

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 14, 2015
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Changes to the Manual of Model Disciplinary
Orders and Disciplinary Guidelines
FROM: Paulette Romero, Enforcement Program Manager

REQUESTED ACTION:

After review and consideration of the attached proposed amendments to the Manual of Model Disciplinary Orders and Disciplinary Guidelines (Disciplinary Guidelines), make a motion to direct staff to notice the amended regulatory language and hold a hearing at the October 2015 Board meeting after the 45- day public comment period.

BACKGROUND AND DISCUSSION:

At the July 2014 Medical Board of California (Board) meeting, staff presented a regulatory proposal containing a number of amendments to the Disciplinary Guidelines. These amendments were needed to be consistent with current practices. Staff identified non-substantive changes which were addressed in the regulatory proposal as well. At the July 2014 Board Meeting the Members approved the amendments and directed staff to notice the amended regulatory language. At the meeting, it was discussed that these changes to the Disciplinary Guidelines may not be able to be noticed for hearing until the regulations pertaining to the Uniform Standards for Substance Abusing Licensees (Uniform Standards) were approved. The regulations for Uniform Standards were approved in March 2015, and the Board is now able to move forward on the regulations for the Disciplinary Guideline amendments.

Since the July 2014 Board Meeting, where initial proposed changes to the Disciplinary Guidelines were approved, additional program changes related to current practices have been identified and necessitate further amendments to the Disciplinary Guidelines. Accordingly, staff is seeking approval of these additional proposed amendments prior to noticing the language, and holding a regulatory hearing.

The proposed amendments that were previously approved by the Board (in red), as well as the new proposed amendments (in blue) can be found on pages 4 – 18. The suggested modifications are identified with underlined text for new language and ~~strike through text~~ for deleted language. The new amendments pertain to the time frames for processing a decision after a cease practice order has been issued and also removing the language that is specific to the Physician Assessment and Clinical Education (PACE) Program. In addition, staff has also identified some other non-substantive amendments.

The following outlines the individual recent amendments and their reasoning:

- The Disciplinary Guidelines related to the abstention from the use of alcohol and controlled substances and biological fluid testing (Conditions 9, 10 and 11) authorize the Board to issue a

cease practice order to a physician who has a confirmed positive biological fluid test or a physician who fails to cooperate in a random biological fluid testing program within the specified time frame. The Board must then file an accusation and/or petition to revoke probation within 30 days. A respondent may request a hearing on the accusation and/or petition to revoke probation and the Board is to provide the respondent with a hearing within 30 days of the request unless the respondent stipulates to a later hearing. The current Disciplinary Guidelines provide for a decision to be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. Amendments to these conditions are required in order to clarify the timelines by which a proposed decision will be submitted to the Board by the Administrative Law Judge, and by which the Board must issue its decision. The intention of the original regulations was that the Administrative Law Judge and the Board would each have 15 days to issue a decision. However, the way it is currently written, it could be interpreted to state that a decision must be issued by the Board within 15 days of the hearing. Therefore, this must be clarified. In addition, the amendments will also define good cause for the delay in issuing a decision.

- Certain conditions within the Disciplinary Guidelines (Conditions 14, 15, 17, and 18) outline the requirements for respondents to take courses in Prescribing Practices, Medical Record Keeping, Professional Boundaries, or a Clinical Competence Assessment Training Program. Additionally, Condition 23 allows a respondent to participate in a professional enhancement program in lieu of a practice or billing monitor. These conditions specify that the courses are to be equivalent to the courses at the PACE Program at the University of California, San Diego School of Medicine. To eliminate the appearance of endorsing one program's courses over others that are also recognized, amendments to these conditions are needed to remove reference to the PACE program and state only that the course be approved in advance by the Board or its designee.
- In the July 2014 proposed changes, Condition 28 was amended to prohibit respondents from supervising advanced practice nurses while on probation. An amendment to the heading of this condition is needed to include advanced practice nurses.
- Other non-substantive amendments are needed to the cover page and introductory page to denote the Agency name change from State and Consumer Services Agency to Business, Consumer Services, and Housing Agency; and to update the edition number and year of the Disciplinary Guidelines. In addition, the hyperlink listed for viewing the document is no longer active. An amendment is needed to remove the language for requesting copies of the manual in writing and to update the hyperlink for viewing the document.
- In prior versions of the Disciplinary Guidelines an extensive listing of all the changes was included in the beginning of the document. Members of the public may request a copy of the Initial Statement of Reasons if they wish to view a summary of the changes made to the Disciplinary Guidelines. Therefore, an amendment is needed to remove the summary of changes from the document.

STAFF RECOMMENDATION:

It is recommended that the Board approve the requested changes and authorize staff to proceed with noticing the amended regulatory language and holding a hearing at the October 2015 Board meeting after the 45-day public comment period.

California Code of Regulations

Title 16, Division 13, Chapter 2, Article 4.

Section 1361. Disciplinary Guidelines

The following edits (page 4 – 18) would be made to The Manual of Model Disciplinary Orders and Disciplinary Guidelines and then incorporated by reference into section 1361 of Title 16 of the California Code of Regulations.

1361. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled “Manual of Model Disciplinary Orders and Disciplinary Guidelines” (~~11th~~ 12th Edition/2015) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Nothing in this section or section 1361.5 shall be construed as a limitation on the Board's authority to seek an interim suspension order against a licensee pursuant to section 11529 of the Government Code.

State of California

State and Consumer Services Agency
Business, Consumer Services, and Housing Agency

MEDICAL BOARD OF CALIFORNIA

MANUAL OF MODEL DISCIPLINARY ORDERS AND DISCIPLINARY GUIDELINES



~~11th~~ 12th Edition
~~2011~~ 2015

STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA

State of California
~~State and Consumer Services Agency~~
Business, Consumer Services, and Housing Agency
MEDICAL BOARD OF CALIFORNIA
MANUAL OF MODEL DISCIPLINARY ORDERS
AND DISCIPLINARY GUIDELINES
~~11th~~ 12th Edition
~~2011~~ 2015
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA

The Board produced this Manual of Model Disciplinary Orders and Disciplinary Guidelines, ~~11th~~ 12th Edition for the intended use of those involved in the physician disciplinary process: Administrative Law Judges, defense attorneys, physicians-respondents, trial attorneys from the Office of the Attorney General, and the Board's disciplinary panel members who review proposed decisions and stipulations and make final decisions. These guidelines are not binding standards.

The Federation of State Medical Boards and other state medical boards have requested and received this manual. All are welcome to use and copy any part of this material for their own work.

To view this document visit http://www.mbc.ca.gov/Enforcement/disciplinary_guide.pdf
~~For additional copies of this manual, please write to the address below or visit~~
http://www.medbd.ca.gov/publications/disciplinary_guide.pdf:

~~Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Phone (916) 263-2466~~

Revisions to the Manual of Model Disciplinary Orders and Disciplinary Guidelines are made periodically. ~~Listed below are the most recent changes included in the 11th edition approved by the Board following open discussion at a public meeting.~~

Summary of Changes

~~The former "Disciplinary Guidelines – Index" printed after the last "Standard Conditions" has been moved to the Table of Contents (a formatting change only) and has been renamed the "Recommended Range of Penalties for Violations" for clarity.~~

~~Model Condition Number:~~

~~9. — Controlled Substances — Abstain from Use~~

~~Amended the timeframe required for filing an accusation/petition to revoke probation after a cease-practice order is issued to 30 days. Other non-substantive additions for clarity.~~

~~**10. Alcohol — Abstain from Use**~~

~~Amended the timeframe required for filing an accusation/petition to revoke probation after a cease-practice order is issued to 30 days. Other non-substantive additions for clarity.~~

~~**11. Biological Fluid Testing**~~

~~Amended the timeframe required for filing an accusation/petition to revoke probation after a cease-practice order is issued to 30 days. Other non-substantive additions for clarity.~~

~~**18. Clinical Training Program**~~

~~Amended the language describing the Comprehensive Assessment Program to reflect changes made to the Program by the University of California - San Diego School of Medicine.~~

~~**19. Oral or Written Examination**~~

~~Amended the language to remove the option to order an oral examination.~~

~~**25. Third Party Chaperone**~~

~~Amended the language to require replacement of a chaperone within 30 calendar days.~~

~~**28. Supervision of Physician Assistants**~~

~~Amended the language to prohibit supervision of advance practice nurses in addition to physician assistants.~~

~~**31. General Probation Requirements**~~

~~Eliminated the requirement in this section that all terms and conditions of probation must be complied with to remove conflict with condition 33.~~

~~**33. Non-Practice While on Probation**~~

~~Clarified requirement that physician residing in California are expected to comply with all conditions of probation.~~

**STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
MANUAL OF MODEL DISCIPLINARY ORDERS AND
DISCIPLINARY GUIDELINES**

Business and Professions Code section 2229 mandates protection of the public shall be the highest priority for the Medical Board and for the Administrative Law Judges of the Medical Quality Hearing Panel. Section 2229 further specifies that, to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of licensees. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (guidelines), ~~11-12th~~ Edition. Consistent with the mandates of section 2229, these guidelines set forth the discipline the Board finds appropriate and necessary for the identified violations. In addition to protecting the public and, where not inconsistent, rehabilitating the licensee, the Board finds that imposition of the discipline set forth in the guidelines will promote uniformity, certainty and fairness, and deterrence, and, in turn, further public protection.

The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board- ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

The Model Disciplinary Orders contain three sections: three (3) Disciplinary Orders; twenty-three (23) Optional Conditions whose use depends on the nature and circumstances of the particular case; and eleven (11) Standard Conditions that generally appear in all probation cases. All orders should place the Disciplinary Order(s) first, Optional Condition(s) second, and Standard Condition(s) third.

**MODEL DISCIPLINARY ORDERS
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9. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within ~~15~~ 30 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within ~~15~~ 30 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

10. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The

respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within ~~15-30~~ days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within ~~15-30~~ days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

11. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within ~~15-30~~ days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. A decision shall be received from the Administrative Law Judge or the Board within 15-

~~days unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board.~~ The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within ~~15-30~~ days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

14. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices ~~equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program),~~ approved in advance by the Board or its designee. Respondent shall provide the ~~program approved~~ course provider with any information and documents that the ~~Program approved course provider~~ may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

15. Medical Record Keeping Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical record keeping ~~equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program),~~ approved in advance by the Board or its designee. Respondent shall provide the ~~program approved~~ course provider with any information and documents that the ~~Program approved course~~ provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

17. Professional Boundaries Program

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

Failure to complete the entire Pprogram not later than six (6) months after respondent’s initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent’s performance in and evaluations from the assessment, education, and training, the Pprogram shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Pprogram recommendations. At the completion of the Pprogram, respondent shall submit to a final evaluation. The Pprogram shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The Pprogram has the authority to determine whether or not respondent successfully completed the Pprogram.

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

(Option # 1: Condition Precedent)

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

(Option # 2: Condition Subsequent)

If respondent fails to complete the Pprogram within the designated time period, respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that respondent failed to complete the Pprogram.

18. Clinical Competence Assessment Training Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical ~~competence assessment training or educational~~ program ~~equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California—San Diego School of Medicine (“Program”) approved in advance by the Board or its designee.~~ Respondent shall successfully complete the Pprogram not later than six (6) months after respondent’s initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Pprogram shall consist of a Comprehensive Assessment ~~program comprised of an two-day assessment~~ of respondent’s physical and mental health; ~~basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties~~ pertaining to respondent’s ~~current or intended~~ area of practice ~~in which respondent was alleged to be deficient, and at minimum, a 40-hour program of clinical education in the respondent’s area of practice in which respondent was alleged to be deficient and.~~ The program shall which takes into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require respondent’s on-site participation for a minimum of 3 to 5 days as determined by the program for the assessment and clinical education evaluation.

~~At the end of the evaluation, the program will submit a report to Based on respondent’s performance and test results in the assessment and clinical education, the Program will advise the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent’s performance on the Clinical Competence Assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition, treatment for any or psychological condition, or anything else affecting respondent’s practice of medicine. Respondent shall comply with the Pprogram’s recommendations.~~

~~At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination.~~ Determination as to whether respondent successfully completed ~~the examination or successfully completed~~ the clinical competence assessment program is solely within the program’s jurisdiction.

[Note: The following language shall be included in this condition unless Option #1 is included: If respondent fails to enroll, participate in, or successfully complete the clinical competence assessment training program within the designated time period, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so

notified. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical ~~competence assessment training~~ program have been completed. If the respondent did not successfully complete the clinical ~~competence assessment training~~ program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.]

(Option #1: Condition Precedent)

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

(Option #2)

Within 60 days after respondent has successfully completed the clinical ~~competence assessment training~~ program, respondent shall participate in a professional enhancement program ~~equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine approved in advance by the Board or its designee~~, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

19. ~~Oral and/or~~ Written Examination

[NOTE: This condition should **only** be used where a clinical training program is not appropriate.]

Within 60 calendar days of the effective date of this Decision, respondent shall take and pass ~~an oral and/or a written examination, administered by the Board or its designee. The Board or its designee shall designate a subject matter and administer the oral and/or written.~~

~~If the examination is an oral examination, it shall be conducted in accordance with section 2293(a) and (b) of the Code.~~

~~If respondent is required to take and pass a written exam, that examination shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.~~

~~If respondent fails the first examination, respondent shall be allowed to take and pass a second examination.~~

Failure to pass the required ~~oral and/or~~ written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations.

[Note: The following language shall be included in this condition unless Option #1 is included: If respondent fails to pass the ~~first~~ written examination, respondent shall receive a notification from the

Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not practice medicine until respondent successfully passes the examination, as evidenced by written notice to respondent from the Board or its designee.]

(Option 1: Condition Precedent)

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

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

23. Monitoring - Practice/Billing

Within 30 calendar days of the effective date of this Decision, if the respondent is providing direct patient care, the respondent shall submit to the Board or its designee for prior approval as a _____ [insert: practice, billing, or practice and billing] monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's _____ [insert: practice, billing, or practice and billing] shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the

standards of practice of _____ [insert: medicine or billing, or both], and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

25. Third Party Chaperone

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

If respondent fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility. Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

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

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If respondent fails to obtain approval of a replacement chaperone within 30 ~~60~~ calendar days of the resignation or unavailability of the chaperone, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

(Option)

Respondent shall provide written notification to respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment with **[insert: male, female or minor]** patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

28. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

31. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit. ~~and all terms and conditions of this Decision.~~

Address Changes

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

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

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

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

33. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine ~~in California~~ as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination ~~a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines"~~ prior to resuming the practice of medicine. Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; ~~and~~ General Probation Requirements, Quarterly Declarations, Abstain from the Use of alcohol and/or controlled substances and Biological Fluid Testing.