

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 22, 2010
ATTENTION: Medical Board of California
DEPARTMENT: Legislation/Regulatory Program
SUBJECT: SB 1441 Standards
STAFF CONTACT: Linda K. Whitney, Interim Executive Director

REQUESTED ACTION: No action required at this time to develop regulatory language to implement the standards.

STAFF RECOMMENDATION: Wait for SB 1172 to be enacted, but direct staff to development recommendations and time lines to implement those standards that do not require legislation or regulatory action.

EXECUTIVE SUMMARY:

The SB 1441 Substance Abuse Coordination Committee (SACC) met on April 6, 2010 to continues to discuss its recommendations and make modifications to a couple of those recommendations, mainly removing the “automatic suspension” concept and replacing it with “placed on inactive status.” These changes have been incorporated into SB 1172, the 2010 legislation that is carrying the legislative recommendations from the SACC.

Below is a listing of each standard as presented at the January Board meeting and our evaluation of regulatory or legislative action. As noted, none will require regulatory action at this time, but should SB 1172 pass, then the Board will need to address implementation of some sections of that language via regulations.

Standard #1 states any licensee on probation who the board has reasonable suspicion has a substance abuse problem shall be required to undergo a clinical diagnostic evaluation at the licensee’s expense. This standard is consistent with the Board’s disciplinary guidelines. Staff will be reviewing the standard to make sure it coincides with all the Board’s procedures.

This standard requires no regulatory or legislative action.

Standard #2 addresses practice restrictions. The standard would require placing licensees on inactive status if they are found to be abusing substances. This will require a revision to the Medical Practice Act or general provisions.

This standard is being addressed in SB 1172.

Standard #3 deals with specific requirements that govern the ability of the licensing board to communicate with the licensee’s employer about the licensee’s status or condition. This standard can be implemented by including it in a stipulation or order as long as the definition of “worksite” is resolved.

This standard requires no regulatory or legislative action.

Standard #4 addresses drug testing standards and would require 104 random drug tests per year; currently the Board orders 52 tests. Ms. Whitney stated this standard presents policy, cost, resource, and necessity issues for the Board. Ms. Scuri added the mandatory number of testings has the potential to reduce the number of stipulations that licensees are willing to enter into; this impact should be considered.

This standard is being re-examined by a sub-committee of the SACC.

Standards #5 and #6 do not apply to the Medical Board.

Standard #7 addresses worksite monitors. The Board's procedures may need to be revised.

This standard requires no regulatory or legislative action.

Standard #8 focuses on the procedures to be followed when a licensee tests positive for a banned substance. The standard calls for placing the licensee's license on inactive status which will require legislation.

This standard is being addressed in SB 1172.

Standard #9 does not apply to the Board as it is already a part of the Board's evaluation of a major violation.

This standard is being addressed in SB 1172.

Standard #10 deals with the specific consequences for major and minor violations. To implement the consequences included in the standard, the authority for inactivation of a license would need to be placed in law. Since the Board does not have a diversion program, the remainder of the consequences does not apply.

This standard is being addressed in SB 1172.

Standard #11 addresses the criteria that a licensee must meet in order to petition for return to practice on a full time basis. The Board would need the statutory authority for the practitioner to return to practice at the same time it obtains authority to remove the licensee from practice, as previously mentioned in Standards #2, #8, and #10.

This standard is being addressed in SB 1172.

Standard #12 lists the criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license. These criteria are already in existing law; the Board would generally follow this same process since it already exists. It appears the standard is looking at two different processes; the Board may need a statutory requirement to address the second process.

This standard is being addressed in SB 1172.

Standards #13, #14, and #15 do not apply to the Board.

Standard #16 addresses measurable criteria and standards to determine whether the Board's method of dealing with substance-abusing licensees protects patients from harm. The Board would need to develop a reporting mechanism to provide all of the specified data to DCA.

This standard requires no regulatory or legislative action.

FISCAL CONSIDERATIONS: None at this time.

PREVIOUS MBC AND/OR COUNCIL ACTION: Continued discussion of the implementation of SB 1441, Statutes of 2008; with the report due January 1, 2010.