



ENFORCEMENT COMMITTEE
MAY 20, 2015

**SUBJECT: REVISIONS TO BPM MODEL DISCIPLINARY GUIDELINES AND
PODIATRIC MEDICINE REGULATION SECTION 1399.710**

ACTION: APPROVE RECOMMENDATION

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RECOMMENDATION

To recommend that the Board approve the Executive Officer's draft revisions to Board of Podiatric Medicine's ("BPM") "Manual of Model Disciplinary Orders and Disciplinary Guidelines" and Podiatric Medicine Regulation 1399.710 which have incorporated the Uniform Standards for Substance-Abusing Healing Arts Licensees as mandated by SB 1441.

ISSUE

Current regulatory section 1399.710 of the Podiatric Medicine Regulations does not incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees as required by SB 1441. ...

BACKGROUND

The background of this matter was outlined in great detail at the Board of Podiatric Medicine ("BPM") Enforcement Committee Meeting on February 18, 2015, and the BPM voted on March 6, 2015 (See Attachment A), to direct the Executive Officer to take the action necessary to become compliant with SB 1441.

The Medical Board of California ("MBC") has recently succeeded updating its regulations to include the Uniform Standards as mandated by SB 1441. As outlined in the report on this matter to the BPM on March 6, 2015, much of the BPM's proposed regulatory language mirrors that of the MBC. The BPM adopted its desired language on September 23, 2011 but the proposed regulatory package did not succeed.

It is now recommended that the BPM re-adopt and update the title of the document it approved at its September 23, 2011 Board Meeting, and update the title of "Manual of Model Disciplinary Orders and Disciplinary Guidelines, as follows, "11th Edition/2015." Additionally, the proposed language will include a change in title and additional numbering sections, as follows:

1. The additional language in the title of 1399.710 to include "...and Uniform Standards for Substance Abusing Licensees" and
2. Additional numbering of sub-sections 1399.711, 1399.712, 1399.713, 1399.714, 1399.715 and 1388.716

Other than these changes, the document is unchanged from what was adopted in September 23, 2011. It is important to note that 1399.710(b) states that notwithstanding the language used in the BPM regulations, "the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1399.711, without deviation, for each individual determined to be a substance-abusing licensee." This assures that the legislative intent of applying the Uniform Standards will be followed.

DISCUSSION

For the same reasons that were outlined in the March 6, 2015 report to the BPM, it is imperative that BPM adhere to the legislative attempts to exclusively use the specifics as outlined in SB 1441 in substance abuse matters. This will allow BPM to discipline and order its licensees as an autonomous Board, with its guidelines as adopted in on September 23, 2011, however, where substance abusing licensees are concerned, the mandates outlined in SB 1441 will be used. By remaining consistent with the MBC and AB 1441 the BPM will become compliant with the legislative mandate to adopt SB1441 and remain autonomous in disciplining non-substance abusing licensees.

FINANCIAL IMPACT

None.

ALTERNATIVES

In view of the discussion above, no reasonable alternative considered would be effective to carry out the mission of the Board in accord with its mandate of consumer protection and as further required by SB 1441.

NEXT STEPS

To approve the proposed attached language that updates the title of the Mandatory Orders and Disciplinary Guidelines to the 11th Edition with the new date of "2015," and the addition of a regulatory numbering system of 1399.711 through 1399.716.

ATTACHMENTS

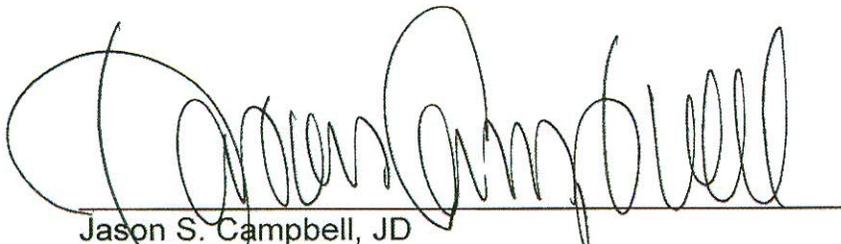
- A. Revisions to Board of Podiatric Medicine Model Disciplinary Guidelines Regulation Section 1399.710
- B. BPM Model Disciplinary Guidelines (Originally Adopted Sept. 5, 2005 and redrafted Sept. 23, 2011)
- C. Enforcement Committee Report, February 18, 2015, (Committee Report E-4 and BPM Report 10). Including Attachments: SB 1441 (Chapter 548,

Statutes of 2008) authored by Senator Ridley Thomas, The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2011)

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**REVISIONS TO BPM MODEL DISCIPLINARY GUIDELINES AND PODIATRIC
MEDICINE REGULATION SECTION 1399.710**

(1) Amend title of Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read as follows:

Article 4. Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees.

(2) Section 1399.710 of Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations is amended to read:

§ 1399.710. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the board shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" ~~with Model Disciplinary Orders" [revised September 2005]~~ (11th Edition/2015) which are hereby incorporated by reference. Deviation from these orders and guidelines ~~and orders~~, including the standard terms of probation, is appropriate where the board, in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of a particular case warrant such a deviation ~~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.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1399.711, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Nothing in this section or section 1399.711 shall be construed as a limitation on the Board's authority to seek an interim suspension order against a licensee pursuant to section 11529 of the Government Code.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(3) Section 1399.711 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.711. Uniform Standards for Substance-Abusing Licensees.

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as

defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1399.710 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee:

(1) Clinical Diagnostic Evaluations and Reports; Temporary Removal From Practice.

(A) If the Board orders a licensee who is on probation due to a substance abuse problem to undergo a clinical diagnostic evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed doctor of podiatric medicine who holds a valid, unrestricted license; has three (3) years' experience in providing evaluations of licensed doctor of podiatric medicine with substance abuse disorders; and is approved by the Board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The evaluator shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

4. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem; whether the licensee is a threat to himself or herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

5. In formulating his or her opinion as to whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

- a. License type;
- b. Licensee's history;
- c. Documented length of sobriety/time that has elapsed since substance use;

- d. Scope and pattern of substance abuse;
- e. Treatment history;
- f. Medical history;
- g. Current medical condition;
- h. Nature, duration, and severity of substance abuse problem; and
- i. Whether the licensee is a threat to himself or herself or the public.

6. The cost of an evaluation shall be borne by the licensee.

7. For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

(B) Whenever the Board orders a licensee to undergo a clinical diagnostic evaluation, the Board shall order the licensee to cease practice pending the results of the clinical diagnostic evaluation and review by the Board.

(C) While awaiting the results of the clinical diagnostic evaluation, the licensee shall undergo random biological fluid testing at least two (2) times per week.

(D) The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the licensee based on the recommendations made by the evaluator. No licensee shall be returned to practice until he or she has at least 30 days of negative biological fluid tests or biological fluid tests indicating that a licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1399.712(e).

(2) Notice of Employer or Supervisor Information. If a licensee whose license is on probation has an employer or supervisor, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent for the Board, the worksite monitor, and his or her employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and the Health or Well Being Committee Chair, or equivalent, if applicable, when the licensee has medical staff privileges.

(3) Biological Fluid Testing.

(A) The Board shall require biological fluid testing of substance-abusing licensees.

(B) For the purposes of this section, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.

(C) The Board may order a licensee to undergo a biological fluid test on any day, at any time, including weekends and holidays. Additionally, the licensee shall be subject to 52 - 104 random tests per year within the first year of probation, and 36 - 104 random tests per year during the second year of probation and for the duration of the probationary term, up to five (5) years. If there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, testing may be reduced to one (1) time per month.

(D) Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or has committed a violation as identified in section 1399.713(a), in addition to ordering any other disciplinary action that may be warranted.

(E) The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, except when testing on a specific date is ordered by the Board or its designee.

(F) The licensee shall be required to make daily contact with the Board or its designee to determine if biological fluid testing is required. The licensee shall be tested on the date of the notification as directed by the Board or its designee.

(G) Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements set forth in section 1399.715.

(H) The cost of biological fluid testing shall be borne by the licensee.

(I) Exceptions to Testing Frequency Schedule.

1. Previous Testing Orders/Sobriety. In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the Board's own testing schedule so that the combined testing is equivalent to the requirements of this section.

2. Violation(s) Outside of Employment. A licensee whose license is placed on probation for a single conviction or incident or two convictions or incidents spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass the first-year testing frequency requirements and participate in the second-year testing frequency requirements.

3. Not Employed in Health Care Field. The Board may reduce the testing frequency to a minimum of 12 times per year for any licensee who is not practicing or working in any health care field. If a reduced testing frequency

schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any health care employment, the licensee shall be required to test at the first-year testing frequency requirement for a period of at least 60 days. At such time the person returns to employment in a health care field, if the licensee has not previously met the first-year testing frequency requirement, the licensee shall be required to test at the first-year testing frequency requirement for a full year before he or she may be reduced to testing frequency of at least 36 tests per year.

4. Tolling. A Board may postpone all testing for any licensee whose probation is placed in a tolling status while the licensee is not residing in California, provided the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to biological fluid testing as provided in this section. If the licensee returns to employment in a health care field and has not previously met the first-year testing frequency requirements, the licensee shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

5. Substance Abuse Disorder Not Diagnosed. In cases where no current substance abuse disorder diagnosis is made, a lesser period of monitoring and biological fluid testing may be adopted by the Board, but shall not be less than 24 times per year.

(J) Reinstatement of License or Reduction of Penalty. Nothing herein shall limit the Board's authority to reduce or eliminate the penalties herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522.

(4) Group Support Meetings.

If the Board requires a licensee to participate in group support meetings, the following shall apply:

(A) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to the following:

1. The licensee's history;
2. The documented length of sobriety/time that has elapsed since substance use;
3. The recommendation of the clinical evaluator;
4. The scope and pattern of use;
5. The licensee's treatment history; and
6. The nature, duration, and severity of substance abuse.

(B) The facilitator of a group support meeting shall conform to the following requirements:

1. He or she shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations.

2. He or she shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. A licensee's previous participation in a group support meeting led by the same facilitator does not constitute a current or former financial, personal, or business relationship.

3. He or she shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. He or she shall report a licensee's unexcused absence to the Board within 24 hours.

(C) Any costs associated with attending and reporting on group support meetings shall be borne by the licensee.

(5) Worksite Monitor Requirements and Responsibilities.

(A) The Board may require the use of worksite monitors. If the Board determines that a worksite monitor is necessary for a particular licensee, the licensee shall, within 30 calendar days of the effective date of that determination, submit to the Board or its designee for prior approval the name of a worksite monitor. The worksite monitor shall meet the following criteria to be approved by the Board:

1. The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

2. The worksite monitor's scope of practice shall include the scope of practice of the licensee being monitored, be another licensed health care professional if no monitor with like scope of practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.

3. If a licensed professional, the worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has

reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

(B) The worksite monitor shall adhere to the following required methods of monitoring the licensee:

1. Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but not less than once per week.

2. Interview other staff in the office regarding the licensee's behavior, if requested by the Board.

3. Review the licensee's work attendance.

(C) Reporting by the worksite monitor to the Board shall comply with the following:

1. The worksite monitor shall verbally report any suspected substance abuse to the Board and the licensee's employer or supervisor as defined in subsection (c)(2) within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; the licensee's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board within 48 hours of the occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include the following:

- a. The licensee's name and license number;
- b. The worksite monitor's name and signature;
- c. The worksite monitor's license number, if applicable;
- d. The worksite location(s);
- e. The dates the licensee had face-to-face contact with the monitor;
- f. The names of worksite staff interviewed, if applicable;
- g. An attendance report;
- h. Any change in behavior and/or personal habits; and
- i. Any indicators that can lead to suspected substance abuse.

(D) The licensee shall complete any required consent forms and execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(E) If the monitor resigns or is no longer available, the licensee shall, within five (5) calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within 15

calendar days. If the licensee fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, the licensee shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The licensee shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

(F) Worksite monitoring costs shall be borne by the licensee.

(6) The licensee must remain in compliance with all terms and conditions of probation. If the licensee commits a major or minor violation, as defined in section 1399.713, the Board will execute the disciplinary actions required by that section, and impose any additional terms or conditions necessary for public protection or to enhance the rehabilitation of the licensee.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(4) Section 1399.712 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.712. Results of Biological Fluid Tests of Substance-Abusing Licensees.

(a) If the results of a biological fluid test indicate that a licensee has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order the licensee to cease practice and instruct the licensee to leave any place of work where he or she is practicing medicine or providing medical services. The Board shall also immediately notify all of the licensee's employers, and supervisors as defined under section 1399.711(c)(2), if any, and work-site monitor, if any, that the licensee may not provide medical services or practice medicine while the cease-practice order is in effect.

(b) A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

(c) After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating doctor(s) of podiatric medicine, other health care provider, or group facilitator, as applicable.

(d) If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

(e) For the purposes of this Article, "prohibited substance" means an illegal drug; a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board; alcohol; or other substance the licensee has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

(f) If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in section 1399.713, and the Board shall impose any or all of the consequences set forth in section 1399.713, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(5) Section 1399.713 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.713. Actions by Substance-Abusing Licensees and Consequences Thereof.

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

- (1) Fails to undergo a required clinical diagnostic evaluation;
- (2) Commits multiple minor violations of probation conditions and terms;
- (3) Treats a patient or patients while under the influence of a prohibited substance;
- (4) Engage in any drug or alcohol related act that is a violation of state or federal law or regulation;
- (5) Fails to undergo biological fluid testing when ordered;
- (6) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;
- (7) Knowingly uses, makes, alters, or possesses any object or product in such a way as to defraud or attempt to defraud a biological fluid test designed to detect the presence of a prohibited substance; or
- (8) Fails to comply with any term or condition of his or her probation that impairs public safety.

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to

this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

(c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

(1) Fails to submit required documentation to the Board in a timely manner;

(2) Has an unexcused absence at a required meeting;

(3) Fails to contact a worksite monitor as required; or

(4) Fails to comply with any term or condition of his or her probation that does not impair public safety.

(d) If a licensee commits a minor violation, the Board will take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of licensee;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee;

(7) Take any other action as determined by the Board.

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(6) Section 1399.714 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.714. Request by a Substance-Abusing Licensee to Return to Practice.

Before determining whether to authorize the return to practice after the issuance of a cease-practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board in conjunction with the evaluator shall ensure that the licensee meets the following criteria:

(a) A demonstration of sustained compliance with his or her current treatment or recovery program, as applicable;

(b) A demonstration of the capability to practice medicine safely as evidenced by current worksite monitor reports (if currently being monitored), evaluations conducted by licensed health care practitioners, and any other information relating to the licensee's substance abuse and recovery therefrom; and

(c) Negative biological fluid tests or biological fluid tests indicating that a licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1399.712(e), for at least six (6) months; two (2) positive worksite monitor reports (if currently being monitored); and complete compliance with other terms and conditions of probation.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(7) Section 1399.715 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.715. Requirements for Laboratories/Testing Locations and Specimen Collectors for Testing Substance-Abusing Licensees.

Licensees shall contract with a laboratory or service approved in advance by the Board, provided that the laboratory or service meets all the following standards:

(a) Its specimen collectors shall either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors shall conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations shall comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors shall observe the collection of testing specimens.

(e) Its laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimen and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which it is responsible on any day of the week.

(h) Its testing locations shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It must have testing sites that are located throughout California.

(j) It must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the licensee to check in daily for testing.

(k) It must have a secure, HIPAA-compliant website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It shall employ or contract with toxicologists that are licensed doctors of podiatric medicine and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229 and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

(8) Section 1399.716 is added to Article 4, Chapter 2, Division 13.9 of Title 16 of the California Code of Regulations to read:

§ 1399.716. Reporting Requirements Relating to Substance-Abusing Licensees.

(a) The Board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are on probation:

- (1) Number of probationers whose conduct was related to a substance abuse problem;
- (2) Number of relapses (break in sobriety);
- (3) Number of cease-practice orders;
- (4) Number of suspensions;
- (5) Number of major violations; nature of violation and action taken;
- (6) Number of petitions to revoke probation filed; and
- (7) Number of licensees who successfully completed probation.

(b) For each reporting category described in subsection (a), the Board shall identify the licensing category and the specific substance abuse problem (i.e., cocaine, alcohol, Demerol, etc.).

(c) If the reporting data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of terms and conditions of probation. The information may also be used to determine the risk factor when the Board is determining whether a license should be revoked or placed on probation.

(d) The Board shall use the following criteria to determine if its terms and conditions of probation protect patients from harm and are effective in assisting its licensees in recovering from substance abuse problems in the long term:

(1) One hundred percent of licensees whose licenses were placed on probation as a result of a substance abuse problem successfully completed probation, or had their licenses to practice revoked or surrendered on a timely basis based on noncompliance with terms and conditions of probation.

(2) At least 75 percent of licensees who successfully completed probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

(e) For purposes of measuring outcomes and effectiveness relating to biological fluid testing as described in section 1399.711(c)(3), the Board shall collect and report historical data (as available) and post-implementation data as follows:

(1) Historical Data. The Board should collect the following historical data (as available) for a period of two years prior to implementation of the Uniform Standards for Substance-Abusing Licensees, for each person subject to testing for banned substances, who has done any of the following:

- (A) Tested positive for a banned substance;
- (B) Failed to appear or call in for testing on more than three occasions;
- (C) Failed to pay testing costs; or
- (D) Given a diluted or invalid specimen.

(2) Post-Implementation Data – Three Years

The Board shall collect data annually for a period of three years following implementation of the Uniform Standards for Substance-Abusing Licensees for every licensee subject to testing for banned substances pursuant to section 1399.711(c)(3). The data collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

- (A) Licensee identification;
- (B) License type;
- (C) Probation effective date;
- (D) General range of testing frequency for each licensee;
- (E) Dates testing requested;
- (F) Dates tested;
- (G) Identity of the entity that performed each test;
- (H) Date(s) licensee tested positive;
- (I) Date(s) Board was informed of positive test(s);
- (J) Date(s) of questionable tests (e.g. dilute, high levels);
- (K) Date(s) Board was notified of questionable test(s);
- (L) Identification of substances detected or questionably detected;
- (M) Date(s) licensee failed to appear for testing;
- (N) Date(s) Board notified of licensee's failure to appear;
- (O) Date(s) licensee failed to call in for testing;
- (P) Date(s) Board was notified that licensee failed to call in for testing;
- (Q) Date(s) licensee failed to pay for testing;
- (R) Date(s) licensee was removed/suspended from practice (identify which); and
- (S) Final outcome and effective date (if applicable).

NOTE: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code. Reference: Sections 315, 315.2 and 315.4, Business and Professions Code.

Board of Podiatric Medicine

Manual

Of
Disciplinary Guidelines

With

Model Disciplinary Orders



Department of Consumer Affairs
State of California

STATE OF CALIFORNIA
BOARD OF PODIATRIC MEDICINE

**MANUAL
OF
DISCIPLINARY GUIDELINES
WITH
MODEL DISCIPLINARY ORDERS**

(Effective ~~February 4, 2006~~ September 23, 2011) 2015

These Disciplinary Guidelines were originally adopted by the BPM on September 5, 1984, and most recently revised ~~September 2005~~ September 23, 2011. They are for use by administrative law judges, attorneys, and licensees.

Additional copies may be obtained from:

Board of Podiatric Medicine
2005 Evergreen Street, Suite 1300
Sacramento, CA 95815-3835

(916) 263-2647

**DISCIPLINARY GUIDELINES WITH
MODEL DISCIPLINARY ORDERS**

Business and Professions Code section 2460.1 mandates that protection of the public shall be the highest priority for the Board of Podiatric Medicine (BPM).

The BPM expects that, absent mitigating or other appropriate circumstances, Administrative Law Judges hearing cases on behalf of the BPM and proposed settlements submitted to the BPM will follow these Guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

The Model Disciplinary Orders contain three sections: three (3) Disciplinary Orders; twenty-six (26) Optional Conditions whose use depends on the nature and circumstances of the particular case; and sixteen (16) Standard Conditions that generally appear in all probation cases. All orders should place the Order(s) first, optional condition(s) second, and standard conditions third.

The Model Disciplinary Guidelines list proposed terms and conditions for more than twenty-four (24) sections of the Business and Professions Code.

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MODEL DISCIPLINARY ORDERS

1. Revocation - Single Cause

Certificate No. (Ex: E-1035) issued to respondent (Ex: John Doe, DPM) is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (Ex: I, II, and III) separately and for all of them.

3. Standard Stay Order

However, revocation is stayed and respondent is placed on probation for _____ (Ex: e.g., ten) years upon the following terms and conditions.

OPTIONAL CONDITIONS

4. Actual Suspension

As part of probation, respondent is suspended from the practice of podiatric medicine for (Ex: 90 days) beginning the sixteenth (16th) day after the effective date of this decision. Respondent shall prominently post a notice of the Board's Order of Suspension, in a place clearly visible to the public. Said notice, provided by the Board, shall remain so posted during the entire period of suspension.

4a. Provisions for Cessation of Practice

In settlements or orders which provide for a cessation of practice, respondent shall comply with procedures provided by the BPM regarding notification and management of patients.

5. Controlled Substances - Total Restriction

Respondent shall not order, prescribe, dispense, administer, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

6. Controlled Substances - Surrender of DEA Permit

Respondent is prohibited from practicing podiatric medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

7. Controlled Substances - Partial Restriction

Respondent shall not order, prescribe, dispense, administer or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules(s) (e.g., IV and V) of the Act.

NOTE: Also use Condition 8 which requires that separate records be maintained for all controlled substances prescribed.

(Option)

Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, respondent shall submit proof that respondent has surrendered respondent's DEA permit to the Drug Enforcement Administration for cancellation and reissuance.

Within 15 calendar days after the effective date of the issuance of a new DEA permit, the respondent shall submit a true copy of the permit to the Board or its designee.

8. Controlled Substances- Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered or possessed by respondent, during probation, showing all the following: 1) the name and address of the patient; 2) the date, 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

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.

12. Rehabilitation Program - Alcohol or Drug

Within 30 days of the effective date of this decision, respondent shall submit to the BPM for its prior approval a rehabilitation monitoring program. When evaluating programs for approval, the following will be taken into consideration: Unless specifically noted in the decision, the minimum length of the program shall be no less than three years. All plans must include face to face monitoring, random biological fluid testing, and an educational program that addresses disease concepts, recovery process and recovery oriented lifestyle changes.

Within 30 days of approval of said program respondent shall enroll and participate until the BPM or its designee determines that further monitoring and rehabilitation is no longer necessary. If it is determined by both the rehabilitation program and a BPM designated physician that respondent cannot practice podiatric medicine safely, the respondent shall immediately cease practice upon notification. Respondent may not resume practice until it has been determined by both the rehabilitation program and a BPM designated physician that respondent can safely practice podiatric medicine and has been notified in writing by the board's designee. Failure to cooperate or comply with the Rehabilitation Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.

13. Community Service - Free Services

Within 60 days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a community service plan in which respondent shall within the first 2 years of probation, provide _____ hours of free services (e.g., medical or non-medical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

Prior to engaging in any community service respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

NOTE: In quality of care cases, only non-medical community service is allowed unless respondent passes the National Board of Podiatric Medical Examiners Part III Exam or otherwise demonstrates competency prior to providing community service.

14. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified or Board approved and limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements, which must be scientific in nature, for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

15. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

16. Medical Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

17. Ethics Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after the effective date of the Decision.

18. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding. Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

(Option # 1: Condition Precedent)

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing.

(Option # 2: Condition Subsequent)

If respondent fails to complete the Program within the designated time period, respondent shall cease the practice of podiatric medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the Program.

19. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of podiatric medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion. Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

(Option #1: Condition Precedent)

Respondent shall not practice podiatric medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of podiatric medicine shall be restricted only to that which is required by the approved training program.

(Option#2: Condition Subsequent)

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the clinical training program.

(Option#3)

After respondent has successfully completed the clinical training program, respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

20. Examination

Within 60 calendar days of the effective date of this Decision, respondent shall arrange to take and pass a written examination, approved by the Board. Failure to pass the examination within one year of the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations. For purposes of this condition, the exam shall be a passing score of the National Board of Podiatric Medical Examiners Part III examination consistent with B&P code section 2493.

(Continue with either one of these two options.)

(OPTION 1: Condition Precedent)

Respondent shall not practice podiatry until respondent has passed the required examination and has been so notified by the Board or its designee in writing. This prohibition shall not bar respondent from practicing in a clinical training program approved by the Board or its designee. Respondent's practice of podiatric medicine shall be restricted only to that which is required by the approved training program.

NOTE: The condition precedent option is particularly recommended in cases where respondent has been found to be incompetent, repeatedly negligent, or grossly negligent.

(OPTION 2: Condition Subsequent)

If the respondent fails to pass the first examination, respondent shall be suspended from the practice of podiatric medicine. Respondent shall cease the practice of podiatric medicine within 72 hours after being notified by the Board or its designee that respondent has failed the examination. Respondent shall remain suspended from the practice of medicine until respondent successfully passes a follow-up examination, as evidenced by written notice to respondent from the Board or its designee.

21. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of the requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

(Option: Condition Precedent)

Respondent shall not engage in the practice of podiatric medicine until notified by the Board or its designee that respondent is mentally fit to practice podiatric medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

22. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years or postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the period of

probation shall be extended until the Board determines that the respondent is mentally fit to resume the practice of podiatric medicine without restrictions. Respondent shall pay the cost of *all* psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency or psychotherapy, is a violation of probation.

NOTE: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and/or drug self-abuse) related to the violations but is not at present a danger to respondent's patients.

23. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee.

If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for its prior approval the name and qualifications of a treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake and shall continue such treatment until further notice from the Board or its designee. The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, that the Board or its designee deems necessary.

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of podiatric medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.

(OPTION - Condition Precedent)

Respondent shall not engage in the practice of podiatric medicine until notified in writing by the Board or its designee of its determination that respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

24. Monitoring - Practice/Billing

Within 30 days of the effective date of this decision, the entire practice shall be monitored, including, but not limited to the following: medical records, charting, pre and postoperative evaluations, and all surgical procedures, and billing records.

The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor of podiatric medicine from its panel of medical consultants or panel of expert reviewers as the monitor.

The monitor shall provide quarterly reports to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of podiatric medicine or billing, or both, and whether respondent is practicing podiatric medicine safely.

The Board or its designee shall determine the frequency and practice areas to be monitored. Such monitoring shall be required during the entire period of probation. The Board or its designee may at its sole discretion also require prior approval by the monitor of any medical or surgical procedures engaged in by the respondent. The respondent shall pay all costs of such monitoring and shall otherwise comply with all requirements of his or her contract with the monitor, a copy of which is attached as "Appendix A - Agreement to Monitor Practice and/or Billing" (revised April 2004). If the monitor terminates the contract, or is no longer available, the Board or its designee shall appoint a new monitor immediately. Respondent shall not practice at any time during the probation until the respondent provides a copy of the contract with the current monitor to the probation investigator and such contract is approved by the Board.

Respondent shall provide access to the practice monitor of respondent's patient records and such monitor shall be permitted to make direct contact with any patients treated or cared for by respondent and to discuss any matters related to respondent's care and treatment of those patients. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent

shall execute a release authorizing the monitor to provide to the Board or its designee any relevant information. If the practice monitor deems it necessary to directly contact any patient, and thus require the disclosure of such patient's identity, respondent shall notify the patient that the patient's identity has been requested pursuant to the Decision. This notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by respondent and a copy of such notification shall be maintained in each patient's file. The notifications signed by respondent's patients shall be subject to inspection and copying by the Board or its designee at any time during the period of probation that respondent is required to comply with this condition. The practice monitor will sign a confidentiality agreement, requiring him or her to keep all patient information regarding respondent's patients in complete confidence, except as otherwise required by the Board or its designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

In lieu of a monitor, respondent may participate in the professional enhancement program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

25. Solo Practice

Respondent is prohibited from engaging in the solo practice of podiatric medicine.

26. Third Party Chaperone

During probation, respondent shall have a third party present while consulting, examining or treating patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a

third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

(Option)

Respondent shall provide written notification to respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment with _____ patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. Note: Sexual offenders should normally be placed in a monitored environment.

27. Prohibited Practice

During probation, respondent is prohibited from _____ (e.g., practicing, performing, or treating) (e.g., a specific medical procedure; surgery; on a specific patient population). After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment respondent shall orally notify the patient that respondent does not (e.g., practice, perform or treat) (e.g., a specific medical procedure; surgery; on a specific patient population). Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address, and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not _____ (e.g., practice, perform or treat) _____ (e.g., a specific medical procedure; surgery; on a specific patient population). Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as

defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

27a. Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the BPM or its designee of restitution in the amount \$_____ paid to _____. Failure to pay restitution shall be considered a violation of probation.

NOTE: In offenses involving economic exploitation, restitution is a necessary term of probation. For example, restitution would be a standard term in any case involving Medi-Cal or other insurance fraud. The amount of restitution shall be no less than the amount of money that was fraudulently obtained by the licensee. Evidence relating to the amount of restitution would have to be introduced at the administrative hearing.

STANDARD CONDITIONS

28. Notification

Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of podiatric medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

29. Physician Assistants

Prior to receiving assistance from a physician assistant, respondent must notify the supervising physician of the terms and conditions of his/her probation.

30. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of podiatric medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

31. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

32. Probation Unit Compliance

Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of podiatric medicine in respondent's place of residence. Respondent shall, maintain a current and renewed California doctor of podiatric medicine's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

33. Interview with the Board or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without notice throughout the term of probation.

34. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar_days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not

engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside, will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California 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: Obey All Law; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing podiatric medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under B&P Code sections 141(a) or 2305 may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

35. Failure to Practice Podiatric Medicine - California Resident

In the event the respondent resides in the State of California and for any reason respondent stops practicing podiatric medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code section 2472.

36. Completion of Probation

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate will be fully restored.

37. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an

Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

38. Cost Recovery

Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of \$_____ for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent of his/her obligation to reimburse the Board for its costs.

39. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice podiatric medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a podiatric medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

40. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

41. Notice to Employees

Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which respondent has been disciplined and the terms and conditions of probation, to all employees involved in his/her practice. Within fifteen (15) days of the effective date of this Decision, respondent shall cause his/her employees to report to the BPM in writing, acknowledging the employees have read the Accusation and Decision in the case and understand respondent's terms and conditions of probation.

42. Changes of Employment

Respondent shall notify the BPM in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.

43. Compliance with Required Continuing Medical Education

Respondent shall submit satisfactory proof biennially to the BPM of compliance with the requirement to complete fifty hours of approved continuing medical education, and meet continuing competence requirements for re-licensure during each two (2) year renewal period.

DISCIPLINARY GUIDELINES

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DISCIPLINE BY ANOTHER STATE [B&P 141 (a) & 2305]

Minimum penalty: Same for similar offense in California

Maximum penalty: Revocation

1. Examination as a condition precedent to practice in California [20]

MISLEADING ADVERTISING [B&P 651, 2271]

Minimum penalty: Stayed Revocation, 5 years probation

Maximum penalty: Revocation

1. Ethics course [17]
2. Suspension of 60 days or more [4]
3. Education Course [14]
4. Monitoring-Practice/Billing [24]
5. Prohibited Practice [27]

**EXCESSIVE PRESCRIBING [B&P 725] or
PRESCRIBING WITHOUT A PRIOR EXAMINATION [B&P 2242]**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Controlled Substances - Total DEA restriction [5]
Surrender DEA permit [6] or Partial DEA restriction [7]
2. Clinical Training Program [19] or Examination [20]
3. Maintain records and Access to Records and inventories [8]
4. Prescribing Practices Course [15]
5. Suspension of 60 days or more [4]
6. Monitoring - Practice/Billing [24]
7. Education course [14]
8. Ethics course [17]
9. Medical Record Keeping Course [16]

EXCESSIVE TREATMENTS [B&P 725]

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Clinical Training Program [19] or Examination [20]
2. Education course [14]
3. Suspension of 60 days or more [4]
4. Monitoring - Practice/Billing [24]
5. Ethics course [17]
6. Prohibited Practice [27]
7. Medical Record Keeping Course [16]

SEXUAL MISCONDUCT [B&P 726]

Minimum penalty: Stayed revocation, 7 years probation

Maximum penalty: Revocation

1. Psychiatric evaluation and/or psychotherapy [21] [22]
2. Education course [14]

3. Ethics course [17]
4. Third Party Chaperone [26]
5. Suspension of 60 days or more [4]
6. Monitoring - Practice/Billing [24]
7. Professional Boundaries Program [18]
 1. Prohibited Practice[27]

SEXUAL EXPLOITATION (B&P 729)

Effective January 1, 2003, Business and Professions Code 2246 was added to read, "Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."

INSURANCE FRAUD [B&P 810]

Minimum penalty: Stayed revocation, 5 years probation
 Maximum Penalty: Revocation

1. Ethics course [17]
2. Restitution to victim [27a]
3. Suspension of 60 days or more [4]
4. Community service program [13]

MENTAL OR PHYSICAL ILLNESS (B&P 820)

Minimum penalty: Stayed Revocation, 5 years probation
 Maximum penalty: Revocation

1. Rehabilitation Program - Alcohol or Drug [12]
2. Examination [20]
3. Psychiatric Evaluation [21]
4. Psychotherapy [22]
5. Medical Evaluation and Treatment [23]
6. Monitoring-Practice/Billing [24]
7. Solo Practice [25]
8. Prohibited Practice [27]

**GENERAL UNPROFESSIONAL CONDUCT [B&P 2234], or
 GROSS NEGLIGENCE [B&P 2234(b)] or
 REPEATED NEGLIGENT ACTS [B&P 2234(c)] or
 INCOMPETENCE [B&P 2234(d)] or
 FAILURE TO MAINTAIN ADEQUATE MEDICAL RECORDS [B&P 2266]**

Minimum penalty: Stayed revocation, 5 years probation
 Maximum penalty: Revocation

1. Examination [20] (preferably Condition Precedent)
2. Education course [14]
3. Clinical training program [19]
4. Monitoring-Practice/billing [24]

5. Prohibited Practice [27]
6. Suspension of 60 days or more [4]
7. Ethics course [17]
8. Prescribing Practices Course [15]
9. Medical Record Keeping Course [16]
10. Solo Practice [25]

DISHONESTY- Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine and arising from or occurring during patient care, treatment, management or billing [B&P 2234(e)]

Minimum penalty: Stayed revocation, one year suspension, at least
7 years probation

Maximum penalty: Revocation

1. Ethics course [17]
2. Examination [20]
3. Community service [13]
4. Restitution [27a]
3. Psychiatric Evaluation [21]
4. Medical Evaluation [23]
5. Monitoring-Practice/Billing [24]
6. Solo Practice [25]
7. Prohibited Practice [27]

DISHONESTY- Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care, treatment, management or billing [B&P 2234(e)]

Minimum penalty: Stayed Revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Ethics Course [17]
3. Psychiatric Evaluation [21]
4. Medical Evaluation [23]
5. Monitoring-Practice/Billing (if financial dishonesty or conviction of financial crime) [24]
6. Restitution to Victim [27a]

PROCURING LICENSE BY FRAUD [B&P 2235]

Revocation [1] [2]

CONVICTION OF CRIME - Substantially related to the qualifications, functions or duties of a doctor of podiatric medicine and arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, one year suspension, at least
7 years probation

Maximum penalty: Revocation

1. Ethics Course [17]
2. Examination [20]
3. Psychiatric Evaluation [21]
4. Medical Evaluation and Treatment [23]
5. Monitoring-Practice/Billing [24]
6. Solo Practice [25]
7. Prohibited Practice [27]

CONVICTION OF CRIME - Felony conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 7 years probation

Maximum penalty: Revocation

1. Suspension of 30 days or more [4]
2. Ethics Course [17]
3. Psychiatric Evaluation [21]
4. Medical Evaluation and Treatment [23]
5. Monitoring- Practice/Billing (if dishonesty or conviction of a financial crime) [24]
6. Victim Restitution [27a]

CONVICTION OF CRIME - Misdemeanor conviction substantially related to the qualifications, functions or duties of a doctor of podiatric medicine but not arising from or occurring during patient care treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Ethics Course [17]
2. Psychiatric Evaluation [21]
3. Medical Evaluation and Treatment [23]
4. Victim Restitution [27a]

**CONVICTION OF DRUG VIOLATION [B&P 2237], or
VIOLATION OF DRUG STATUTES [B&P 2238], or
EXCESSIVE USE OF CONTROLLED SUBSTANCES [B&P 2239], or
PRACTICE UNDER THE INFLUENCE OF NARCOTIC [B&P 2280]**

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Examination [20]
2. Controlled Substances - Total DEA restriction [5], Surrender DEA permit [6], or Partial DEA restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Prescribing Practices Course [15]
5. Education course [14]
6. Suspension of 60 days or more [4]
7. Rehabilitation Program [12]
8. Biological Fluid Testing [11]
2. Monitoring - Practice/Billing [24]
10. Ethics course [17]
11. Clinical Training Program [19]
12. Controlled Substances - Abstain From Use [9]
13. Medical Record Keeping Course [16]
14. Psychiatric Evaluation [21]
15. Psychotherapy [22]
16. Medical Evaluation and Treatment [23]
17. Prohibited Practice [27]

ILLEGAL SALES OF CONTROLLED SUBSTANCES (B&P 2238)

Revocation [1] [2]

**EXCESSIVE USE OF ALCOHOL [B&P 2239] or
PRACTICE UNDER THE INFLUENCE OF ALCOHOL [B&P 2280]**

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Rehabilitation Program [12]
2. Examination [20]
3. Biological Fluid Testing [11]
4. Suspension of 60 days or more [4]
5. Monitoring - Practice/Billing [24]
6. Ethics Course [17]
7. Controlled Substances - Abstain From Use [9]
8. Alcohol- Abstain From Use [10]
9. Psychiatric Evaluation [21]
10. Psychotherapy [22]
11. Medical Evaluation and Treatment [23]

PRESCRIBING TO ADDICTS [B&P 2241]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Controlled Substances - Total DEA restriction [5]
Surrender DEA permit [6] or Partial restriction [7]
2. Maintain Drug Records and Access to Records and Inventories [8]

3. Prescribing practices course [15]
4. Examination [20]
5. Education course [14]
6. Clinical Training Program [19]
7. Monitoring- Practice/Billing [24]
8. Ethics Course [17]
9. Medical Record Keeping Course [16]
10. Suspension of 60 days or more [4]
11. Prohibited Practice [27]

**MAKING OR SIGNING FALSE DOCUMENTS [B&P 2261], or
ALTERATION OF MEDICAL RECORDS [B&P 2262]**

Minimum penalty: Stayed revocation, 3 5 years probation
Maximum penalty: Revocation

1. Ethics course [17]
2. Suspension of 60 days or more [4]
3. Medical Record Keeping Course [16]
4. If fraud involved, see "Dishonesty" guidelines

AIDING AND ABETTING UNLICENSED PRACTICE [B&P 2264]

Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [14]
3. Ethics Course [17]
4. Examination [20]
5. Monitoring - Practice/Billing [24]
6. Prohibited Practice [27]

FICTITIOUS NAME VIOLATION [B&P 2285]

Minimum penalty: Stayed revocation, one year probation
Maximum penalty: Revocation

IMPERSONATION OF APPLICANT IN EXAMINATION [B&P 2288]

1. Revocation [1] [2]

PRACTICE DURING SUSPENSION [B&P 2306]

1. Revocation [1] [2]

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:7 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.



AGREEMENT TO MONITOR PRACTICE AND/OR BILLING

Introduction

The role of the practice and/or billing monitor (Monitor) is to ensure, to the extent possible, that the Probationer will conduct his/her practice with safety to the public and in a competent manner. The Monitor is responsible for reporting to the Board of Podiatric Medicine (Board) any identified problems or deficiencies in the quality of the Probationer's patient care, billing practices, medical record keeping, and/or professional conduct. The Monitor also fulfills the role of an educator and advisor to the Probationer, with the goal of assisting the Probationer to improve clinical skills and gain insight into practices that led to disciplinary action, so that learning and rehabilitation will occur. In order to provide this type of objective oversight, the Monitor must not have any prior or current business, personal, or other relationship with the Probationer that could reasonably be expected to compromise the ability of the Monitor to render fair and unbiased reports to the Board.

AGREEMENT

I, _____, D.P.M., "Monitor", hereby agree to monitor the medical and/or billing practice of _____, D.P.M., "Probationer."

- I have received and have read a copy of the Accusation and Decision regarding the Probationer.
- I clearly understand the role of a Monitor and what is expected of me.
- I have no prior or current business, personal or other relationship with the Probationer that could reasonably be expected to compromise my ability to render fair and unbiased reports to the Board.
- I understand that the Probationer is responsible for all costs associated with the monitoring of his/her practice, and that the Board does not set these costs. I am not being compensated for my services by any form of bartering arrangement with the Probationer.
- I have reviewed the Monitoring Plan and (check one):
 - Agree to monitor the Probationer as specified in the Plan.
 - I am submitting a revised Monitoring Plan for approval by the assigned Investigator. I understand that the Investigator may reject my proposed revisions, in which case I may either decline to monitor the Probationer's practice, or submit a new proposed Monitoring Plan that is acceptable to the assigned Investigator.
- I agree to regularly submit written reports to the assigned Investigator regarding my review of the Probationer's practice. The due dates and required content of these reports is detailed in the Monitoring Plan.
- If I am no longer able or willing to continue to monitor the Probationer's practice, I agree to immediately notify the assigned Investigator.

Executed on _____, 200____, at _____, California.

(City)

(County)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Monitor (Print Name)

Signature

I have no prior or current business, personal or other relationship with (*insert Monitor's name*) that could reasonably be expected to compromise the (*insert Monitor's name*) ability to render fair and unbiased reports to the Board. I have agreed to compensate the monitor at the rate of \$ _____ per hour for all work performed in executing the duties of monitor.

Executed on _____, 200____,

at _____, California.

(City)

(County)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Probationer (Print Name)

Signature



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

Medical Board of California
BOARD OF PODIATRIC MEDICINE
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ENFORCEMENT COMMITTEE
FEBRUARY 18, 2015

**SUBJECT: REVISIONS TO BPM MODEL DISCIPLINARY GUIDELINES AND
PODIATRIC MEDICINE REGULATION SECTION 1399.710**

10

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

Direct the Executive Officer to initiate draft revisions to BPM's "Manual of Disciplinary Guidelines with Model Disciplinary Orders" and Podiatric Medicine Regulation 1399.710 in order to incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees as mandated by SB 1441 and return to committee in May with proposed amendments and revisions.

ISSUE

Current regulatory section 1399.710 of the Podiatric Medicine Regulations does not incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees as required by SB 1441.

BACKGROUND

As a semi-autonomous health Board within the Medical Board of California ("MBC"), the Board of Podiatric Medicine utilizes MBC complaint intake, investigation, enforcement and discipline personnel under a Shared Services arrangement. In order to maintain uniformity across the medical practitioner spectrum, BPM endeavors to maintain consistency of practice in disciplinary and enforcement coordination efforts in order to ensure that doctors of podiatric medicine are held to the same standards as medical doctors.

In September of 2008, SB 1441 was passed and signed into law. Codified in section 315 of the California Business and Professions Code, SB 1441 established the Substance Abuse Coordination Committee as part of the Department of Consumer Affairs ("DCA"). The Substance Abuse Coordination Committee (the "Committee") was tasked with creating a set of Uniform Standards to be used by all healing arts boards when dealing with substance-abusing licensees. The Legislative intent behind SB 1441 was to protect the public by ensuring that all health care related boards adopted a uniform set of best practices or standards for contending with medical practitioners having alcohol or drug related abuse problems.

In April 2011, the Committee—composed of the executive officers of healing arts boards—released the Uniform Standards regarding Substance-Abusing Healing Arts Licensees composed of sixteen (16) separate criterion for implementing the requirements mandated by SB 1441.

Accordingly, mirroring the efforts undertaken by MBC at that time, BPM revised its Manual of Disciplinary Guidelines with Model Disciplinary Orders to incorporate some but not all of the 16 standards propounded by the Committee. The effort resulted in revisions to Conditions 9, 10 and 11, of the Board’s disciplinary guidelines which expanded the definition of “biological fluid testing” and permitted the Board to impose a “cease practice” order for a positive drug or alcohol result on a biological fluid test in addition to requiring a timely filing for administrative action in order to preserve due process rights. Also included were revisions to the recommended range of penalties for probation violations in order to maintain consistency with MBC. These revisions were adopted by the Board on September 23, 2011, with the central intent of updating the Board’s previous 2005 edition of its model disciplinary guidelines.

In accordance with SB 523 (Stats. 1995, Chapt. 938; Kopp), which prohibits a penalty in an administrative disciplinary action from being based on a guideline unless it has been specifically adopted as a regulation, the Board approved and sought to incorporate the revised 2011 model disciplinary guidelines into regulation by reference and initiated the regulatory process for accomplishing same. This effort would have implemented some but not all of the Uniform Standards required by SB 1441 in addition to reestablishing consistency with MBC and their then current 2010 Manual of Model Disciplinary Orders and Disciplinary Guidelines with respect to licensee rehabilitation as a condition of probation.

Notwithstanding, the revised model guidelines were disapproved by DCA in 2011 on the grounds that BPM selectively incorporated the Uniform Standards required by SB 1441. Three legal opinions were cited including that of the Office of Legislative Counsel, the Office of the Attorney General in addition to the Department’s own Legal Affairs Office, which concluded that compliance with section 315 of the Business and Professions Code was mandatory. Further, the proposed guidelines that BPM proposed to incorporate were found inconsistent with requirements of the law because they provided the Board additional discretion to deviate from those Uniform Standards. Thus, BPM’s attempted regulatory effort to incorporate the revised 2011 guidelines by reference failed.

At this juncture, the Board’s adopted 2011 revisions are dead letter and may not legally be referenced or used as guidance for any administrative disciplinary or enforcement matters. Thus, the most current Manual of Model Disciplinary Guidelines with Model Disciplinary Orders in effect remains the September 2005 edition which neither incorporates the Uniform Standards issued by the Substance Abuse Coordination Committee nor maintains current consistency of practice with MBC.

DISCUSSION

Pursuant to section 2470 of the California Business and Professions Code and consistent with provisions contained in the Administrative Procedures Act (“APA”), the

Board of Podiatric Medicine (“BPM”) may adopt, amend or repeal regulations necessary to enable it to carry into legal effect provisions relating to the practice of podiatric medicine. However, the APA prohibits the use of any Board related guideline in an administrative disciplinary action unless it has been specifically incorporated into regulation by reference. Therefore, the September 2011 revisions to BPM’s model disciplinary guidelines may not be used because they failed to be adopted into a regulation by reference. Thus, the most current model disciplinary guideline in effect for BPM is the 2005 edition of the guidelines. The 2005 edition also remains the guidelines currently referenced in section 1399.710 of the Podiatric Medicine Regulations. Because the 2005 edition of the model disciplinary guidelines were approved prior to enactment of SB 1441 or the creation of Substance Abuse Coordination Committee, they neither contain any of the Uniform Standards issued by the Substance Abuse Coordination Committee nor as mandated for inclusion by California Business and Professions Code section 315.

It is widely accepted and recognized that substance abusing physicians pose a significant health and safety risk to patients, many of whom may even be unaware of the practitioner’s issue and the dangers presented. In order to address these concerns, the Legislature and the Governor passed and signed SB 1441 to establish the Substance Abuse Coordination Committee within DCA. The stated intent of the legislation was to better protect the public from substance abusing healing arts licensees with consistent standards and best practice for addressing substance abuse across all healing arts boards.

More recently, MBC has again initiated a regulatory process to incorporate a number of statutory and programmatic changes which has prompted revisions to their disciplinary guidelines in order to maintain consistency with current practice in addition to a robust effort to implement the Uniform Standards through incorporation of the required terms and conditions without deviation into their regulatory framework. Following completion of this regulatory effort, yet further inconsistency between BPM and MBC disciplinary and enforcement practice will result. At the very least, such inconsistency will likely engender potential confusion among Medical Board complaint and investigative staff, Deputy Attorneys General and Administrative Law Judges who will be prohibited from applying guidelines reflecting improved licensee rehabilitation standards or provisions specifically mandated by SB 1441. At the most, the difference in practice will create a greater chasm of inconsistency between BPM and MBC and further thwart the stated legislative intent of SB 1441 to ensure that all health care related boards adopt a uniform set of best practices or standards for contending with medical practitioners having alcohol or drug related abuse problems.

Accordingly, staff recommends that the Board revise its current model disciplinary guidelines for compliance with SB 1441’s mandate to incorporate those Uniform Standards and best practices developed by the Committee that were originally left out during the previous 2011 BPM effort to revise its guidelines in addition to drafting proposed regulatory amendments to 1399.710 to implement those mandatory terms and conditions that must be ordered in all instances without deviation when a physician is deemed a substance abuser except where the Board may impose more restrictive measures to protect the public if necessary.

Failure to amend regulatory section 1399.710 and revise BPM model disciplinary guidelines will cause continued application of outdated guidelines that do not properly reference legal and technical changes that have since transpired and will neglect to incorporate mandated consumer protection measures to engender greater consistency, efficiency and protection of the public across all healing arts boards considered necessary in the Legislature's view.

FINANCIAL IMPACT

None.

ALTERNATIVES

In view of the discussion above, no reasonable alternative considered would be effective to carry out the mission of the Board in accord with its mandate of consumer protection and as further required by SB 1441.

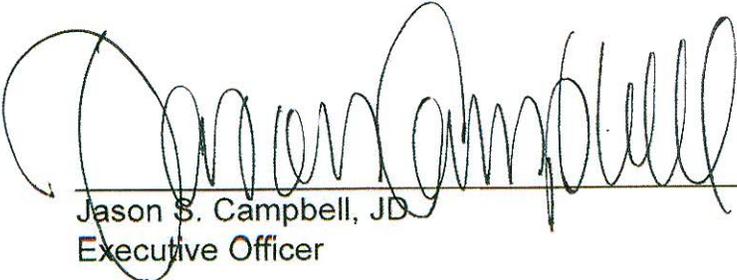
NEXT STEPS

With Board approval staff will begin drafting revisions for BPM's model disciplinary guidelines and amending Podiatric Medicine Regulation section 1399.710 to incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees as mandated by SB 1441 and implementing those terms and conditions that must be followed without deviation and return to Committee in May with draft language for approval.

ATTACHMENTS

- A. SB 1441 (Chapter 548, Statutes of 2008) authored by Senator Ridley Thomas
- B. The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2011

Prepared by: Jason S. Campbell, JD, Executive Officer



Jason S. Campbell, JD
Executive Officer



California
LEGISLATIVE INFORMATION

SB-1441 Healing arts practitioners: substance abuse. (2007-2008)

Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, **uniform** and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee, approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require

registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

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

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have "diversion programs" designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which **uniformly** concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board's diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and **uniform** standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomicity, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services

received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

315. (a) For the purpose of determining **uniform** standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate **uniform** and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

- (7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
- (8) Procedures to be followed when a licensee tests positive for a banned substance.
- (9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
- (10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.
- (11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.
- (12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
- (13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.
- (14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
- (15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.
- (16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

- (a) "Board" means the Board of Dental Examiners of California.
- (b) "Committee" means a diversion evaluation committee created by this article.
- (c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

- 1695.5.** (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.
- (b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).
- (c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the

Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

- (a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.
- (b) To review and designate those treatment facilities and services to which a participant in the program may be referred.
- (c) To receive and review information concerning participants in the program.
- (d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.
- (e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.
- (f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.
- (g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

- (a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.
- (b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.
- (c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.
- (d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.
- (e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.
- (f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.
- (g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.
- (h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

- (1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.
- (2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.
- (3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.
- (4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.
- (5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.
- (6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

- (1) The participant has successfully completed the treatment program.
- (2) The participant has failed to comply with the treatment program designated for him or her.
- (3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).
- (4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare.

Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) "Board" means the Board of Registered Nursing.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board's diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A registered nurse who has been under investigation by the board and

has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

- (a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.
- (b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.
- (c) To receive and review information concerning a registered nurse participating in the program.
- (d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.
- (e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.
- (f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between

the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

- (a) "Board" means the Medical Board of California.
- (b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.
- (c) "Trainee" means a person who is currently enrolled in an approved program.
- (d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.
- (e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.
- (f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.
- (g) "Committee" or "examining committee" means the Physician Assistant Committee.
- (h) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.
- (i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.
- (j) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

- (a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.
- (b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.
- (c) The receipt and review of information concerning physician assistants participating in the program.
- (d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011

STATE OF CALIFORNIA
dca
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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversion Participant

Dates Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test

Dates Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels)

Date Contractor Notified Board of Questionable Test

Identify Substances Detected or Questionably Detected

Dates Failed to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing

Dates Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which)

Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.