



**CALIFORNIA BOARD OF PODIATRIC MEDICINE  
NOVEMBER 13, 2015**

**SUBJECT: PROPOSED DRAFT LANGUAGE FOR REVISIONS TO BPM  
MANUAL OF DISCIPLINARY GUIDELINES AND BOARD OF  
PODIATRIC MEDICINE REGULATION SECTION 1399.710**

**11**

**ACTION: APPROVE:**

- A. PROPOSED DRAFT LANGUAGE FOR REVISIONS TO BPM  
MANUAL OF DISCIPLINARY GUIDELINES WITH MODEL  
DISCIPLINARY ORDERS;**
- B. PROPOSED DRAFT LANGUAGE AMENDING PODIATRIC  
MEDICINE REGULATION 1399.710 AND ADDING  
REGULATORY SECTIONS 1399.711, 1399.712, 1399.713,  
1399.714, 1399.715 1388.716 INCORPORATING THE UNIFORM  
STANDARDS FOR SUBSTANCE-ABUSING HEALING ARTS  
LICENSEES; AND**
- C. AUTHORIZING THE EXECUTIVE OFFICER TO MAKE ANY NON-  
SUBSTANTIVE CHANGES AND TO COMMENCE THE  
RULEMAKING PROCESS.**

**RECOMMENDATION**

After review and discussion of the proposed revisions to the Board of Podiatric Medicine's ("BPM") current "Manual of Disciplinary Guidelines with Model Disciplinary Orders" and Podiatric Medicine Regulation 1399.710 incorporating the Uniform Standards for Substance-Abusing Healing Arts Licensees as mandated by SB 1441, approve and direct the Executive Officer to make any non-substantive changes and to initiate the regulatory process.

**ISSUES**

- A. The Executive Officer must be authorized and directed to make any non-substantive changes to proposed regulatory revisions to section 1399.710 of the Podiatric Medicine Regulations incorporating the Uniform Standards for Substance-Abusing Healing Arts Licensees as required by SB 1441.

- B. Two (2) standard conditions recommended for application against probationers contained in the board's current Manual of Disciplinary Guidelines and Model Disciplinary Orders may violate the due process rights of disciplined licensees if either is used as a term and condition of probation as recommended in Board settlement orders or decisions.
- C. Additional amendments to conditions 9, 10 and 11 are necessary to reflect changes to California Government Code section 11529 effective January 1, 2014, that extended the 15-day time frame for filing an accusation following the issuance of a suspension order to 30 days. These proposed revisions also provide clarification to both Administrative Law Judges and the Board that each has a 15-day deadline to issue a decision absent good cause.
- D. Revisions to conditions 18, 19 and 24 are proposed to eliminate reference to the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine in order to remove the appearance of government endorsement of one specific program over those of others that are available. In addition, the proposed amendment to condition 18 renames the program to "Clinical Competence Assessment Program" and strengthens the program requirements to conform to changes in the educational and probationary environments that strengthen consumer protection.

## **BACKGROUND**

The background of issue A has been previously outlined in detail at the February 18<sup>th</sup> and May 20<sup>th</sup> Board of Podiatric Medicine ("BPM") Enforcement Committee meetings and the March 6<sup>th</sup> and June 5<sup>th</sup> meetings of the full board. While the Board voted to approve a motion for amending BPM model disciplinary guidelines and implementing the Uniform Standards, the Board must direct and authorize the Executive Officer to make any non-substantive changes and commence the rulemaking process.

During this interim period however, it has recently come to staff's attention that a 2008 case out of the Third District Court of Appeal for the State of California has cast into question the legal soundness of two (2) standard conditions contained in the board's current Manual of Disciplinary Guidelines and Model Disciplinary Orders recommended for application against probationers.

Changes effective January 1, 2014 to California Government Code section 11529 allow accusations to be filed within 30-days after an interim order has been issued and required additional revisions to previously proposed language submitted to the Board covering conditions 9, 10 and 11 of the guidelines in order to reflect the requirements of the law appropriately.

## **DISCUSSION**

### **Uniform Standards**

As previously reported, the Medical Board of California (“MBC”) recently succeeded updating its regulations to include all the Uniform Standards as mandated by SB 1441. As previously outlined in reports to the Board on this matter, much of the proposed regulatory language contained herein mirrors the regulatory language recently and successfully passed by MBC. BPM’s previous effort in 2011 to adopt desired regulatory language adding some but not all of the Uniform Standards did not succeed. It was therefore recommended at the June 5, 2015 BPM meeting that the board approve staff’s recommendation for amendments and revisions that would:

1. Update the title of BPM’s manual of disciplinary guidelines and model disciplinary orders to “Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11<sup>th</sup> Edition/2015”;
2. Add proposed language to regulation 1399.710 after its title “Disciplinary Guidelines” to include “and Uniform Standards for Substance Abusing Licensees”;
3. Amend 1399.710 to include language that will clarify, among other minor revisions, that “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” to assure that the legislative intent for applying the Uniform Standards will be followed; and
4. Add proposed regulatory provisions including sections 1399.711, 1399.712, 1399.713, 1399.714, 1399.715 and 1388.716 incorporating the Uniform Standards for Substance-Abusing Healing Arts Licensees.

While the Board voted to approve staff’s recommendation for amending BPM model disciplinary guidelines and implementing the Uniform Standards at the June 5<sup>th</sup> meeting, the Board must direct and authorize the Executive Officer to make any non-substantive changes and commence the rulemaking process in order to ensure that the proposed package of regulatory changes is not rejected by the Office of Administrative Law.

### **Due Process**

Due process considerations require that all individuals holding occupational licenses be afforded a notice and opportunity to be heard before disciplinary action involving the revocation, suspension or restriction of a license is taken by state licensing boards. This

principal was held to apply to automatic cancellation provisions contained in Board ordered probation settlement orders and decisions.

On or about 2008, a probationer filed a petition for extraordinary writ with the Third District Court of Appeal challenging the automatic cancellation provisions imposed by the Medical Board of California (“MBC”) as a term and condition of probation. *Mao v. Superior Court of California*, No. C058547 (Super. Ct. No. 03CS000736) (Cal. Ct. App. Nov. 25, 2008). By conditioning probation with limitations on periods of non-practice no greater than two-years in duration, MBC essentially imposed a requirement that a probationer must practice under his or her license in order to retain it, or the license would cancel automatically after two years of non-practice.

Petitioner argued that MBC lacked statutory authority to cancel a license when the licensee was otherwise in compliance with continuing licensure requirements including payment of licensure fees and meeting continuing medical education and that any automatic effort to cancel a compliant licensee without a hearing violates due process rights to notice and an opportunity to be heard before action may be taken.

Significantly, the Court held, citing, *Ralph Williams Ford v. New Car Dealers Policy & Appeals Bd.* (1973) 30 Cal.App. 3d. 494, 500-501, that individuals must be afforded notice and an opportunity to be heard before being deprived of an occupational license. The Court found that an automatic cancellation clause was an unreasonable condition and did not further the Board’s objective for ensuring that a licensee did not sit out a probationary term by non-practice because he or she is obligated to practice under the terms and conditions of probation when medical practice is resumed.

In this case, standard conditions nos. 34 and 35 of BPM’s current Manual of Disciplinary Guidelines with Model Disciplinary Orders recommends automatic cancellation of a license in all probation cases against disciplined licensees based on two separate grounds. These include automatic cancellation for: 1) permanent or temporary periods of residence outside of California exceeding two years in duration; or 2) failure to practice podiatric medicine for a total of two years.

Based on the reasoning above, it is recommended that the aforementioned standard conditions be revised to eliminate the automatic cancellation provisions in order to afford individuals notice and an opportunity to be heard before disciplinary action is taken against a probationer. Proposed draft language changes ensuring that a probationer is afforded a hearing have been incorporated to conditions nos. 34 and 35 as indicated in attachment B. The underlying concerns against probationers attempting to defeat terms of probation by sitting out the duration of probation through non-practice are preserved.

Government Code Section 11529

Section 11529 of the California Government Code (“GC”) provides in pertinent part that an interim order will be dissolved in all cases if an accusation is not filed and served “within 30 days of the date” after submission of the interim order. Further, section 11529 also specifies that “a written decision shall be prepared within 15 days of the hearing [....]”

Previous proposed revisions to conditions 9, 10 and 11 of the model guidelines reviewed and considered by the Board at the June 5<sup>th</sup> meeting did not contain the requirement that an accusation shall have been filed within 30 days. Disciplinary guideline revisions submitted for review and consideration now track the 30-day requirement codified in section 11529 GC. Additionally, the proposed revisions also provide greater clarification that a 15-day deadline to issue a decision is applicable to both Administrative Law Judges and the Board absent good cause.

### Physician Assessment and Clinical Education Program

Public service as a public trust dictates that every government agency and employee has a responsibility to the State of California and the people of the state to whom they serve to place loyalty to the Constitution, laws and ethical principles above private gain. Principles of ethical conduct include prohibitions on endorsement of organizations, products or persons absent statutory authority. Often, even the appearance of impropriety is frequently as damaging to government integrity and loss of public confidence in public institutions as impropriety itself.

Current Board guidelines under conditions 18 (Professional Boundaries Program), 19 (Clinical Training Program) and 24 (Monitoring - Professional Enhancement Program) specify that probationers must enroll in courses equivalent to those offered by the San Diego School of Medicine’s Physician Assessment and Clinical Education Program (“PACE”).

Proposed revisions remove the reference to PACE and eliminate the appearance of government endorsement of one program over all others.

### Clinical Training Program

Condition 18 describes the Board’s requirements for a clinical training program. The Board’s current model guidelines require a two day comprehensive assessment of respondent’s physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment related to the respondent’s area of practice in which he or she was alleged to be deficient, and required a minimum 40-hour program of clinical education in that area.

The Board guidelines further provide that the program will advise the Board of its recommendations for any additional education, training, or treatment for any medical or psychological condition or anything else affecting respondent’s practice of medicine.

Current guidelines require respondent to pass an examination at the end of any additional education or clinical training.

Proposed amendments include renaming Condition 18 to the “Clinical Competence Assessment Program.” The two day assessment and a 40-hour program requirement is also proposed to be eliminated to allow custom-designed assessments and programs specific to each respondent’s particular needs and circumstances thus removing the one-size fits all approach from the guidelines. Proposed amendments also add a pre-assessment, self-report and interview to be included in the assessment of the respondent and specify the respondent’s on site participation for a minimum of three to five days as determined by the program.

Additionally, it is proposed that the program will be required to submit a comprehensive assessment to the Board that unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. The program is also to provide recommendations for any further education, clinical training, or evaluation or treatment for any medical or psychological condition, or anything else affecting respondent’s practice of medicine. References to passage of a final examination at completion of additional education or clinical training are proposed to be eliminated. Finally, the ability to practice in a clinical training program as an exception is proposed to be removed.

### **FINANCIAL IMPACT**

None.

### **ALTERNATIVES**

In view of the discussion above, no reasonable alternatives 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. Continued use of terms and conditions of probation that may run afoul of due process considerations needlessly subjects future board settlement orders and decisions to collateral attack which may create further undue expense and burden in pursuit of the agency’s mission. Further, proposed changes discussed above are required for consistency with statutory requirements found in the Government Code effective January 1, 2014, in addition to strengthening program requirements in conformance with changes in educational and probationary environments which directly strengthen consumer protection.

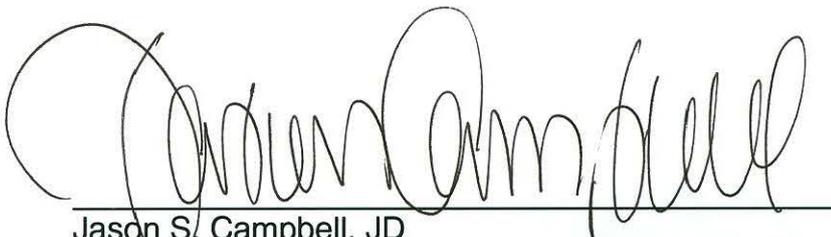
### **NEXT STEPS**

Should the Board adopt staff’s recommendation the Executive Officer will make any non-substantive changes and commence the formal rulemaking process with the Office of Administrative Law.

**ATTACHMENTS**

- A. Proposed Revisions to Regulation Section 1399.710
- B. Proposed Revisions to BPM Manual of Disciplinary Guidelines with Model Disciplinary Orders

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Jason S. Campbell, JD  
Executive Officer

**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 practitioner who holds a valid, unrestricted license; has three (3) years' experience in providing evaluations of licensed doctors 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), 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 practitioners 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  
**MODEL DISCIPLINARY ORDERS GUIDELINES**  
**WITH AND**  
**MODEL DISCIPLINARY GUIDELINES ORDERS**

(Effective ~~February 4, 2006~~)

These Disciplinary Guidelines were originally adopted by the BPM on September 5, 1984, and most recently revised ~~September 2005~~ November 13, 2015. 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

**MODEL DISCIPLINARY ORDERS GUIDELINES WITH  
AND MODEL DISCIPLINARY GUIDELINES 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 is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 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. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. 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 30 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 the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the

Board within 30 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. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. 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 30 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 is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 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. If the case is heard from an Administrative Law Judge alone, he or she shall forward a proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. 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 30 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").~~ approved in advance by the Board or its designee. Respondent, at the Pprogram's discretion, shall undergo and complete the Pprogram'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 Pprogram shall evaluate respondent at the end of the training and the Pprogram 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 Pprogram 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 Pprogram 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 Pprogram recommendations. At the completion of the Pprogram, respondent shall submit to a final evaluation. The Pprogram shall provide the results of the evaluation to the Board or its designee.

The Pprogram's determination whether or not respondent successfully completed the Pprogram shall be binding. Failure to participate in and complete successfully all phases of the Pprogram, 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 Competence Assessment Training Program**

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical competence assessment 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”). approved in advance by the Board or its designee.

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.~~ The program shall which takes into account data obtained from the pre-assessment, self report form and interview, and the 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. The program shall require respondent’s on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation.

At the end of the evaluation, the program will submit a report to ~~Based on respondent’s performance and test results in the assessment and clinical education, the Program will advise the Board or its designee~~ which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent’s performance on the Clinical Competence Assessment, 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, evaluation or treatment for any medical condition, ~~treatment for any~~ or 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 competence assessment 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 ~~P~~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 competence assessment 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 competence assessment training program.

**(Option#3)**

After respondent has successfully completed the clinical competence assessment 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,~~ approved in advance by the Board or its designee, 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 a professional enhancement program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, approved by the Board or its designee 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 and Advanced Practice Nurses**

Prior to receiving assistance from a physician assistant or advanced practice nurse, 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 15 ~~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 Laws; Probation Unit Compliance; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; Biological Fluid Testing; and Cost Recovery.

Respondent's license is subject to cancellation ~~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 15 ~~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, and does not relieve respondent from complying with all the terms and conditions of probation.

~~Respondent's license shall be automatically cancelled if respondent resides~~ Failure to practice while 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 shall be a violation of probation. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation.

**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; 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