

**DEPARTMENT OF CONSUMER AFFAIRS  
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS  
DIVISION 13.**

**MEDICAL BOARD OF CALIFORNIA**

**PROPOSED REGULATORY LANGUAGE  
Physician and Surgeon Health and Wellness Program**

<b>Legend:</b>	Added text is indicated with an <u>underline</u> . Deleted text is indicated by <del>strikeout</del> . Omitted text is indicated by . . .
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**Amend Sections 1357, 1357.1, and 1357.9; Repeal Sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8, Adopt Sections 1357.10, 1357.11, 1357.12, 1357.13, and 1357.14 of Article 2 and Amend section 1361.5(c)(3) of Article 4 of Chapter 2 of Division 13, of Title 16 of the California Code of Regulations to read as follows:**

**Article 2. ~~Impaired Physician Program~~ Physician and Surgeon Health and Wellness Program**

**§ 1357. Definitions.**

As used in this article:-

~~(a) "Program" means the impaired physician diversion program authorized pursuant to Article 14 (commencing with Section 2340) of the Medical Practice Act.~~

~~(b) "Committee" means a diversion evaluation committee.~~

(a) "Board" means the Medical Board of California or its designee unless otherwise specified.

(b) "Clinical Diagnostic Evaluation" includes any exam performed by a licensed physician and surgeon, and used to determine:

(1) whether the participant has a substance abuse problem;

(2) whether the participant is a threat to themselves or others; and

(3) recommendations relating to the participant's treatment, rehabilitation, and/or the participant's ability to practice medicine safely.

(c) "Conflict of Interest" means having a financial, personal, or familial relationship with the participant, or other relationship that could reasonably be expected to compromise the ability of the other to render impartial and unbiased reports.

- (d) “Contractor” includes a contractor or a subcontractor who contracts to perform services for the vendor, including medical, mental health, laboratory, or other service providers.
- (e) “Employer” includes the participant’s employer, supervisor, chief of staff, the health or wellbeing committee chair, or equivalent, as applicable to the participant’s practice setting, if any.
- (f) “Full-time practice” means the licensee is not subject to any practice restriction imposed by the program or Board.
- (g) “Licensee” means a California licensed physician and surgeon or a holder of a California physician and surgeon postgraduate training license.
- (h) “Participant” means a licensee enrolled in the program pursuant to a signed agreement with the program, regardless of whether the licensee enrolled pursuant to a condition of probation imposed by the Board, or as a self-referral.
- (i) “Practice restriction” means a restriction from practicing medicine for any period of time or a limitation on any of the following:
  - (1) Number of hours the participant is authorized to practice medicine;
  - (2) Locations where a participant is authorized to practice medicine;
  - (3) The types of services or procedures the participant may perform.
- (j) “Program” means the Physician and Surgeon Health and Wellness Program authorized pursuant to Article 14 commencing with Section 2340 of the code.
- (k) “Vendor” means the entity contracted with the Board to perform services required to administer the program or its designee.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 2064.5, 2340, 2340.2, 2340.4, 2340.6, and 2340.8, Business and Professions Code.

**§ 1357.1. Criteria for Admission.**

~~An applicant~~The participant shall meet the following criteria for admission to the program:

- (a) ~~The applicant~~participant shall be a California licensed physician and surgeon or hold a physician and surgeon postgraduate training license ~~be otherwise legally authorized to practice medicine~~ in this state.
- (b) ~~The applicant~~participant is found to abuse ~~dangerous drugs~~substances or alcoholic beverages, ~~or suffer from mental or physical disability~~ in a manner which may affect the

physician's participant's ability to practice medicine ~~safely~~ safely or competently.

(c) The ~~applicant~~ participant shall have voluntarily requested admission to the program or have been referred by the Board pursuant to a disciplinary order.

(d) The ~~applicant~~ participant agrees in writing to undertake any medical or psychiatric examinations ordered to evaluate the application for participation in the program.

(e) The ~~applicant~~ participant cooperates with the program by providing medical information, disclosure authorizations and releases of liability as may be necessary for participation in the program.

(f) The participant agrees in writing to abstain from the use of alcohol and prohibited substances as defined in section 1361.51(e).

(g) The participant agrees in writing to comply with all practice restrictions as defined in section 1357(i) imposed by the program.

(f)(h) The ~~applicant~~ participant agrees in writing to cooperate with all elements of the ~~diversion agreement for admission into the program, including all sections of this article, and to pay all costs required for participation in the program.~~

Note: Authority cited: Section 2018, Business and Professions Code.  
Reference: Sections 315, 2064.5, 2340, 2340.2, 2340.4, 2340.6, and 2340.8~~2350~~,  
Business and Professions Code.

### **~~§ 1357.2. Procedure for Review of Applicants.~~**

~~(a) Program staff and a committee, shall act as consultants to the program manager for the purpose of interviewing each applicant who requests admission to the program.~~

~~(b) The committee shall recommend such medical and psychiatric examinations as may be necessary to determine the applicant's eligibility for the program and request such other information, authorizations, and releases necessary for the program.~~

~~(c) The committee shall make a recommendation to the program manager whether the applicant should be admitted to the program.~~

~~(d) The program manager's decision on admission of an applicant to the program shall be final.~~

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section ~~2350~~, Business and Professions Code.

### **~~§ 1357.3. Evaluating Physicians.~~**

~~A physician selected by the program manager or his/her designee to conduct medical and psychiatric evaluations of an applicant shall be a licensed physician who is competent in his/her field of specialty.~~

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2350, Business and Professions Code.

**§ 1357.4. Causes for Denial of Admission.**

The program manager may deny an applicant admission to the program for any of the following reasons:

- (a) The applicant does not meet the requirements set forth in Section 1357.1.
- (b) The applicant has been disciplined by another state medical licensing authority.
- (c) Complaints or information have been received by the division which indicate that the applicant may have violated a provision of the Medical Practice Act or committed any other act that would be grounds for discipline, excluding Sections 822 and 2239 of the code.
- (d) The committee recommends that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety or welfare.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2350 and 2354, Business and Professions Code.

**§ 1357.5. Causes for Termination from the Program.**

The program manager may terminate a physician's participation in the program for any of the following reasons:

- (a) The physician has failed to comply with the diversion agreement, including but not limited to, failure to comply with the prescribed monitoring or treatment regimen, use of alcohol or other unauthorized drug; or refusal to stop practice when directed to do so by the committee.
- (b) Any cause for denial of an applicant in Section 1357.4.
- (c) The physician has failed to comply with any of the requirements set forth in Section 1357.1.
- (d) The committee recommends that the physician will not benefit from further participation in or has not substantially benefited from participation in the program or that the physician's continued participation in the program creates too great a risk to the public health, safety or welfare.

Note: Authority cited: Sections 2018 and 2355, Business and Professions Code. Reference: Sections 2350, 2351 and 2354, Business and Professions Code.

**§ 1357.6. Notification of Termination.**

Whenever any physician who is self-referred is terminated from the program and has been determined to present a threat to the public health or safety, the program manager shall report such fact to the division, without the inclusion of any confidential information as defined in Section 1357.8.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2350 and 2355, Business and Professions Code.

**§ 1357.8. Confidentiality of Records.**

~~(a) All board, division, committee and program records relating to a physician's application to the program or participation in the program shall be kept confidential pursuant to Section 2355 of the code, including all information provided by the applicant, or by an examining physician, to the program manager, a medical consultant, members of the committee, or other employees of the division in connection with the program. Except as otherwise provided in section 1357.9, such records shall be purged when a physician's participation in the program is either completed or terminated.~~

~~(b) All other information or records received by the board prior to the acceptance of the applicant into the program, or which do not relate to the physician's application to the program, or which do not relate to the physician's participation in the program, shall not be maintained in a confidential manner as required by Section 2355 and may be utilized by the board in any disciplinary or criminal proceedings instituted against the physician.~~

~~Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2346 and 2355, Business and Professions Code.~~

### **§ 1357.9. Retention of Diversion Program and Participant Records.**

The diversion program shall retain the following types of records in a paper or electronic format that is usable, readable, and searchable (e.g., Microsoft Word, Excel, or a PDF document) for seven (7) years from the date of creation by the program or receipt by the program concerning a participant:

~~(A)~~(a) All participant intake reports and case analyses.

~~(b)~~ All participant agreements and amendments thereto.

~~(e)~~(c) All participant file notes, laboratory and incident reports.

(d) All other records related to the participant's performance in the program, including medical records, treatment plans, and documents relating to the participant's compliance or noncompliance with the conditions and procedures for treatment and monitoring by the program.

(e) All correspondence with the Board.

(f) All correspondence with contractors.

~~(c) All correspondence with the Enforcement Program.~~

~~(d) All committee letters.~~

~~(f) Computerized records derived from any of the foregoing types of documents.~~

Note: Authority cited: Sections 2018 ~~and 2355~~, Business and Professions Code.

Reference: Sections 315, 2340, 2340.2, 2340.4, 2340.6, and 2340.8 ~~2355~~, Business and Professions Code.

**§ 1357.10. Requirements for the Physician and Surgeon Health and Wellness Program Vendor and Participants**

- (a) The vendor shall comply with and is responsible for ensuring that all contractors and subcontractors comply with the Board’s requirements contained in Article 14 of the Code and this article.
- (b) Participants shall meet the criteria set forth in section 1357.1.
- (c) Clinical Diagnostic Evaluation: If the vendor or Board requires a participant to undergo a clinical diagnostic evaluation, the participant shall comply with, and the evaluator shall meet, all the requirements set forth in section 1361.5(c)(1)(A)-(D). For purposes of this program, references to the “Board” in section 1361.5(c)(1)(A)-(D) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants. References to “probationary terms and conditions” and “on probation” in section 1361.5(c) shall mean probationary terms and conditions ordered by the Board for Board-referred participants and the terms of the participant’s monitoring agreement with the vendor for self-referred participants.
- (d) Notification of Employer or Supervisor Information: If the participant has an employer or supervisor, the participant shall comply with all the notification and consent requirements set forth in section 1361.5(c)(2). For purposes of this program, references to the “Board” in section 1361.5(c)(2) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (e) Biological Fluid Testing:
- (1) Participants shall abstain from the use, consumption, ingestion, or administration of prohibited substances, as defined in section 1361.51(e).
- (2) Participants shall comply with and be tested in accordance with all the requirements set forth in section 1361.5(c)(3). For purposes of this program, references to the “Board” in section 1361.5(c)(3) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (A) Notwithstanding section 1361.5(c)(3)(l)(4), tolling shall not be allowed for a self-referred participant, so long as the participant has a license to practice in California. A self-referred participant who is moving their place of residence out of state, however, may transfer monitoring and care to a program in the new location upon the vendor’s written approval and in compliance with the requirements of this subsection. The self-referred participant shall have the out-of-state program forward its

testing results within three (3) business days of the results being reported to the out-of-state program and compliance reports within three (3) business days of receipt by the out-of-state program to the vendor. The participant shall take all steps required by the out-of-state program to authorize information sharing with the vendor, including signing any authorization or consent to release test results or compliance reports to the vendor.

Any report to the vendor by the out-of-state program of a major violation as defined in section 1361.52(a) or minor violation as defined in section 1361.52(c) shall be reported in writing to the Board consistent with section 1351.13. Within 10 days prior to returning to California to reside, the self-referred participant shall re-enter into a contract for monitoring and care with the vendor. Upon returning to California, if the self-referred participant has not previously met the full first-year testing frequency requirements, the participant 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.

- (f) Positive Biological Fluid Tests: When a participant tests positive for a prohibited substance, the vendor shall notify the Board of the positive test in writing within one (1) business day of receiving the results.
- (g) Requirements for Testing Locations/Laboratories and Specimen Collectors: The vendor's contractors that provide testing locations, laboratory services, or specimen collection, shall meet all the standards set forth in section 1361.54. For purposes of this program, references to the "Board" in section 1361.54 shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (h) Type of Treatment: In determining whether a participant shall be required to undergo inpatient, outpatient, or other type of treatment, the vendor and its contractors shall consider the following criteria:
  - (1) If the participant is required to undergo a clinical diagnostic evaluation as specified in section 1357.10, the recommendation of the clinical diagnostic evaluation;
  - (2) License type;
  - (3) Participant's history;
  - (4) Documented length of sobriety/time that has elapsed since substance abuse;

- (5) Scope and pattern of substance use;
  - (6) Participant's treatment history;
  - (7) Participant's medical history and current medical condition;
  - (8) Nature, duration, and severity of substance abuse; and
  - (9) Whether the participant is a threat to themselves or the public.
- (i) Treatment Providers: A vendor's contractors providing staff and services shall meet all the following requirements:
- (1) Licensure and/or accreditation by the state agency or other authority responsible for the licensure or other regulation of the practice of the particular healthcare profession in the state in which the treatment provider proposes to practice;
  - (2) A minimum of three (3) years' experience in the treatment and rehabilitation of health professionals with substance abuse problems;
  - (3) Sufficient resources available to adequately evaluate the physical and mental needs of the participant, provide for safe detoxification, and manage any medical emergency;
  - (4) Professional staff who are competent and experienced members of the clinical staff with a minimum of three (3) years' experience in the treatment and rehabilitation of healthcare professionals with substance abuse problems;
  - (5) Treatment planning involving a multidisciplinary approach and specific aftercare plans; and
  - (6) Means to provide treatment and progress documentation to the vendor and Board for Board-referred participants, or to the vendor for self-referred participants consistent with the contract for services. "Means" shall include the staffing, equipment, and procedures in place to meet the requirements of this section.
- (j) Group Support Meeting Facilitators: If the participant is required to participate in support group meetings, the participant shall comply with, and the facilitator shall meet, all the requirements set forth in section 1361.5(c)(4). For purposes of this program, references to the "Board" in section 1361.5(c)(4) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-

referred participants.

- (k) Worksite Monitors: If the participant is required to have a worksite monitor, the participant shall comply with, and the monitor shall meet, all the requirements set forth in section 1361.5(c)(5). For purposes of this program, references to the “Board” in section 1361.5(c)(5) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (l) Return of Participant to Practice: If participant has been restricted from full-time practice, the participant shall meet all the requirements of section 1361.53 prior to a determination being made to return the participant to full-time practice or returning to practice with restrictions. For purposes of this program, references to the “Board” in section 1361.53 shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants; references to “probation” in section 1361.53 shall mean probation ordered by the Board for Board-referred participants, and the terms of the participant’s monitoring agreement with the vendor for self-referred participants.

Note: Authority cited: Sections 2018 and 2340, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4, 2340.6 and 2340.8, Business and Professions Code.

#### **§ 1357.11. Report and Public Disclosure of Practice Restrictions for Participants**

If a vendor imposes a practice restriction on a participant, the vendor shall report it in writing to the Board within one (1) business day, and the Board shall make the following information public on the participant’s profile on the Board’s website: 1) the participant’s name; 2) whether the participant’s license is restricted or in a non-practice status; 3) a detailed description of each restriction imposed. If the participant self-referred, and enrollment in the program was not a condition of probation, then the public disclosure shall not contain information that the restriction or non-practice status is the result of the participant’s enrollment in the program. The Board shall remove the practice restriction from the participant’s profile within one (1) business day of the Board’s receipt of written notice from the vendor that the practice restriction has been lifted.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

#### **§ 1357.12. Reports of Participant Violations, Withdrawals, and Terminations to the Board; Inquiries by the Board**

- (a) The vendor shall report in writing to the Board each major violation by a participant, as defined in section 1361.52(a), within one (1) business day of the vendor’s finding that the participant committed a major violation, and shall

identify the name and license number of the participant, and a detailed description of the violation(s), including the type and date of each occurrence.

- (b) The vendor shall report in writing to the Board each minor violation by a participant, as defined in section 1361.52(c) within five (5) business days of the vendor's finding that the participant committed a minor violation, and shall identify the name and license number of the participant, and a detailed description of the violation(s), including the type and date of each occurrence.
- (c) The vendor shall report in writing to the Board any participant who withdraws or is terminated from the program within one (1) business day of the withdrawal or termination, and shall identify the name and license number of the participant, the date the participant enrolled in the program, the date of the withdrawal or termination from the program, and a description of the circumstances leading up to the withdrawal or termination.
- (d) If the Board inquires as to whether a licensee is a participant in the program after initiating an investigation on the licensee, the vendor shall provide a written response within three (3) business days of the inquiry indicating whether the licensee is a participant in the program.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

### **§ 1357.13. Vendor Communication with the Board; Annual Reports**

- (a) Within 30 days of receiving a written request by the Board, the vendor shall provide a written report containing the following de-identified information:
  - (1) The number of participants currently enrolled in the program;
  - (2) The number of participants who self-referred;
  - (3) The number of participants who were referred by the Board as a condition of probation;
  - (4) The number of participants who have successfully completed their agreement period;
  - (5) The number of participants who successfully returned to practice;
  - (6) The number of participants who withdrew from the program, and the reasons therefor;

- (7) The number of participants who were terminated from the program, and the reasons therefor;
  - (8) The number of participants who committed a major violation as defined in section 1361.52(a), or minor violation as defined in section 1361.52(c), and the types of violations committed;
  - (9) The number of patients harmed by a participant while the participant was enrolled in the program. For purposes of this section, “patient harm” means injury or death to a patient caused by the participant’s violation of the Medical Practice Act or Medical Practice Regulations established by admission, or by Board decision or order issued after an action taken pursuant to the procedures set forth in the Administrative Procedure Act (Section 11500 et seq. of the Government Code);
  - (10) The number and types of reports filed with the Board pursuant to section 1357.12;
  - (11) A list of contractors performing treatment or other services for program participants, a description of the services they are contracted to perform, and the number of participants assigned to each;
  - (12) The number of participants whose families received services through the program, including the types of services received (e.g., individual counseling, group therapy, etc.), and how many times services were provided;
  - (13) The number and types of educational events provided by the vendor, the dates provided, and the number of licensees and other interested parties in attendance. For purposes of this section, “educational events” includes seminars, webinars, distribution of written materials, and any other activity designed to assist with the recognition and prevention of physical, emotional, and psychological problems of licensees.
  - (14) Any other program statistics requested in writing by the Board regarding compliance with this article, including statistics showing a subcontractor’s compliance with the Board’s requirements contained in Article 14 of the Code and this article.
- (b) With regard to subdivisions (a)(1) through (a)(12) the report for each category shall include the specific types of substance abuse problems for which treatment is or was being sought (e.g., cocaine, alcohol, Demerol, etc.).

- (c) On a yearly basis, on or before August 31, the vendor shall provide all of the data identified in subdivisions (a) and (b) to the Board for inclusion in the Board's annual report.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

**§ 1357.14. External Independent Audits; Responses to Findings; Grounds for Termination; Transfer of Care**

- (a) At least once every three (3) years, and at any other time requested by the Board with at least 90 days' notice from the Board, an external, independent audit shall be conducted by a qualified reviewer or review team from outside the Department of Consumer Affairs with no conflict of interest with the vendor (i.e., no reviewer or individual on a review team has a current or prior business, personal, or financial relationship with the vendor or any employee or officer of the vendor) providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the Board. The independent reviewer or review team must consist of licensed certified public accountant(s) or public accountant(s) who have at least five (5) years' experience in the professional practice of internal auditing and assessment processes and are qualified to perform audits of monitoring programs. The cost of the audits shall be borne by the vendor and factored into each participant's fee.
- (b) The audit must assess the vendor's performance in adhering to the contract requirements applicable to the program. The auditor must provide a written report of their findings to the Board by June 30 of each three (3)-year period referenced in subsection (a) ("triennial report"), or within 60 days of completing an audit requested by the Board. The report shall not identify participants by name, but shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's contract with the Board or identify any treatment or monitoring services provided by the vendor that would, in the opinion of the auditor, interfere with the Board's mandate of public protection (collectively referred to herein as "deficiencies"). The report shall further recommend a corrective action plan for each identified deficiency, if any.
- (c) The vendor shall respond to the findings in the audit report in writing to the Board no later than September 1 for each triennial report, or within 60 days of receiving an audit report requested by the Board. If deficiencies were identified in the audit report, then within 60 days of receiving the vendor's response, the Board shall indicate whether and when the contract with the vendor will be terminated along with the reasons therefore, or whether the vendor will be given the opportunity to cure the deficiencies. If the vendor will be given the opportunity to cure the deficiencies, the vendor shall provide a written plan

within 30 days of the Board's request, identifying how each deficiency will be addressed and in what time period. The Board shall determine whether to reject, modify, or approve the plan within 30 days of receipt. The Board may extend the deadlines in this section for purposes of consulting with one or more experts or for other good cause.

(d) Failure of the vendor to cure all deficiencies within the timeframes set by a plan approved by the Board in subsection (c) shall subject the vendor to termination. Termination of the vendor shall be in the sole discretion of the Board.

(e) As part of its contract with the Board, the vendor shall have a written plan approved by the Board for transferring care and monitoring of participants if its contract with the Board is terminated, including a plan for transferring participant or other records required by this Article to another vendor designated by the Board.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4, 2340.6 and 2340.8, Business and Professions Code.

### **§ 1361.5. Uniform Standards for Substance-Abusing Licensees.**

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#### **Amendment only to section 1361.5, subdivision (c)(3) as follows:**

##### **(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 1361.52(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 frequency or testing locations for any reason, including during vacation or other travel, any alternative testing schedule and testing locations must be approved by the Board and meet the requirements set forth in section 1361.54.

(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.

6. Licensed Supervision During Practice. The Board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the Board.

(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.

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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,~~ and 2340.2, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.