

INTERESTED PARTIES MEETING

January 11, 2017

Purpose: To discuss a proposed amendment to the Manual of Model Disciplinary Orders and Disciplinary Guidelines to include an optional condition of probation requiring patient notification of the physician's probationary status.

Option 1: Require Posting of a Sign – Modelled after the California State Board of Optometry's Disciplinary Guidelines, Optional Condition No. 20

Notice to Patients

During the period of probation, Respondent shall post a notice in a prominent place in his/her office that is conspicuous and readable to the public. The notice shall state the Respondent's license is on probation and shall contain the telephone number and web address of the Medical Board of California. Respondent shall also post a notice containing this information prominently on any website advertising his or her services as a physician and surgeon. The notices described above shall be submitted for approval by the Board within 15 calendar days of the effective date of this decision, and shall be posted within 10 calendar days of notification of approval.

Option 2: Require Physician Notification to Patient in Writing

Notice to Patients

During the period of probation, Respondent shall provide a written notice to each patient for his or her retention containing the following information: 1) a statement that the Medical Board of California has placed Respondent's physician's and surgeon's license on probation; 2) the period of probation; 3) a description of any practice limitations imposed; 4) the telephone number and web address of the Medical Board of California; 5) a statement that a copy of the disciplinary order is available upon request to the Respondent or his or her designee, or by contacting the Board. The notice described above shall be submitted for approval by the Board within 15 calendar days of the effective date of this decision, and shall be provided to each patient at the time of the initial appointment within 10 calendar days following notification of approval.

After the effective date of this decision, verbal notice of the probation status, and the phone number and web address of the Medical Board of California shall additionally be provided to all new patients at the time the first appointment is made.

Each patient shall be asked to sign an acknowledgement of receipt of the notice(s), which shall be kept in the patient's chart.

Respondent shall maintain a log of all patients to whom the required notice(s) was provided. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the date the notice was provided; and 4) the date the notice was acknowledged. 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.

Medical Board of California Interested Parties Meeting



Physician Health and Wellness Program

Purpose of Meeting

To discuss drafting regulations to establish the Physician Health and Wellness Program pursuant to Business and Professions Code section 2340.

B&P Code section 2340

- Provides that the Board may establish a Physician and Surgeon Health and Wellness Program (PHWP).
- ➔ On October 28, 2016, the Board voted to move forward with establishing a PHWP.

B&P Code section 2340.2

If the Board establishes a PHWP, the PHWP shall do all of the following:

- (a) Provide for the education of all licensed physicians with respect to the recognition and prevention of physical, emotional, and psychological problems.
- (b) Offer assistance to a physician in identifying substance abuse problems.

Regulations:

- Require the development of an outreach plan to be approved by the Board.
- Specify that quarterly reports of presentations to hospital medical staff, professional associations, etc., shall be provided to the Board.

B&P Code section 2340.2 (cont.)

- (c) Evaluate the extent of substance abuse problems and refer the physician to the appropriate treatment by executing a written agreement with a physician participant.

Regulations:

- The evaluation shall be consistent with the requirements of the Uniform Standards.
- Specify terms that must be included in the written agreement, including what the PHWP is required to report to the Board regardless of whether physician is Board-referred via disciplinary order or self-referred.

B&P Code section 2340.2 (cont.)

- (d) Provide for the confidential participation by a physician with substance abuse issues who does not have a restriction on his or her practice related to those substance abuse issues. If an investigation of a physician occurs after the physician has enrolled in the program, the board may inquire of the program whether the physician is enrolled in the program and the program shall respond accordingly.

Regulations:

- Specify that if the PHWP imposes a practice restriction on a physician, it shall be reported to the Board, and the Board shall make the restriction public, regardless of whether the physician was Board-referred via a disciplinary order or self-referred.
- Specify that if the physician self-referred, the Board shall not identify the reason for the practice limitations.
- Specify that timeframe and format of response by PHWP to a Board inquiry.

B&P Code section 2340.2 (cont.)

- (e) Comply with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the department pursuant to Section 315.

Uniform Standard #1

Clinical Diagnostic Evaluations

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

Regulations:

- Model after Uniform Standard #1.
- Specify that if the physician is self-referred, the report goes to the administering entity; if the physician is Board-referred, the report goes to the Board and the administering entity.

Uniform Standard #2

Temporary Removal from Practice

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

- Cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by board staff.
- While awaiting the results of the clinical diagnostic evaluation, the licensee shall be randomly drug tested at least two (2) times per week.
- No licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

Regulations:

- Model after Uniform Standard #2.

Uniform Standard #3

Employer Notification

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

Regulations:

- Model after Uniform Standard #3.
- Specify that “employer” includes the physician’s employer, supervisor, chief of staff, the health or wellbeing committee chair, or equivalent, if any, as applicable to the physician’s practice setting.

Uniform Standard #4

Biological Fluid Testing

Standards governing all aspects of required testing, including, but not limited to, frequency of random, observed testing, method of notice to the licensee.

- A board may order a licensee to drug test at any time.
- Each licensee shall be tested at a minimum range of number of random test are 36-104 per year depending on certain factors.
- There are some exceptions to the testing frequency schedule with certain events occurring.
- Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

Regulations:

- Model after Uniform Standard #4.

Uniform Standard #5

Support Group Meetings

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

Uniform Standard #5 (cont.)

Support Group Meetings

Regulations:

- Model after Uniform Standard #5.
- Clarify that a participant's previous participation in a support group meeting led by the same facilitator does not constitute a current or former financial, personal, or business relationship.
- Specify that if the physician is Board-referred, reports go to the Board and the administering entity; if the physician is self-referred, reports go to the administering entity.

Uniform Standard #6

Type of Treatment

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

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

Regulations:

- Model after Uniform Standard #6.

Uniform Standard #7

Worksite Monitoring

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

Regulations:

- Model after Uniform Standard #7.

Uniform Standard #8

Positive Tests

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

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

Regulations:

- Model after Uniform Standard #8.
- Specify that the Board must be immediately notified of a positive test whether Board-referred or self-referred.

Uniform Standard #9

Confirmed Positive Tests

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

Regulations:

- Model after Uniform Standard #9.
- Must be reported to the Board, even if participant self-referred.

Uniform Standard #10

Major and Minor Violations

Specific consequences for major and minor violations.

Major Violations include, but are not limited to:

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

Uniform Standard #10 (cont.)

Major and Minor Violations

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

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

Uniform Standard #10 (cont.)

Major and Minor Violations

Minor Violations include, but are not limited to:

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

Uniform Standard #10 (cont.)

Major and Minor Violations

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

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

Uniform Standard #10 (cont.)

Major and Minor Violations

Regulations:

- Model after Uniform Standard #10.
- Both major and minor violations must be immediately reported to the Board, even if participant self-referred.

Uniform Standard #11

Petition for Modification

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

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

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

Regulations:

- Model after Uniform Standard #11.

Uniform Standards #12

Petition for Reinstatement

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

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

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

Regulations:

- Model after Uniform Standard #12.

Uniform Standard #13

Requirements for Private Sector Vendors/Administering Entities

If a board uses a private-sector vendor that provides services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (2) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely services; and (3) standards for a licensee's termination from the program and referral to enforcement.

Regulations:

- Model after Uniform Standards.
- Specify selection criteria.
- Specify oversight responsibilities.

Uniform Standard #14

Public Disclosure of Limitations

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

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

Regulations:

- Model after Uniform Standard #14.
- Amend public disclosure section for definition and disclaimer.

Uniform Standard #15

Audits of Vendors

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

An external independent audit must be:

- conducted at least once every three (3) years
- by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services.

In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

The board shall respond to the findings in the audit report.

Uniform Standard #15 (cont.)

Audits of Vendors

Regulations:

- Model after Uniform Standard #15.
- Audit shall be done at least once every three years or at any time requested by the Board.
- Cost of audits shall be borne by the vendor, and factored into each participant's fee.
- Audit must assess the vendor's financial status and performance in adhering to the statutes and regulations applicable to the PHWP.
- Report shall recommend a corrective action plan for each identified deficiency, if any.
- Specify timeframe for Board response.
- Specify timeframe to cure deficiencies.
- Specify consequences for failure to cure deficiencies by deadline.
- Require vendor to have a written plan approved by the Board for transferring care and monitoring of participants if contract is terminated.

Uniform Standards #16

Reporting Requirements

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

Regulations:

- Model after Uniform Standard #16.

B&P Code section 2340.4

- (a) If the Board establishes a PHWP, the Board shall contract for the PHWP's administration with a private third-party independent administering entity pursuant to a request for proposals. The process for procuring the services for the PHWP shall be administered by the Board pursuant to Article 4 (commencing with Section 10335) of the Public Contract Code. However, Section 10425 of the Public Contract Code shall not apply to this subdivision.

- (b) The administering entity shall have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals.

Regulations:

- Specify expertise and experience required for administering entity.

B&P Code section 2340.4 (cont.)

- (c) The administering entity shall identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and shall establish a process for evaluating the effectiveness of those programs.

Regulations:

- Specify criteria required, consistent with Uniform Standards.
- Specify criteria for oversight of providers, contractors, subcontractors.

- (d) The administering entity shall provide counseling and support for the physician and for the family of any physician referred for treatment.

Regulations:

- Clarify definition of “family” and “support.”
- Specify services to be provided.

B&P Code section 2340.4 (cont.)

(e) The administering entity shall make their services available to all licensed California physicians, including those who self-refer to the program.

Regulations:

- Specify disclosure to be made to physicians who self-refer before they enter into an agreement to ensure they understand what will be reported to the Board.

B&P Code section 2340.4 (cont.)

- (f) The administering entity shall have a system for immediately reporting a physician, including, but not limited to, a physician who withdraws or is terminated from the program, to the Board. This system shall ensure absolute confidentiality in the communication to the Board. The administering entity shall not provide this information to any other individual or entity unless authorized by the participating physician or this article.

Regulations:

- Specify timeframe for reporting.
- Specify format for reporting.

B&P Code section 2340.4 (cont.)

(g) The contract entered into pursuant to this section shall also require the administering entity to do the following:

(1) Provide regular communication to the board, including annual reports to the board with program statistics, including, but not limited to, the number of participants currently in the program, the number of participants referred by the board as a condition of probation, the number of participants who have successfully completed their agreement period, and the number of participants terminated from the program. In making reports, the administering entity shall not disclose any personally identifiable information relating to any participant.

Regulations:

- Specify data to be reported, including the elements required under Uniform Standard #16.
- Specify reports are to be made quarterly at Board meetings, and when requested by the Board.
- Specify the administering entity is to supply data to be included in the Board's annual report.

B&P Code section 2340.4 (cont.)

(2) Submit to periodic audits and inspections of all operations, records, and management related to the program to ensure compliance with the requirements of this article and its implementing rules and regulations. Any audit conducted pursuant to this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information identifying a program participant.

Regulations:

➤ See discussion under Uniform Standard #15.

B&P Code section 2340.4 (cont.)

(h) If the board determines the administering entity is not in compliance with the requirements of the program or contract entered into with the board, the board may terminate the contract.

Regulations:

- Specify process for addressing deficiencies.
- Specify timeframe for addressing deficiencies.
- Specify consequences for failing to address deficiencies to the satisfaction of the Board.

B&P Code section 2340.6

- (a) A physician and surgeon shall, as a condition of participation in the program, enter into an individual agreement with the program and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement. The agreement shall include all of the following:
- (1) A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program.

Regulations:

- Specify conditions and procedures for monitoring consistent with the Uniform Standards.

B&P Code section 2340.6 (cont.)

(2) Compliance with terms and conditions of treatment and monitoring.

Regulations:

- Specify major and minor violations consistent with the Uniform Standards.
- Specify major and minor violations will be reported to the Board even if participant self-referred.

(3) Criteria for program completion.

Regulations:

- Specify criteria for program completion, including those required in Uniform Standard #12.

B&P Code section 2340.6 (cont.)

(4) Criteria for termination of a physician and surgeon participant from the program.

Regulations:

➤ Specify criteria for termination.

(5) Acknowledgment that withdrawal or termination of a physician and surgeon participant from the program shall be reported to the board.

Regulations:

➤ The acknowledgment shall make it clear that this applies to self-referred participants as well as Board-referred participants pursuant to a disciplinary order.

B&P Code section 2340.6 (cont.)

(6) Acknowledgment that expenses related to treatment, monitoring, laboratory tests, and other activities specified by the program shall be paid by the physician and surgeon participant.

Regulations:

- Specify that the costs of the Board for the administration of the program are included in the vendor's costs.
- Regulations setting the fees will be developed after the administering entity is selected through the bidding process.

B&P Code section 2340.6 (cont.)

- (b) Any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board and shall not be disclosed to the board if both of the following apply:
- (1) The physician and surgeon did not enroll in the program as a condition of probation or as a result of an action by the board.
 - (2) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

Regulations:

- Specify timeframe and contents of report for non-compliance.

B&P Code section 2340.6 (cont.)

- (c) Any oral or written information reported to the board shall remain confidential and shall not constitute a waiver of any existing evidentiary privileges. However, confidentiality regarding the physician's and surgeon's participation in the program and related records shall not apply if the board has referred a participant as a condition of probation or as otherwise authorized by this article.

Regulations:

- Specify reports of termination, withdrawal, or non-compliance will be treated as a complaint falling within the Board's priorities under B&P section 2220.05, where applicable.

B&P Code section 2340.6 (cont.)

(d) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions that are alleged to be grounds for discipline.

Regulations:

- Specify reports of termination, withdrawal, or non-compliance will be used as evidence in disciplinary actions.

B&P Code section 2340.6 (cont.)

- (e) Participation in the program shall not be a defense to any disciplinary action that may be taken by the board. This section does not preclude the board from commencing disciplinary action against a physician and surgeon who is terminated unsuccessfully from the program. However, that disciplinary action shall not include as evidence any confidential information unless authorized by this article.

Regulations:

- Specify reports of termination, withdrawal, or non-compliance will be treated as a complaint falling within the Board's priorities under B&P section 2220.05, where applicable.
- Specify such reports will be used as evidence to determine the appropriate level of discipline, including revocation.

B&P Code section 2340.8

- (a) The Physician and Surgeon Health and Wellness Program Account is hereby established within the Contingent Fund of the Medical Board of California. Any fees collected by the board pursuant to subdivision (b) shall be deposited in the Physician and Surgeon Health and Wellness Program Account and shall be available, upon appropriation by the Legislature, for the support of the program.

B&P Code section 2340.8 (cont.)

- (b) The board shall adopt regulations to determine the appropriate fee that a physician and surgeon participating in the program shall provide to the board. The fee amount adopted by the board shall be set at a level sufficient to cover all costs for participating in the program, including any administrative costs incurred by the board to administer the program.

Regulations:

- Specify that the costs of the Board for the administration of the program are included in the vendor's costs.
- Regulations setting the fees will be developed after the administering entity is selected through the bidding process.

B&P Code section 2340.8 (cont.)

(c) Subject to appropriation by the Legislature, the board may use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program under this article, except these moneys shall not be used to cover any costs for individual physician and surgeon participation in the program.

Further Comments?

The Board welcomes your comments and ideas regarding the development of regulations for the PHWP.

**Please submit written comments to
Jacobby Jorgensen at:**

Jacobby.Jorgensen@mbc.ca.gov

Senate Bill No. 1177

CHAPTER 591

An act to add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 24, 2016. Filed with
Secretary of State September 24, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, Galgiani. Physician and Surgeon Health and Wellness Program.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards and a designee of the State Department of Health Care Services. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board is required to use in dealing with substance-abusing licensees, whether or not a healing arts board has a formal diversion program.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California within the Department of Consumer Affairs. Existing law requires all moneys paid to and received by the Medical Board of California to be paid into the State Treasury and credited to the Contingent Fund of the Medical Board of California, which, except for fine and penalty money, is a continuously appropriated fund.

This bill would authorize the board to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse, as specified. If the board establishes a program, the bill would require the board to contract for the program's administration with a private 3rd-party independent administering entity meeting certain requirements. The bill would require program participants to enter into an individual agreement with the program that includes, among other things, a requirement to pay expenses related to treatment, monitoring, and laboratory tests, as provided.

This bill would create the Physician and Surgeon Health and Wellness Program Account within the Contingent Fund of the Medical Board of California. The bill would require the board to adopt regulations to determine the appropriate fee for a physician and surgeon to participate in the program, as specified. The bill would require these fees to be deposited in the Physician and Surgeon Health and Wellness Program Account and to be available, upon appropriation by the Legislature, for the support of the program. Subject to appropriation by the Legislature, the bill would authorize

the board to use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program, except the bill would prohibit these moneys from being used to cover any costs for individual physician and surgeon participation in the program.

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

SECTION 1. Article 14 (commencing with Section 2340) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 14. Physician and Surgeon Health and Wellness Program

2340. (a) The board may establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession. The program, if established, shall aid a physician and surgeon with substance abuse issues impacting his or her ability to practice medicine.

(b) For the purposes of this article, “program” shall mean the Physician and Surgeon Health and Wellness Program.

(c) If the board establishes a program, the program shall meet the requirements of this article.

2340.2. If the board establishes a program, the program shall do all of the following:

(a) Provide for the education of all licensed physicians and surgeons with respect to the recognition and prevention of physical, emotional, and psychological problems.

(b) Offer assistance to a physician and surgeon in identifying substance abuse problems.

(c) Evaluate the extent of substance abuse problems and refer the physician and surgeon to the appropriate treatment by executing a written agreement with a physician and surgeon participant.

(d) Provide for the confidential participation by a physician and surgeon with substance abuse issues who does not have a restriction on his or her practice related to those substance abuse issues. If an investigation of a physician and surgeon occurs after the physician and surgeon has enrolled in the program, the board may inquire of the program whether the physician and surgeon is enrolled in the program and the program shall respond accordingly.

(e) Comply with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the department pursuant to Section 315.

2340.4. (a) If the board establishes a program, the board shall contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals. The process for procuring the services for the program shall be administered by the board pursuant to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, Section 10425 of the Public Contract Code shall not apply to this subdivision.

(b) The administering entity shall have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals.

(c) The administering entity shall identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and shall establish a process for evaluating the effectiveness of those programs.

(d) The administering entity shall provide counseling and support for the physician and surgeon and for the family of any physician and surgeon referred for treatment.

(e) The administering entity shall make their services available to all licensed California physicians and surgeons, including those who self-refer to the program.

(f) The administering entity shall have a system for immediately reporting a physician and surgeon, including, but not limited to, a physician and surgeon who withdraws or is terminated from the program, to the board. This system shall ensure absolute confidentiality in the communication to the board. The administering entity shall not provide this information to any other individual or entity unless authorized by the participating physician and surgeon or this article.

(g) The contract entered into pursuant to this section shall also require the administering entity to do the following:

(1) Provide regular communication to the board, including annual reports to the board with program statistics, including, but not limited to, the number of participants currently in the program, the number of participants referred by the board as a condition of probation, the number of participants who have successfully completed their agreement period, and the number of participants terminated from the program. In making reports, the administering entity shall not disclose any personally identifiable information relating to any participant.

(2) Submit to periodic audits and inspections of all operations, records, and management related to the program to ensure compliance with the requirements of this article and its implementing rules and regulations. Any audit conducted pursuant to this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information identifying a program participant.

(h) If the board determines the administering entity is not in compliance with the requirements of the program or contract entered into with the board, the board may terminate the contract.

2340.6. (a) A physician and surgeon shall, as a condition of participation in the program, enter into an individual agreement with the program and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement. The agreement shall include all of the following:

(1) A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program.

(2) Compliance with terms and conditions of treatment and monitoring.

(3) Criteria for program completion.

(4) Criteria for termination of a physician and surgeon participant from the program.

(5) Acknowledgment that withdrawal or termination of a physician and surgeon participant from the program shall be reported to the board.

(6) Acknowledgment that expenses related to treatment, monitoring, laboratory tests, and other activities specified by the program shall be paid by the physician and surgeon participant.

(b) Any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board and shall not be disclosed to the board if both of the following apply:

(1) The physician and surgeon did not enroll in the program as a condition of probation or as a result of an action by the board.

(2) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

(c) Any oral or written information reported to the board shall remain confidential and shall not constitute a waiver of any existing evidentiary privileges. However, confidentiality regarding the physician and surgeon's participation in the program and related records shall not apply if the board has referred a participant as a condition of probation or as otherwise authorized by this article.

(d) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions that are alleged to be grounds for discipline.

(e) Participation in the program shall not be a defense to any disciplinary action that may be taken by the board. This section does not preclude the board from commencing disciplinary action against a physician and surgeon who is terminated unsuccessfully from the program. However, that disciplinary action shall not include as evidence any confidential information unless authorized by this article.

2340.8. (a) The Physician and Surgeon Health and Wellness Program Account is hereby established within the Contingent Fund of the Medical Board of California. Any fees collected by the board pursuant to subdivision (b) shall be deposited in the Physician and Surgeon Health and Wellness Program Account and shall be available, upon appropriation by the Legislature, for the support of the program.

(b) The board shall adopt regulations to determine the appropriate fee that a physician and surgeon participating in the program shall provide to

the board. The fee amount adopted by the board shall be set at a level sufficient to cover all costs for participating in the program, including any administrative costs incurred by the board to administer the program.

(c) Subject to appropriation by the Legislature, the board may use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program under this article, except these moneys shall not be used to cover any costs for individual physician and surgeon participation in the program.

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Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011



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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

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

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

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

UNIFORM STANDARDS

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

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

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

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

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

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

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

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

OTHER DRUG STANDARDS

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

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

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

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

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

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

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

Collection of specimens shall be observed.

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

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

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

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

PETITIONS FOR REINSTATEMENT

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

OUTCOMES AND AMENDMENTS

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

Historical Data - Two Years Prior to Implementation of Standard

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

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

Post Implementation Data- Three Years

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

Data Collection

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

- Probationer/Diversion Participant Unique Identifier
- License Type
- Probation/Diversion Effective Date
- General Range of Testing Frequency by/for Each Probationer/Diversion Participant
- Dates Testing Requested
- Dates Tested
- Identify the Entity that Performed Each Test
- Dates Tested Positive
- Dates Contractor (if applicable) was informed of Positive Test
- Dates Board was informed of Positive Test
- Dates of Questionable Tests (e.g. dilute, high levels)
- Date Contractor Notified Board of Questionable Test
- Identify Substances Detected or Questionably Detected
- Dates Failed to Appear
- Date Contractor Notified Board of Failed to Appear
- Dates Failed to Call In for Testing
- Date Contractor Notified Board of Failed to Call In for Testing
- Dates Failed to Pay for Testing
- Date(s) Removed/Suspended from Practice (identify which)
- Final Outcome and Effective Date (if applicable)

UNIFORM STANDARDS

#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

#6 SENATE BILL 1441 REQUIREMENT

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

#6 Uniform Standard

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

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

#7 SENATE BILL 1441 REQUIREMENT

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

#7 Uniform Standard

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

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

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

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

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

#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

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

UNIFORM STANDARDS

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

UNIFORM STANDARDS

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

(a) Specimen Collectors:

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

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

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

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

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

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

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

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

(e) General Vendor Requirements

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

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

#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

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

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

#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

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

UNIFORM STANDARDS

#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

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

UNIFORM STANDARDS

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

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