Elements of a Successful Physician Health Program

Medical Board of California

Board Meeting

(Thursday, October 29, 2015)

Purpose

To discuss what elements are necessary in a Physician Health Program in order for it to be a program that assists physicians with substance abuse problems, while still meeting the Board's mission of consumer protection.

Uniform Standards

ANY Physician Health Program would need to comply with the Uniform Standards for Substance Abusing Physicians (require regulatory changes)

- Background:
  - SB 1441 Ridley-Thomas (Chapter 548, Statutes of 2008)
  - Created the Substance Abuse Coordination Committee (SACC)
  - Required the SACC to formulate uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal program.

Uniform Standards

Standard 1

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

Uniform Standards

Standard 2

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.

Uniform Standards

Standard 3

If the licensee who is either in a board 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.

Uniform Standards

Standard 4

Standards governing all aspects of required testing, including, but not limited to, frequency of 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.
- Collection of specimens shall be observed.
- Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

Uniform Standards

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

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

Standard 7
Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

Uniform Standards

Standard 8
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.

Standard 9
Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

- 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 and applicable consequences shall be imposed.

Uniform Standards

Standard 10
Specific consequences for major and minor violations. In particular, 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.

Standard 11
The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

- Demonstrated sustained compliance with current recovery program.
- 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.
- 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.

Uniform Standards

Standard 12

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

- Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
- Demonstrated successful completion of recovery program, if required.
- 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.
- Demonstrated that he or she is able to practice safely.
- Continuous sobriety for three (3) to five (5) years.

Uniform Standards

Standard 13

If a board uses a private-sector vendor that provides services, that vendor must have:

- 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;
- standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely services; and
- standards for a licensee's termination from the program and referral to enforcement.

Uniform Standards

Standard 14
If a board uses a private-sector vendor that provides services, 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.

Uniform Standards

Standard 15
If a board uses a private-sector vendor that provides services, 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.

Uniform Standards

Standard 16

There must be 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.

The board shall use the following criteria to determine if protecting patients from harm and is effective in assisting in recovery.

- All licensees who either entered a 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, surrendered, or placed on probation in a timely basis based on noncompliance with those programs.
- At least 75 percent of licensees who successfully completed a program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Board Staff Recommendations

- Program should not reside within the Board.
- Program should be run by a private/contracted non-profit entity.
- Adequate protocols for the Program's communication with the Board.
- Regularly scheduled meetings with the Board.
- Allows both self-referrals and probationers to participate.
- Report to the Board any physician who is terminated from the program, for any reason.
- No diversion – if a complaint/report is received, enforcement process will be followed.

Board Staff Recommendations

- Clear and regular communication to the Board on the status of probationers in the Program.
- Participant to share in cost of administering the Program.
- If the required audit finds the Program is not in compliance, there must be repercussions.
- Sufficient resources to perform clinical roles and case management roles, with sufficient expertise and experience (50 physicians per case manager).
- Should only be provided for substance-abusing licensees.
- Strict documentation of monitoring is necessary.

Consumers Group Recommendations/Concerns

- Is there a need for a program, as there are numerous private entities already within California who provide treatment/monitoring services?
- An analysis needs to be completed to determine if there is a need for a Program.
- Is such a Program a "penalty" for physicians? If a physician was in a private program, he/she would not be reported to the Board for termination, no matter what the reason. Therefore why would individuals go into the Program?
- No need for the Board to be engaged in such a Program (especially in light of the recent adoption of the Uniform Standards and inherent conflict between consumer protection and confidentiality).

Consumers Group Recommendations/Concerns

- Concept: a) Board involvement would be limited to placing Probationers into a Program; b) criteria and standards would be set for Programs; c) a list would be established of entities that met these standards for all self-referrals (outside of the Board's involvement).
- No confidentiality.
- Any non-compliant participants must be reported to the Board immediately and removed from practice.
- Two-strike policy: entering the Program constitutes one strike; strike two (non-compliance) would result in termination from the Program.
- Any new program cannot be controlled by the same program, organizations or individuals that were connected to the old diversion program.

Consumers Group Recommendations/Concerns

- California Medical Association should not be eligible to contract for services.
- Audits must include checking the records to ensure all violations are being reported to the Board.
- If an audit identifies issues with the Program, the contract should cease immediately.
- Mandatory practice cessation period for participants upon entry of the Program.
- Under certain circumstances, termination from the Program should trigger revocation of the license.
- A complete financial analysis of revenue and amount of funding needed for each aspect of a Program should be completed prior to a Program being initiated.

Physicians Group Recommendations

- Education and promotion of awareness of the Program, with information for hospitals, training programs, medical groups, etc., about how to identify potential impairment, services available, policies and procedures, what to expect from the program, how to contact it, how to enter it, how to refer to it, how to use it.
- Consultation and intervention services (receive and respond to inquiry calls, give advice, provide assistance with intervention, etc.).

Physicians Group Recommendations

- Documentation of monitoring: documentation of compliance with requirements, documentation of status in recovery, documentation of health status, with reporting to appropriate agencies (groups, hospitals, regulatory board).
- Adequate stable funding – funding primarily from license fees, with additional funds from other sources such as fees from participants, fees from educational or other services, fundraising, etc.
- Sufficient number of staff in both clinical and administrative roles who have sufficient expertise and experience with treating physicians as patients to run the program effectively and in the way that meets the standards.

Physicians Group Recommendations

- Ongoing quality assurance - internal audit process integrated into the functioning of the Program.
- Compliance with standards of the Federation of State Physician Health Programs, where applicable.
- To promote the earliest possible referral, option for a self-referral track where participants can enter without having their identity made public and where medical/clinical oversight determines Program in line with the clinical standards and the protection of the public.
- Immunity from liability for those who function for the Program.