ~~Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.~~

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

VIOLATION OF PROBATION

Minimum penalty: 30 day suspension ~~Impose actual period of suspension~~
Maximum penalty: Revocation ~~Impose penalty that was stayed~~

The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. A violation of any of the following conditions of probation ~~Other violations of probation~~ should result in, ~~draw~~ at minimum, a 60 day ~~least a period of actual~~ suspension:~~,~~ ~~preferably 90 days or more.~~

1. Controlled Substances - Maintain Records and Access to Records and Inventories [8]
2. Biological Fluid Testing [11]
3. Professional Boundaries Program [18]
4. Psychiatric Evaluation [21]
5. Psychotherapy [22]
6. Medical Evaluation and Treatment [23]
7. Third Party Chaperone [26]

It is the expectation of the Board of Podiatric Medicine that the appropriate penalty for a doctor of podiatric medicine who did not successfully complete a clinical training program ordered as part of his or her probation is revocation.