

TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at Long Beach Memorial Hospital Miller Children's Hospital, 2801 Atlantic Avenue, Long Beach, California 90806, at 9:10 a.m., November 5, 2010. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. **on Monday November 1, 2010** or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2018 and 2220 of the Business and Professions Code, and to implement, interpret or make specific Sections 2228, 2229 and 2234 of said Code, as well as Sections 11400.20, 11400.21, 11425.50(e) of the Government Code, the Medical Board of California is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1361 in Article 4 of Chapter 2, Division 13, relating to the *Manual of Disciplinary Guidelines and Model Disciplinary Orders* to reflect current law and make technical changes.

Current law authorizes the Medical Board of California to investigate complaints filed against physicians and surgeons and take disciplinary action against the license should a violation of law be proven. Section 2227 of the Business and Professions Code (Code) authorizes the Board to place licensees on probation following an evidentiary hearing, a default decision or the execution of a stipulated settlement. Section 2228 of the Code specifies the terms and conditions that may be included in the term of a licensee's probation, including but is not limited to additional training, restrictions on practice, and successful completion of diagnostic examinations. Business and Professions Code Section 2229 also requires that, wherever possible, the Board should take action that is calculated to aid in the rehabilitation of the licensee and order actions to include further education, restrictions from practice, or other means, that will remove the identified deficiencies. The *Manual of Model Disciplinary Orders and Disciplinary Guidelines* referenced in the current regulation (10th Edition/2008) contains the approved terms and conditions that can be ordered to rehabilitate physicians as part of a probationary order while allowing the Board to honor its primary obligation of public protection.

The proposed amendment to existing regulation will incorporate by reference the 11th Edition/2010 of the *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, reflecting changes in law, as well as making technical changes to address unnecessary and duplicative elements, and to more accurately reflect the current probationary environment.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

There are no costs associated with the proposed regulatory action. This rulemaking only relates to physicians disciplined by the Medical Board of California.

Impact on Jobs/New Businesses:

The Medical Board of California has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Medical Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

This proposed regulation only reflects the current law, and will only have an impact on physicians disciplined by the Medical Board of California.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Medical Board of California has determined that the proposed regulations would not affect small businesses. This proposed regulation only will have an impact on physicians disciplined by the Medical Board of California.

The new edition of the *Manual of Disciplinary Guidelines and Model Disciplinary Orders*, incorporated by reference, makes no changes that would result in an increase of costs to licensees or small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice. Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Medical Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Medical Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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|-----------------|-----------------------------------|
| Name: | Susan Cady, Enforcement Manager |
| | Medical Board of California |
| Address: | 2005 Evergreen Street, Suite 1200 |
| | Sacramento, CA 95815 |
| Telephone No.: | (916) 263-2389 |
| Fax No.: | (916) 263-2387 |
| E-Mail Address: | regulations@mbc.ca.gov |

The backup contact person is:

| | |
|-----------------|-----------------------------------|
| Name: | Kevin A. Schunke |
| | Medical Board of California |
| Address: | 2005 Evergreen Street, Suite 1200 |
| | Sacramento, CA 95815 |
| Telephone No.: | (916) 263-2389 |
| Fax No.: | (916) 263-2387 |
| E-Mail Address: | regulations@mbc.ca.gov |

Website Access: Materials regarding this proposal can be found at http://www.medbd.ca.gov/laws/regulations_proposed.html.

MEDICAL BOARD OF CALIFORNIA
INITIAL STATEMENT OF REASONS

Hearing Date: November 5, 2010

Subject Matter of Proposed Regulations:

To amend the *Manual of Model Disciplinary Orders and Disciplinary Guidelines* to reflect changes in law, clarify existing language, and make technical changes to reflect the current probationary environment.

Section(s) Affected:

Amend Section 1361 in Article 4 of Chapter 2, Division 13

Specific purpose of each adoption, amendment, or repeal:

The current *Manual of Model Disciplinary Orders and Disciplinary Guidelines* referenced in the regulation (10th Edition/2008) must be made consistent with current law. The proposed regulation will reference the 11th Edition/2010 of the *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, reflecting changes in law, as well as making technical changes to address unnecessary and duplicative elements, and some technical changes to reflect the current probationary environment.

Factual Basis/Rationale:

The factual basis and rationale for the determination that each amendment is reasonably necessary to clarify the purpose for which technical changes are required, together with a description of the problem, administrative requirement, or other condition or circumstance that each amendment is intended to address, is as follows:

Condition 5-7. Controlled substances – Total Restriction/Partial Restriction

- Expand restriction to include “furnishing” controlled substances and amend the language regarding the appropriateness or necessity of prescribing controlled substances to patient.

B&P Code Section 2242 was amended to require that an “appropriate prior examination and a medical indication” must exist before prescribing medication to a patient. The Board is amending the *Guidelines* to be consistent with the current laws pertaining to prescribing. The current *Guidelines* restrict respondents from prescribing, administering and dispensing medication but do not restrict their ability to furnish or supply controlled substances to patients. This amendment is necessary to correct this omission.

Condition 8. Controlled Substances – Maintain records

- Deletes language stating that the failure to comply with the requirement to maintain logs and records constitutes a violation of probation.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 9-10 Controlled Substances/Alcohol Abstain from Use

- Allows the Board to impose a “cease practice” order when a positive biological fluid test is received for alcohol or a substance not legally prescribed and requires that an administrative action be filed timely so the respondent is afforded due process.

Due to a change in law, the Medical Board no longer has a Diversion Program to monitor physicians with substance abuse problems. In the past, physicians were ordered into the Diversion Program. The program had the authority to order a physician who tested positive from a biological fluid test, to cease practicing medicine. While the previous *Guidelines* were amended to reflect the elimination of the Diversion Program, it did not contain the specific condition that the Board could order physicians testing positive to cease practice. In addition, SB 1441 required the Department of Consumer Affairs (DCA) to develop guidelines for monitoring all licensees with substance abuse problems.

(http://www.dca.ca.gov/about_dca/sacc/unistand_04_10.pdf). The *Guidelines* developed by DCA require that licensees be removed from practice should they test positive for drugs or alcohol. The Board is recommending that the licensee be given notification and shall be directed to cease practice within three days following the notification. The Board currently has the authority to direct the respondent to cease practice if a practice monitor is not replaced in a timely manner. The proposed language recommending that the cease practice order become effective three days after notification to the respondent is consistent with the existing guidelines currently in use and, in the Board's opinion, gives the respondent adequate notice to make the necessary arrangements to close the practice temporarily and redirect patients to covering physicians. The Board is required to file an accusation/petition to revoke probation within 15 days and, if requested, provide the respondent with a hearing in 30 days. The Board used the timeframes defined in Government Code Section 11529(f) for providing an expeditious hearing on interim suspension orders as the model for the timeframes for the filing of an accusation and the hearing on “cease practice” orders issued by the Board. The expedited timeframes being proposed are necessary to provide due process to licensees.

Condition 11. Biological Fluid testing

- Expands and defines “Biological Fluid Testing” to include blood, urine, breathalyzer, and hair follicle testing and removes the minimum number of tests required throughout the term of probation. Allows the Board to order the respondent to cease practice for failing to cooperate with the required testing. Deletes language stating that the failure to cooperate with the biological fluid testing constitutes a violation of probation.

Due to technological changes in drug testing, it is preferable to define “Biological Fluid Testing” to include other methods that may be able to detect some substances that are not picked up by a urine test. This is necessary to protect the public by allowing for better drug and alcohol testing. In addition, SB 1441 required the Department of Consumer Affairs to develop guidelines for monitoring all licensees with substance abuse problems.

(http://www.dca.ca.gov/about_dca/sacc/unistand_04_10.pdf) The guidelines developed by DCA identified specific testing frequencies; however, the number has been the subject of extensive debate within the Boards, licensee population and other interested parties. By removing reference to a specific number of minimum tests throughout the term of probation, the Board will be able to adjust the frequency according to the specific facts of the case and/or the *Guidelines* once finalized by DCA.

The Board is also proposing that a “cease practice” order be issued for failing to cooperate with the ordered biological fluid testing. The Board currently has the authority to direct the respondent to cease practice if a practice monitor is not replaced in a timely manner. The proposed language recommending that the cease practice order become effective three days after notification to the respondent is consistent with the existing guidelines currently in use and, in the Board’s opinion, gives the respondents adequate notice to make the necessary arrangements to close the practice temporarily and redirect patients to covering physicians. The Board is required to file an accusation/petition to revoke probation within 15 days and, if requested, provide the respondent with a hearing in 30 days. The Board used the timeframes defined in Government Code Section 11529(f) for providing an expeditious hearing on interim suspension orders as the model for the timeframes for the filing of an accusation and the hearing on “cease practice” orders issued by the Board. The expedited timeframes being proposed are necessary to provide due process to licensees.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 12. Community Service

- Deletes language indicating medical community service cannot be ordered or allowed when the board has charged the respondent with negligence or incompetence in a quality of care case unless and until the respondent has been tested and deemed competent and safe to practice. Amends this condition to preclude medical community service from being ordered when disciplinary action has been taken related to the quality of the medical care provided by respondent.

BPC Section 2228 (d) authorizes the Board to place an individual on probation and allow the option of alternative community service in cases *other than* violations relating to quality of care. It is not in the interest of public protection to permit a physician found to have been negligent or incompetent to provide medical care as part of his/her community service. This amendment is necessary to conform to the existing statute.

Condition 13. Education Course

- Expand acceptable continuing medical education courses beyond classroom, conference, and seminars, to reflect other types of educational delivery systems.

There has been a change in the educational environment, and respondents may be able to complete more appropriate coursework not offered in the traditional classroom. Online courses, CD Rom courses, workshops, and other methods of education may be more suitable to address a respondent's deficiencies. For this reason, the Board is proposing to allow other types of courses, rather than only those didactic courses taught in a classroom environment.

Condition 14. Prescribing Practices Course

- Allows for participation in equivalent programs other than those provided by the Physician Assessment & Clinical Education (PACE) Program offered by UCSD, if approved by the Medical Board. Requires that the respondent provide all documentation and material required by the program and sets specific timeframes for completing the ordered course. Deletes language stating that the failure to complete the prescribing practices course within six months constitutes a violation of probation and clarifies that any CME hours received for completing this course could not also be applied towards meeting the CME requirements for license renewal.

There are other comparable prescribing practices programs in various locations other than the San Diego PACE Program and the Board is proposing to allow

physicians to attend alternative but equivalent programs. A number of the education/training courses included in the *Guidelines* require that the physician provide materials prior to the classroom instruction or participate in exercises after completing the classroom instruction. This material can be used to either determine the areas of remediation required prior to classroom instruction or to provide longitudinal follow-up at six and twelve month intervals following the classroom instruction. This amendment is necessary to ensure that the respondent cooperates with all of the requirements of the course and to define the timelines and consequences for failing to comply. A one year deadline has been selected to ensure the longitudinal follow up requirement has been satisfied. The current *Guidelines* define a deadline for enrollment in the required course but there is no timeframe defined for completing the classroom instruction. Based on the Board's experience in this area, six months is an adequate amount of time to allow a physician to clear his/her schedule to devote to the classroom portion of the course.

It has been the Board's policy to not allow physicians to use the CME credits obtained while completing the board-ordered educational courses as meeting both the probation condition and a portion of the 25 hours of CME required each year for license renewal. This language is necessary to memorialize the existing policy and eliminate confusion for the respondents on the number of CME hours required to maintain licensure.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 15. Medical Recordkeeping Course

- Allows for participation in equivalent programs other than those provided by the Physician Assessment & Clinical Education (PACE) Program offered by UCSD, if approved by the Medical Board. Requires that the respondent provide all documentation and material required by the program and sets specific timeframes for completing the ordered course. Deletes language stating that the failure to comply with the requirement to maintain logs and records constitutes a violation of probation and clarifies that any CME hours received for completing this course could not also be applied towards meeting the CME requirements for license renewal.

There are other comparable medical recordkeeping programs in various locations other than the San Diego PACE Program and the Board is proposing to allow physicians to attend alternative but equivalent programs. A number of the education/training courses included in the *Guidelines* require that the physician

provide materials either prior to the classroom instruction or participate in exercises after completing the classroom instruction. This material can be used to either determine the areas of remediation required prior to classroom instruction or to provide longitudinal follow-up at six and twelve month intervals following the classroom instruction. This amendment is necessary to ensure that the respondent cooperates with all of the requirements of the course and to define the timelines and consequences for failing to comply. A one year deadline has been selected to ensure the longitudinal follow up requirement has been satisfied. The current *Guidelines* define a deadline for enrollment in the required course but there is no timeframe defined for completing the classroom instruction. Based on the Board's experience in this area, six months is an adequate amount of time to allow a physician to clear his/her schedule to devote to the classroom portion of the course.

It has been the Board's policy to not allow physicians to use the CME credits obtained while completing the board-ordered educational courses as meeting both the probation condition and a portion of the 25 hours of CME required each year for license renewal. This language is necessary to memorialize the existing policy and to eliminate confusion for the respondents on the number of CME hours required to maintain licensure.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 16. Professionalism Course/Ethics Course

- Requires that the respondent provide all documentation and material required by the program and sets specific timeframes for completing the ordered course. Deletes language stating that the failure to complete the course within the first year constitutes a violation of probation and clarifies that any CME hours received for completing this course could not also be applied towards meeting the CME requirements for license renewal.

There are other comparable professionalism programs in various locations other than the San Diego PACE Program and the Board is proposing to allow physicians to attend alternative but equivalent programs. A number of the education/training courses included in the *Guidelines* require that the physician provide materials prior to the classroom instruction or participate in exercises after completing the classroom instruction. This material can be used to either determine the areas of remediation required prior to classroom instruction or to provide longitudinal follow-up at six and twelve month intervals following the classroom instruction. This amendment is necessary to ensure that the

respondent cooperates with all of the requirements of the course and to define the timelines and consequences for failing to comply. A one year deadline has been selected to ensure the longitudinal follow up requirement has been satisfied. The current *Guidelines* define a deadline for enrollment in the required course but there is no timeframe defined for completing the classroom instruction. Based on the Board's experience in this area, six months is an adequate amount of time to allow a physician to clear his/her schedule to devote to the classroom portion of the course.

It has been the Board's policy to not allow physicians to use the CME credits obtained while completing the board-ordered educational courses as meeting both the probation condition and a portion of the 25 hours of CME required each year for license renewal. This language is necessary to memorialize the existing policy and to eliminate confusion for the respondents on the number of CME hours required to maintain licensure.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Finally, the course has been renamed from "Ethics Course" to Professionalism Program. This amendment includes technical changes to reflect the name change.

Condition 17. Professional Boundaries Course

- Allows the Board to accept the completion of a professional boundaries program or course prior to the effective date of the decision as fulfillment of this condition. Clarifies that any CME hours received for completing this course could not also be applied towards meeting the CME requirements for license renewal.

The Board has traditionally accepted coursework taken before the effective date of the decision in all other educational conditions except the professional boundaries course. There is no reason why this course should not be subject to the same parameters. This amendment is necessary to correct this omission and to clarify that the Professional Boundaries Course used as the standard is the course offered by PACE.

It has been the Board's policy to not allow physicians to use the CME credits obtained while completing the board-ordered educational courses as meeting both the probation condition and a portion of the 25 hours of CME required each year for license renewal. This language is necessary to memorialize the existing policy and to eliminate confusion for the respondents on the number of CME hours required to maintain licensure.

Condition 18. Clinical Training Program

- Amends the language to clarify that the respondent must *successfully* complete the clinical training program six months after enrollment and allows the Board to order the respondent to cease practice if the clinical training program has not been successfully completed. Amends the language to require that the assessment and retraining be focused on the area of medicine that the respondent was alleged to be deficient in. Deletes language stating that the failure to participate in and complete all phases of the clinical training program constitutes a violation of probation. Adds a timeframe for enrolling in the professional enhancement program if ordered.

The current *Guidelines* define a deadline for enrollment in the clinical training program but there is no timeframe defined for completing the program. Based on the Board's experience in this area, six months is an adequate amount of time to allow a physician to clear his/her schedule to devote to the ordered clinical training program and for the PACE (or comparable program) to perform the initial assessment and develop the 40-hour clinical education component.

The objective in ordering a clinical training and assessment is to ensure that the physician is competent and safe to practice medicine. When a physician completes the clinical training program within the required time period but is deemed unsafe to practice medicine, the Board must act quickly to ensure that he/she is not allowed to continue treating patients. This amendment allows the Board to issue a "cease practice" order if necessary to immediately remove the physician from the practice of medicine if he/she did not successfully complete the clinical training program. The Board currently has the authority to direct the respondent to cease practice if a practice monitor is not replaced in a timely manner. The proposed language recommending that the cease practice order become effective three days after notification to the respondent is consistent with the existing guidelines currently in use and, in the Board's opinion, gives the respondent adequate notice to make the necessary arrangements to close their practice temporarily and redirect patients to covering physicians.

Physicians are licensed to practice medicine in any specialty they choose but are expected to meet the standard of care for the specialty they are practicing in. If a physician has been disciplined for practicing medicine in a specialty outside his/her area of training, the clinical assessment and retraining must correlate to the area(s) of practice in which he/she is found to be negligent. This amendment is necessary to clarify that requirement.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

The current *Guidelines* allow the Board to order a physician to enroll in the professional enhancement program but do not include a timeframe for enrollment. A 60-day time limit will ensure timely enrollment and, in the Board's experience, is adequate time to allow the respondent to complete the application and collect the patient charts needed as part of the enrollment process as well as allow the PEP program sufficient time to identify an appropriate monitor and arrange for on-site visits to begin the professional enhancement program.

Condition 19. Oral and/or Written/Examination

- Amends the language to ensure that oral examinations being administered as a condition of probation are consistent with the statutory requirements outlined in BPC section 2293. Allows the Board to issue a cease practice order if the respondent does not successfully complete the exam.

The current *Guidelines* do not specify how an oral examination should be conducted and this amendment corrects that omission to ensure all oral examinations follow a consistent protocol. The protocol is set forth in B&P 2293(a) and (b). Use of this protocol will result in consistency between the various types of oral examinations.

The objective in ordering an oral/written examination is to ensure that the physician is competent and safe to practice medicine. When a physician fails the test, the Board must act quickly to ensure that he/she is not allowed to continue treating patients. This amendment provides public protection by immediately removing the physician from the practice of medicine if he/she did not pass the oral or written examination.

Non-substantive grammatical changes are made for clarity and ease of reading.

Condition 20. Psychiatric Evaluation

- Deletes language stating that the failure to complete a psychiatric evaluation and psychological testing constitutes a violation of probation.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 21. Psychotherapy

- Deletes language stating that the failure to undergo and continue psychotherapy

constitutes a violation of probation. Amends language to add requirement that a treating physician must be licensed in California.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary. The current *Guidelines* give the Board the authority to approve the psychiatrist or psychotherapist nominated to provide the board ordered therapy. As part of the approval process, the Board must consider the nominee's complaint history and background to ensure there are no pending complaints, investigations or disciplinary actions which would suggest that the nominee's care might be outside the standard of practice in the medical community. This background information would not be available to the Board unless the individual is California licensed. This amendment is necessary to ensure that the Board has the necessary information to review and approve individuals providing board ordered psychotherapy.

Condition 22. Medical Evaluation and Treatment

- Requires that disciplined physicians provide pertinent documentation to the physician conducting a medical evaluation as part of a probationary condition and adds the requirement that the treating physician must be licensed in California. Deletes language stating that the failure to cooperate and/or comply with the condition constitutes a violation of probation.

As a condition of probation for physicians who may be suffering from a medical condition that may affect their medical practice skills, a medical evaluation conducted by a physician may be ordered. In order for physicians conducting the evaluations to effectively do their work, full cooperation is needed. For that reason, the *Guidelines* have been amended to require the disciplined physician to cooperate with the evaluator and provide any relevant documentation requested. Otherwise, the resulting evaluation may not be complete.

The current *Guidelines* give the Board the authority to approve the physician nominated to provide medical treatment deemed necessary following an independent medical evaluation. As part of the approval process, the Board must consider the nominee's complaint history and background to ensure there are no pending complaints, investigations or disciplinary actions which would suggest that the nominee's care might be outside the standard of practice in the medical community. This background information would not be available to the Board unless the individual is California licensed. This amendment is necessary to ensure that the Board has the necessary information to review and approve individuals providing recommended and/or board ordered medical treatment.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 23. Monitoring – Practice/Billing

- Provides the ability to issue a cease practice order if the respondent fails to obtain an approved practice monitor within 60 calendar days from the effective date of the Decision. Minor grammatical changes have been made to the language to ensure that notification is sent to the respondent prior to imposing a cease practice order and to clarify the timeframe for the order to become effective. Deletes language stating that the failure to cooperate and/or comply with the condition constitutes a violation of probation.

The current Guidelines allow the Board to issue a “cease practice” order to the respondent if the approved practice/billing monitor resigns and the respondent is unable find a replacement within 60 days. However, if the respondent does not find an acceptable practice/billing monitor within the first 60 calendar days after the decision becomes effective, the Board has no authority to order a “cease practice”. There is no reason why the initial appointment of a practice/billing monitor should not be subject to the same parameters as securing a replacement. This amendment is necessary to correct this omission. In addition the language was amended to clarify that the Board or designee must approve any modifications made to the monitoring plan. The current *Guidelines* confirm that the Board or designee must approve the initial monitoring plan but there is no provision to address any adjustments or changes made to the monitoring plan. This amendment is necessary to address that omission.

The time period to secure a replacement monitor was clarified to identify “calendar” days to be consistent with all other timeframes outlined in this condition. Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 24. Solo Practice Prohibition

- Defines the term “solo practice” by a licensee on probation and provides the ability to issue a cease practice order if the respondent fails to secure an approved practice setting within 60 calendar days from the effective date of the Decision or from a change in an approved practice setting.

The current language does not provide a sufficient explanation as to what the Board is requiring when a respondent is prohibited from engaging in “solo”

practice which has resulted in ambiguity for the probationer. The clarifying language added to the condition defines what is meant by the solo practice prohibition and clarifies that a probationer cannot just have another physician, who is sharing office space, or employ other health care practitioners, such as registered nurses or physician assistants, to comply with this condition. The goal of this condition is to ensure that the physician, who has been found to be negligent, dishonest or to have engaged in inappropriate relationships with patients, has another physician colleague or peer to consult with and give guidance on patient care issues. Neither a registered nurse, a physician assistant, nor an independent contract physician can fulfill this role. By including the parameters of the condition it clarifies for the respondents what is required of them when they have this condition and provides for greater public protection by ensuring that requirements of this condition can be clearly understood.

This amendment would also allow the Board to issue a "cease practice" order to remove the physician from the practice of medicine if he/she is in practice setting that is inconsistent with the solo practice prohibition. The Board currently has the authority to direct the respondent to cease practice if a practice monitor is not replaced in a timely manner but has no such provision on the "solo practice" prohibition. This amendment is necessary to correct that omission. The proposed language requiring that the cease practice order become effective three days after notification to the respondent is consistent with the existing guidelines currently in use and, in the Board's opinion, gives the respondent adequate notice to make the necessary arrangements to close the practice temporarily and redirect patients to covering physicians.

Condition 25. Third Party Chaperone

- Amends this condition to require that chaperones record their presence on the medical record and incorporate privacy protection for the patient by only requiring the patient's initials. Adds protection for the chaperone by informing the respondent that the chaperone cannot be terminated from the position because he/she reports a finding to the Board. Allows the Board to order the respondent to cease practice for failing to have an approved third party chaperone. Deletes the recommendation regarding the practice environment most suitable for sexual offenders.

The Board is also proposing that a "cease practice" order be issued for not having or failing to replace a third party chaperone. The Board currently has the authority to direct the respondent to cease practice if a practice monitor is not replaced in a timely manner but no such provision for the third party chaperone requirement. This amendment is necessary to correct that omission. The proposed language requiring that the cease practice order become effective three days after notification to the respondent is consistent with the existing

guidelines currently in use and, in the Board's opinion, gives the respondent adequate notice to make the necessary arrangements to close their practice temporarily and redirect patients to covering physicians

History has shown that failure of the third party chaperone to properly document the medical record can result in a lack of evidence when a violation is detected. By including the signature instead of initials in the medical record the Board can more easily identify the name of the third party chaperone that was in attendance. To reflect the privacy laws, the log maintained by respondent will only have the patient's initials and not the full name. To remove the fear of retaliation against the third party chaperone, the Board has added the prohibition that respondent cannot terminate a third party chaperone as a result of his/her cooperation with the Board. All of these changes will strengthen the enforceability of this term of probation. BPC Section 2232 requires, with some limited exceptions, license revocation for any physician required to register as a sex offender. This amendment is needed to reflect this statutory change.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Condition 26. Prohibited Practice

- Amended language to remove additional requirement for written notification to be provided at subsequent patient visits. Deletes language stating that the failure to cooperate and/or comply with condition constitutes a violation of probation.

The current *Guidelines* require that the respondent make a verbal notification to any patient seeking the prohibited service and must document that notification in a log. In addition, at any subsequent visits, each time the patient seeks the prohibited service, the respondent must provide a written notification to the patient and place the written notification in the file. However, in the Board's experience, this protocol is not consistent with how a medical practice functions.

Typically, a patient will contact the physician's office and schedule an appointment through the office staff. The staff will identify the reason for the appointment and what "service" is needed. If the patient wishes to be scheduled for a procedure or service that the respondent is prohibited from providing, the patient would be advised at that time that the requested service/procedure could not be provided and no appointment would be scheduled. The amended language requires that all patients be notified after the decision becomes effective that the respondent is prohibited from providing specific services or procedures and that notification must be documented in a log. If all patients are provided with the notification when it becomes effective, it is highly unlikely that

patients would continue to “request” the prohibited service or be scheduled by the physician’s office staff for a service or procedure the physician could not provide. To require the respondent to provide additional notifications (either written or verbal) appears unnecessary and burdensome.

Standard Condition #35 states that the failure to comply with any term and condition is a violation of probation, therefore this language is redundant and unnecessary.

Condition 27. Notification

- Clean-up language to clarify when respondents must provide notification to their employer.

The current language implies that respondents are not practicing when placed on probation. This makes it clear that within seven (7) days from the effective date of the Decision they must provide notification. Based on the Board’s experience, seven days is sufficient time for respondents to make the necessary notification to their employer, hospitals where they have privileges and malpractice insurance carriers.

Condition 31 General Probation Requirements

- Amends the formatting to make it clearer to the respondent what the general requirements are while serving on probation. Aside from adding the headings, the first section explains that respondents will have to comply with the Board’s probation unit and the terms and conditions of probation. Other enhancements include requesting the respondent’s e-mail address and telephone number for contact purposes; clarifying that the respondent cannot practice at a patient’s residence unless the patient resides in a skilled nursing facility or other similar licensed facility. The notification for travel or residence outside California was incorporated from the previous Condition 33, “Residing or Practicing Out of State.”

During the probationary term, the Board needs to maintain contact with the respondent to schedule appointments and interviews and to ensure compliance with the ordered terms and conditions. Adding phone numbers and e-mails addresses (if applicable) to the contact information that must be provided enhances the Board’s ability to maintain regular contact with the respondent.

The current *Guidelines* do not allow respondents to practice medicine in their residence. It is not in the interest of public protection to permit a physician found to have been negligent or incompetent to provide medical care in a patient’s

residence. However, there are some settings where the patient may be seen somewhere other than the physician's office; such as a skilled nursing facility and licensed board and care facility, etc. By including the parameters of the condition it clarifies for the respondents what is required of them when they have this condition. These limitations provide greater public protection by ensuring practice occurs in an organized health care setting.

Condition 32 Interview with the Board

- Non-substantive grammatical changes are made for clarity and ease of reading.

Condition 33 Residing or Practicing Out of State

- This condition was repealed and portions were consolidated into condition number 31, "General Probation Requirements" and the new number 33 "Non-Practice While on Probation."

It was determined that the information in this condition and condition #34 were redundant; therefore the two conditions were combined to remove unnecessary language.

Condition 34 Failure to Practice Medicine

- This condition was repealed and portions were consolidated into condition number 31, "General Probation Requirements" and the number 33 "Non-Practice While on Probation."

It was determined that the information in this condition and the previous condition #33 were redundant; thereby the two conditions were combined to remove unnecessary language.

Underlying Data:

As specified above, the 10th Edition (2008) of the *Manual of Model Disciplinary Orders and Disciplinary Guidelines* is referenced in current regulation. The 11th Edition (2010) of the *Guidelines* has been amended to reflect changes in law, changes in educational and probationary environments, and has also been amended for clarity and consistency.

The Medical Board has worked on the changes in the *Guidelines* for several months, culminating with a meeting on June 18, 2009 with interested parties, including professional associations and consumer organizations, defense counsels and prosecutors. (Minutes attached.) Suggestions made at that meeting, if appropriate, were incorporated into the 11th Edition of the *Guidelines*. In summary, the proposed changes were not controversial, and the Board would expect little comment, if any, in

opposition to this rulemaking as a result of the comments heard at that meeting.

As discussed in the "Factual Basis" above, changes to the Guidelines have been made to clarify conditions, tighten requirements, remedy ambiguities in the previous edition, and offer alternatives that reflect the current law, educational opportunities, technological advances, and the probationary environment. The Board consulted with all interested parties, including prosecutors, defense counsels, professional organizations, probation officers and individual physicians to solicit comment into the proposed changes.

Business Impact

- ☒ This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:
- This regulation only impacts physicians disciplined by the Medical Board.
- ☐ Description of alternatives which would lessen any significant adverse impact on business:

Not applicable, as the proposed regulation has no business or economic impact.

Specific Technologies or Equipment:

- ☒ This regulation does not mandate the use of specific technologies or equipment.
- ☐ This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

**Medical Board of California
Disciplinary Guidelines
Specific Language**

1. Amend section 1361 in Article 4 of Chapter 2, Division 13, to read as follows:

1361. Disciplinary Guidelines.

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 Disciplinary Guidelines and Model Disciplinary Orders" (~~10th Edition/2008~~ 11th Edition/2010) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Medical Board of California 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.

NOTE: Authority cited: Sections 2018, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 2227, 2228, 2229, and 2234, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

**State of California
State and Consumer Services Agency
MEDICAL BOARD OF CALIFORNIA
MANUAL OF MODEL DISCIPLINARY ORDERS
AND DISCIPLINARY GUIDELINES
1140th Edition
20082010
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA**

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Barbara Yaroslavsky,
President
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Frank Zerunyan,
Vice President
Hedy Chang,
Secretary**

The Board produced this Manual of Model Disciplinary Orders and Disciplinary Guidelines, 1140th 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.

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 1140th 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:

5. Controlled Substances – Total Restriction

Eliminated the term “good faith” prior examination to reflect amendments made to statute that now requires an “appropriate prior examination and a medical indication” and adds “furnish” to the list of prohibited activities.

6. Controlled Substances – Surrender of DEA Permit

References to the “Division” (Division of Medical Quality) changed to “Board.”

7. Controlled Substances – Partial Restriction

Eliminated the term “good faith” prior examination to reflect amendments made to statute that now requires an “appropriate prior examination and a medical indication” and adds “furnish” to the list of prohibited activities.

8. Controlled Substances - Maintain Records and Access To Records and Inventories

References to the “Division” (Division of Medical Quality) changed to “Board.”

Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

9. Controlled Substances - Abstain From Use

References to the “Division” (Division of Medical Quality) changed to “Board.”

Added language that respondent shall cease the practice of medicine based upon a positive biological fluid test and that the Board must meet time requirements for filing an Accusation and/or Petition to Revoke and hold a hearing.

10. Alcohol - Abstain From Use

Added language that respondent shall cease the practice of medicine based upon a positive biological fluid test and that the Board must meet requirements for filing an Accusation and/or Petition to Revoke and hold a hearing.

11. Biological Fluid Testing

Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. Expands the parameters of biological fluid testing to include various testing mechanisms. Added language that respondent shall cease the practice of medicine based upon a positive biological fluid test and that the Board must meet requirements for filing an Accusation and/or Petition to Revoke and hold a hearing.

The following language was deleted:

~~Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.~~

The following language replaces the above:

~~Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. Prior to practicing medicine, respondent~~

~~shall, at respondent's expense, contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, urine testing a minimum of four times each month. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation."~~

Former # 12 "Diversion Program" was eliminated:

12 was formerly entitled "Diversion Program." As the Diversion Program is eliminated on June 30, 2008, the following language was deleted:

~~Within 30 calendar days from the effective date of this Decision, respondent shall enroll and participate in the Board's Diversion Program until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Upon enrollment, respondent shall execute a release authorizing the Diversion Program to notify the Division of the following: 1) respondent requires further treatment and rehabilitation; 2) respondent no longer requires treatment and rehabilitation; and 3) respondent may resume the practice of medicine. Respondent shall execute a release authorizing the Diversion Program to provide confirmation to the Division whenever the Diversion Program has determined that respondent shall cease the practice of medicine.~~

~~Within 5 calendar days after being notified by the Diversion Program of a determination that further treatment and rehabilitation are necessary, respondent shall notify the Division in writing. The Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Within 24 hours after being notified by the Diversion Program of a determination that respondent shall cease the practice of medicine, respondent shall notify the Division and respondent shall not engage in the practice of medicine until notified in writing by the Division or its designee of the Diversion Program's determination that respondent may resume the practice of medicine. Failure to cooperate or comply with the Diversion Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.~~

12. Community Service - Free Services

Reworded the language regarding non-medical community service.

Formerly # 13, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

13. Education Course

Deleted language limiting the education program or course to classroom, conference or seminar settings.

Formerly # 14, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

14. Prescribing Practices Course

Added language to require the course be equivalent to the course offered at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.

~~Formerly # 15, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

15. Medical Record Keeping Course

Added language to require the course be equivalent to the course offered at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.

~~Formerly # 16, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

16. Ethics Course Professionalism Program (Ethics Course)

Amended the name and language to comport with subsequent regulations setting requirements for a professionalism program (previously referred to as an ethics course). Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.

~~Formerly # 17, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

17. Professional Boundaries Program

Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. Added language permitting discretionary acceptance of a course taken prior to the effective date of the decision.

~~Formerly # 18, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

18. Clinical Training Program

Amended the language regarding completion of program and replaced the terms specialty and sub specialty with area of practice in which respondent was deficient. Added language that respondent shall cease the practice of medicine for failing to successfully complete the clinical training program. Also eliminated the subsequent optional term and made it a requirement.

~~Formerly # 19, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

19. Oral or Written Examination

Added that if the examination is an oral examination, it is to be administered in accordance with Business and Professions Code section 2293(a) and (b). Also eliminated the subsequent optional term and made it a requirement. Made technical changes. Formerly # 20, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

20. Psychiatric Evaluation

Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Formerly # 21, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

21. Psychotherapy

Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Formerly # 22, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

22. Medical Evaluation and Treatment

Added language requiring the respondent to provide pertinent documents/information to the evaluating physician. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Formerly # 23, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

23. Monitoring - Practice/Billing

Restructured the formatting to clarify the type of monitor required. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Added language that respondents shall cease the practice of medicine until they obtain a monitor if they do not meet the required timeline for obtaining a monitor.

Formerly # 24, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

24. Solo Practice Prohibition

Clarified the title to show it was a prohibition and clarified what constitutes solo practice.

Added language that respondent shall cease the practice of medicine for failing to secure an approved practice setting within 60 days.

Formerly # 25, it is re-numbered to reflect the deletion of former #12.

25. Third Party Chaperone

Restructured the formatting to clarify the type of patient in which respondent is required to have a chaperone. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. In addition, language was added prohibiting employment termination of a chaperone for reporting to the Board. Added language that respondent shall cease the practice of medicine for failing to have an approved third-party chaperone.

Formerly # 26, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

26. Prohibited Practice

Restructured the formatting of the condition to clarify the type of practice prohibition and to require that all patients be notified of prohibition. Deleted language that required a written notification in addition to verbal. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Formerly # 27, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

27. Notification

Required notification to be within seven days of the effective date of the decision rather than prior to practicing medicine.

Formerly # 28, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

31. General Probation Requirements Unit Compliance

Reformatted the conditions and added clarification regarding notification of residence or practice out-of-state and of email and telephone number.

Formerly # 32, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

32. Interview with the Board or its designee

Reworded for clarity. Formerly # 33, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

Formerly 33. Residing or Practicing Out-of-State

Deleted condition due to combining conditions 33 and 34 to clarify non-practice regardless of physician location.

Formerly # 34, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

Formerly 34. Failure to Practice Medicine- California Resident

Deleted condition due to combining conditions 33 and 34 to clarify non-practice regardless of physician location.

Formerly # 35, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

New 33. Non-Practice While on Probation

Combined former conditions #33 and #34. Clarified non-practice regardless of physician location. Added clinical training for non-practice of more than 18 calendar months, defined non-practice, and required physician to practice in two years.

35.34. Completion of Probation

Formerly # 36, it is re-numbered to reflect the deletion of former #12. Formerly # 35, it is re-numbered to reflect the combination of conditions #33 and #34. Reference to "cost recovery" is deleted condition due to elimination of authority to order cost recovery. See Business and Professions Code section 125.3(k).

36.35. Violation of Probation

Formerly # 37, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board." Formerly # 36, it is re-numbered to reflect the combination of conditions #33 and #34.

Formerly 37. Cost Recovery

Deleted condition due to elimination of authority to order cost recovery. See Business and Professions Code section 125.3(k).

Formerly # 38, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

38. 36. License Surrender

Formerly 38, it is re-numbered to reflect the combination of conditions #33 and #34 and the deletion of condition #37. Also, reworded for clarity.

Formerly # 39, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

39. 37. Probation Monitoring Costs

Formerly 39, it is re-numbered to reflect the combination of conditions #33 and #34 and the deletion of condition #37. Also, deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

Formerly # 40, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."

**STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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), 1140th 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, and 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 thirteen (113) Standard Conditions that generally appear in all probation cases. All orders should place the Disciplinary Order(s) first, ~~optional condition(s)~~ Optional Condition(s) second, and ~~standard conditions~~ Standard Condition(s) third.

~~The Model Disciplinary Guidelines list proposed terms and conditions for more than twenty-four (24) sections of the Business and Professions Code.~~

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MODEL DISCIPLINARY ORDERS

1. Revocation - Single Cause

Certificate No. _____ issued to respondent _____ is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (e.g. I, II, and III), separately and for all of them.

3. Standard Stay Order

However, revocation stayed and respondent is placed on probation for (e.g., ten) years upon the following terms and conditions.

OPTIONAL CONDITIONS

4. Actual Suspension

As part of probation, respondent is suspended from the practice of medicine for (e.g., 90 days) beginning the sixteenth (16th) day after the effective date of this decision.

5. Controlled Substances - Total Restriction

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If respondent forms the medical opinion, after ~~a~~ an appropriate good-faith prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior good-faith examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

6. Controlled Substances - Surrender of DEA Permit

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

7. Controlled Substances - Partial Restriction

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s) _____ (e.g., IV and V) of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If respondent forms the medical opinion, after an appropriate good faith prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior good faith examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

Note: Also use Condition 8, which requires that separate records be maintained for all controlled substances prescribed.

(Option)

Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, respondent shall submit proof that respondent has surrendered respondent's DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, ~~the~~ respondent shall submit a true copy of the permit to the Board or its designee.

8. Controlled Substances- Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

~~Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.~~

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 ~~lawful prescription~~ medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, ~~and strength,~~ and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a positive biological fluid test for any substance not legally prescribed and not reported to the Board or its designee, 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 final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. 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. 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 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 positive biological fluid test for alcohol, 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 final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. 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. 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 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. Within 30 calendar days of this Decision, Prior to practicing medicine, respondent shall, at respondent's expense, contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, urine biological fluid testing a minimum of four times each month. The contract shall require results of the urine 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 Failure to maintain this laboratory or service contract during the period of probation is a violation of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. ~~Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation."~~

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 cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 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. 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. 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 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.

12. Community Service - Free Services

[Medical community service shall only be authorized in cases not involving quality of care.]

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall within the first 2 years of probation, provide _____ hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

Prior to engaging in any community service respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition. ~~Note: In quality of care cases, only non-medical community service is allowed unless respondent passes a competency exam or otherwise demonstrates competency prior to providing community service.~~

13. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, ~~limited to classroom, conference, or seminar settings.~~ The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

14. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, ~~at respondent's expense,~~ 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 with any information and documents that the Program 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. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

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 dDecision, respondent shall enroll in a course in medical record keeping, at respondent's expense, 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 with any information and documents that the Program 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. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

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.

16. ~~Ethics Course~~ Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of

Regulations (CCR) section 1358.1 course in ethics, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

~~An ethics course~~ A professionalism program 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~~ program would have been approved by the Board or its designee had the program ~~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 program ~~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, ~~at respondent's expense, 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").~~ Respondent, at the Program's discretion, shall undergo and complete the Program'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 Program shall evaluate respondent at the end of the training and the Program 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 Program 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 Program 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 Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program 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 Program's determination~~ Program has the authority to determine whether or not respondent successfully completed the Program ~~shall be binding~~.

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.

~~Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.~~

(Option # 1: Condition Precedent)

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

(Option # 2: Condition Subsequent)

If respondent fails to complete the Program within the designated time period, respondent shall cease the practice of medicine within ~~72 hours~~ three (3) calendar days after being notified by the Board or its designee that respondent failed to complete the Program.

18. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical 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"). Respondent shall successfully complete the Program 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 Program shall consist of a Comprehensive Assessment program comprised of a 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 pertaining to respondent's area of practice in which respondent was alleged to be deficient ~~specialty or sub-specialty~~, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. ~~The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.~~ Determination as to whether respondent successfully completed the

examination or successfully completed the program is solely within the program's jurisdiction.

~~Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.~~

~~Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.~~

[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 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 training program have been completed. If the respondent did not successfully complete the clinical 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 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: Condition Subsequent)

~~If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the clinical training program.~~

(Option#23)

~~After~~ Within 60 days after respondent has successfully completed the clinical 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, 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.

~~Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.~~

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 written examination, administered by the Board or its designee ~~Probation Unit~~. The Board or its designee shall designate a subject matter and ~~administer the oral and/or written examination in a subject to be designated by the Board or its designee and the oral examination shall be audio tape recorded.~~

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, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days.~~

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. ~~For purposes of this condition, if respondent is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.~~

[Note: The following language shall be included in this condition unless Option #1 is included: If respondent fails to pass the first 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.]

~~(Continue with either one of these two options:-)~~

(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.

(Option 2: Condition Subsequent)

~~If respondent fails to pass the first examination, respondent shall be suspended from the practice of medicine. Respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent has failed the examination.~~

~~Respondent shall remain suspended from the practice of medicine until respondent successfully passes a repeat examination, as evidenced by written notice to respondent from the Board or its designee.~~

20. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

~~Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.~~

(Option: Condition Precedent)

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

21. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice

of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations. ~~Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.~~

Note: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and/or drug self-abuse) related to the violations but is not at present a danger to respondent's patients.

22. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment, ~~that the Board or its designee deems necessary.~~

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

~~Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.~~

(Option- Condition Precedent)

Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that respondent is medically fit to practice safely.

Note: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

23. Monitoring - Practice/Billing

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a _____ (~~i.e.,~~ **[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 _____ (~~i.e.,~~ **[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. be suspended from Respondent shall cease the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. ~~Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Board or its designee.~~

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, 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.

~~Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.~~

24. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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 practice until an appropriate practice setting is established.

25. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating _____ (e.g., [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 ~~initial~~ 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 ~~name~~ 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. ~~Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation 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 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 (e.g., [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.

~~Note: Sexual offenders should normally be placed in a monitored environment.~~

26. Prohibited Practice

During probation, respondent is prohibited from _____ (e.g., [insert: practicing, performing, or treating] _____ (e.g., [insert: a specific medical procedure; surgery; on a specific patient population]). After the effective date of this Decision, ~~the first all time that patients being treated by the seeking the prohibited services makes an appointment, orally~~ respondent shall be notified the patient that the respondent does not is prohibited from _____ (e.g., [insert: practice, perform or treat]) _____ (e.g., [insert a specific medical procedure; surgery; on a specific patient population]). Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. 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. ~~Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.~~

~~In addition to the required oral verbal notification, after the effective date of this Decision, the first each time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not _____ (e.g., [insert: practice, perform or treat]) _____ (e.g., [insert: a specific medical procedure; surgery; on a specific patient population]). Respondent shall maintain a copy of the written notification in the patient's file, 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. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.~~

STANDARD CONDITIONS

27. Notification

~~Prior to engaging in the practice of medicine~~ Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of ~~the this Decision(s) and Accusation(s)~~ to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum

tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

28. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

29. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

30. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

31. General Probation Unit Compliance 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.

32. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, ~~with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.~~

33. Residing or Practicing Out of State

~~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. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.~~

~~All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside 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; Probation Unit Compliance; and Cost Recovery.~~

~~Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.~~

(Optional)

~~Any respondent disciplined under B&P Code sections 141(a) or 2305 (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.~~

34. Failure to Practice Medicine—California Resident

~~In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.~~

~~All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.~~

~~Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.~~

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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 19 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 will not apply to the reduction of the probationary term.

Periods of non-practice 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.

35. 34. Completion of Probation

Respondent shall comply with all financial obligations (e.g., ~~cost recovery~~, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

~~36.~~ 35. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

~~37.~~ Cost Recovery

~~Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of \$_____ for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent his/her obligation to reimburse the Board for its costs.~~

~~38.~~ 36. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to the voluntary surrender of his or her respondent's license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation ~~and the surrender of respondent's license shall be deemed disciplinary action~~. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

~~39.~~ 37. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. ~~Failure to pay costs within 30 calendar days of the due date is a violation of probation.~~

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RECOMMENDED RANGE OF PENALTIES FOR VIOLATIONS

DISCIPLINE BY ANOTHER STATE DISCIPLINARY ACTION TAKEN BY OTHERS **[B&P 141(a) & 2305]**

Minimum penalty: Same for similar offense in California

Maximum penalty: Revocation

~~1. Oral or Written Examination as a condition precedent to practice in California~~

MISLEADING ADVERTISING (B&P 651 & 2271)

Minimum penalty: Stayed revocation, 15 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [13]
3. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
4. Monitoring-Practice/Billing [23]
5. Prohibited Practice [26]

EXCESSIVE PRESCRIBING (B&P 725), or **PRESCRIBING WITHOUT AN APPROPRIATE PRIOR EXAMINATION (B&P 2242)**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Controlled Substances-Total DEA restriction [5],
Surrender DEA permit [6] or,
Partial DEA restriction [7]
3. Maintain Records and Access to Records and Inventories [8]
4. Education Course [13]
5. Prescribing Practices Course [14]
6. Medical Record Keeping Course [15]
7. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
8. Clinical Training Program [18] ~~or Oral or Written Examination [19]~~
9. Monitoring-Practice/Billing [23]

EXCESSIVE TREATMENTS (B&P 725)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [13]
3. Medical Record Keeping Course [15]
4. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
5. Clinical Training Program [18] ~~or Oral or Written Examination [19]~~
6. Monitoring-Practice/Billing [23]
7. Prohibited Practice [26]

SEXUAL MISCONDUCT (B&P 726)

Minimum penalty: Stayed revocation, 7 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [13]
3. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
4. Professional Boundaries Program [17]
5. Psychiatric Evaluation [20]
6. Psychotherapy [21]
7. Monitoring-Practice/Billing [23]
8. Third Party Chaperone [25]
9. Prohibited Practice [26]

SEXUAL EXPLOITATION (B&P 729)

Minimum penalty: Revocation

Effective January 1, 2003, Business and Professions Code 2246 was added to read, "Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."

MENTAL OR PHYSICAL ILLNESS (B&P 820)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Oral or Written Examination [19]
2. Psychiatric Evaluation [20]
3. Psychotherapy [21]
4. Medical Evaluation and Treatment [22]
5. Monitoring-Practice/Billing [23]
6. Solo Practice Prohibition [24]
7. Prohibited Practice [26]

REGISTRATION AS A SEX OFFENDER (B&P 2232)

Minimum penalty: Revocation

Effective January 1, 2004 section 2232(a) was added to the Business and Professions Code read, "Except as provided in subdivisions (b), (c), and (d), the Board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of section 290 of the Penal Code."

**GENERAL UNPROFESSIONAL CONDUCT (B&P 2234), or
GROSS NEGLIGENCE [B&P 2234 (b)], or
REPEATED NEGLIGENT ACTS [B&P 2234(c)], or
INCOMPETENCE [B&P 2234(d)], or
FAILURE TO MAINTAIN ADEQUATE RECORDS (B&P 2266)**

Minimum penalty: Stayed revocation, 5 years probation

NOTE: In cases charging repeated negligent acts with one patient, a public reprimand may, in appropriate circumstances, be ordered.

Maximum penalty: Revocation

1. Education course [13]
2. Prescribing Practices Course [14]
3. Medical Record Keeping Course [15]
4. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
5. Clinical Training Program [18]
6. ~~Oral or Written Examination [19] (preferably Condition Precedent)~~
7. ~~6.~~ Monitoring-Practice/Billing [23]
8. ~~7.~~ Solo Practice Prohibition [24]
9. ~~8.~~ Prohibited Practice [26]

DISHONESTY - Substantially related to the qualifications, functions or duties of a physician and surgeon and *arising from* or occurring during patient care, treatment, management or billing [B&P 2234(e)]

Minimum penalty: Stayed revocation, one year suspension at least 7 years probation

Maximum penalty: Revocation

1. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
2. ~~Oral or Written Examination [19]~~
23. Psychiatric Evaluation [20]
34. Medical Evaluation [22]
45. Monitoring-Practice/Billing [23]
56. Solo Practice Prohibition [24]
67. Prohibited Practice [26]
7. Victim Restitution

DISHONESTY - Substantially related to the qualifications, function or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing [BP 2234 (e)]

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Community Service [12]
2. ~~3.~~ ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
3. ~~4.~~ Psychiatric Evaluation [20]
4. ~~5.~~ Medical Evaluation [22]
5. ~~6.~~ Monitoring-Practice/Billing (if financial dishonesty or conviction of financial crime) [23]
6. ~~7.~~ Restitution to Victim Restitution

PROCURING LICENSE BY FRAUD (B&P 2235)

1. Revocation [1] [2]

CONVICTION OF CRIME - Substantially related to the qualifications, functions or duties of a physician and surgeon and *arising from* or occurring during patient care, treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, one year suspension, at least 7 years probation

Maximum penalty: Revocation

1. Community Service [12]

- ~~1.~~ 2. Ethics Course Professionalism Program (Ethics Course) [16]
- ~~2.~~ Oral or Written Examination [19]
3. Psychiatric Evaluation [20]
4. Medical Evaluation and Treatment [22]
5. Monitoring-Practice/Billing [23]
6. Solo Practice Prohibition [24]
7. Prohibited Practice [26]
7. Victim Restitution

CONVICTION OF CRIME - Felony conviction substantially related to the qualifications, functions or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 7 years probation

Maximum penalty: Revocation

1. Suspension of 30 days or more [4]
2. Community Service [12]
- ~~2.~~ 3. Ethics Course Professionalism Program (Ethics Course) [16]
- ~~3.~~ 4. Psychiatric Evaluation [20]
4. 5. Medical Evaluation and Treatment [22]
- ~~5.~~ 6. Monitoring-Practice/Billing (if dishonesty or conviction of a financial crime) [23]
- ~~6.~~ 7. Victim Restitution

CONVICTION OF CRIME - Misdemeanor conviction substantially related to the qualifications, functions or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing (B&P 2236)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Community Service [12]
- ~~1.~~ 2. Ethics Course Professionalism Program (Ethics Course) [16]
- ~~2.~~ 3. Psychiatric Evaluation [20]
- ~~3.~~ 4. Medical Evaluation and Treatment [22]
4. 5. Victim Restitution

**CONVICTION OF DRUG VIOLATIONS (B&P 2237), or
VIOLATION OF DRUG STATUTES (B&P 2238), or
EXCESSIVE USE OF CONTROLLED SUBSTANCES (B&P 2239), or
PRACTICE UNDER THE INFLUENCE OF NARCOTIC (B&P 2280)**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Controlled Substances - Total DEA restriction [5],
Surrender DEA permit [6], or
Partial DEA restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Controlled Substances - Abstain From Use [9]
5. Alcohol-Abstain from Use [10]
6. Biological Fluid Testing [11]
7. Education Course [13]

8. Prescribing Practices Course [14]
9. Medical Record Keeping Course [15]
10. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
11. ~~Oral or Written Examination~~ [19]
12. ~~11.~~ Psychiatric Evaluation [20]
13. ~~12.~~ Psychotherapy [21]
14. ~~13.~~ Medical Evaluation and Treatment [22]
15. ~~14.~~ Monitoring-Practice/Billing [23]
16. ~~15.~~ Prohibited Practice [26]

ILLEGAL SALES OF CONTROLLED SUBSTANCES (B&P 2238)

Revocation [1] [2]

EXCESSIVE USE OF ALCOHOL (B&P 2239) or PRACTICE UNDER THE INFLUENCE OF ALCOHOL (B&P 2280)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Controlled Substances-Abstain From Use [9]
3. Alcohol-Abstain from Use [10]
4. Biological Fluid Testing [11]
5. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
6. ~~Oral or Written Examination~~ [19]
7. ~~6.~~ Psychiatric Evaluation [20]
8. ~~7.~~ Psychotherapy [21]
9. ~~8.~~ Medical Evaluation and Treatment [22]
10. ~~9.~~ Monitoring-Practice/Billing [23]

PRESCRIBING TO ADDICTS (B&P 2241)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Controlled Substances- Total DEA restriction [5],
Surrender DEA permit [6], or
Partial restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Education Course [13]
5. Prescribing Practices Course [14]
6. Medical Record Keeping Course [15]
7. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
8. Clinical Training Program [18]
9. ~~Oral or Written Examination~~ [19]
10. ~~9.~~ Monitoring-Practice/Billing [23]
11. ~~10.~~ Prohibited Practice [26]

ILLEGAL CANCER TREATMENT (B&P 2252 and 2258)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education course [13]
3. Prescribing Practices Course [14]
- ~~3.~~ ~~4.~~ Ethics Course Professionalism Program (Ethics Course) [16]
- ~~4.~~ ~~5.~~ Clinical Training Program [18]
- ~~5.~~ ~~Oral or Written Examination [19]~~
6. Monitoring-Practice/Billing [23]
7. Prohibited Practice [26]

**MAKING FALSE STATEMENTS (B&P 2261), or
ALTERATION OF MEDICAL RECORDS (B&P 2262)**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Medical Record Keeping Course [15]
3. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
4. If fraud involved, see "Dishonesty" guidelines

AIDING AND ABETTING UNLICENSED PRACTICE (B&P 2264)

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [13]
3. ~~Ethics Course~~ Professionalism Program (Ethics Course) [16]
- ~~4.~~ ~~Oral or Written Examination [19]~~
5. ~~4.~~ Monitoring-Practice/Billing [23]
6. ~~5.~~ Prohibited Practice [26]

FICTITIOUS NAME VIOLATION (B&P 2285)

Minimum penalty: Stayed revocation, one year probation

Maximum penalty: Revocation

IMPERSONATION OF APPLICANT IN EXAM (B&P 2288)

1. Revocation [1] [2]

PRACTICE DURING SUSPENSION (B&P 2306)

1. Revocation [1] [2]

BUSINESS ORGANIZATION IN VIOLATION OF CHAPTER (B&P 2417)

Minimum penalty: Revocation

Effective January 1, 2002, Business and Professions Code section 2417 was added to read, in part, "(b) A physician and surgeon who practices medicine with a business organization knowing that it is owned or operated in violation of Section 1871.4 of the Insurance Code, Section 14107 or 14107.2 of the Welfare and Institutions Code, or Section 549 or 550 of the Penal Code shall have his or her license to practice permanently revoked."

VIOLATION OF PROBATION

Minimum penalty: 30 day suspension

Maximum penalty: Revocation

The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. A violation of any of the following conditions of probation should result in, at minimum, a 60 day suspension:

1. Controlled Substances -Maintain Records and Access to Records and Inventories [8]
2. Biological Fluid Testing [11]
3. Professional Boundaries Program [17]
4. Clinical Training Program [18]
5. Psychiatric Evaluation [20]
6. Psychotherapy [21]
7. Medical Evaluation and Treatment [22]
8. Third Party Chaperone [25]



California Medical Association
Physicians dedicated to the health of Californians

October 18, 2010

Susan Cady
Enforcement Manager
Medical Board of California
2005 Evergreen St, Suite 1200
Sacramento, CA 95815

Subject: Comments on
“Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th Edition/2010)”

Dear Ms. Cady:

The California Medical Association (CMA) respectfully submits the following comments for consideration related to the proposed amendments to the “Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th Edition/2010)”. The comments are in response to the solicitation for comments in a notice of proposed rulemaking posted on September 13, 2010 for Division 13 of Title 16 of the California Code of Regulations.

The California Medical Association is an advocacy organization that represents 35,000 California physicians. Dedicated to the health of Californians, CMA is active in the legal, legislative, reimbursement and regulatory areas on behalf of California physicians and their patients.

I. Background

We understand that the purpose of the proposed amendments to the Manual of Model Disciplinary Orders and Disciplinary Guidelines is to reflect changes in law, clarify existing language, and make technical changes to reflect the current probationary environment. CMA would like to offer additional revisions for your consideration.

II. CMA’s Comments

CMA has several concerns regarding the proposed disciplinary guidelines as follows:

- A. **Section 9. Controlled Substances - Abstain From Use**
- Section 10. Alcohol - Abstain From Use**
- Section 11. Biological Fluid Testing**

These sections essentially provide for an automatic suspension of a license in the event the respondent has a positive biological fluid test for certain substances or fails to cooperate in a random biological fluid testing program. While we acknowledge that such events are a violation of probation, as was the case with the diversion program, we have serious reservations that the Medical Board may lawfully order the cessation of medical practice under these circumstances.

First, the Legislature, in its detailed statutory scheme governing Medical Board disciplinary powers, has not authorized an automatic suspension in these cases, as it has where a licensee has been convicted of a felony. See Business & Professions Code §2236.1. Accordingly, the Medical Board lacks the statutory authority to issue such suspensions. See *Medical Board of California v. Superior Court* (2003) 111 Cal.App.4th 163 (Business & Professions Code provision governing a physician's participation in the diversion program did not permit disciplinary action against a physician solely on his failure to complete the program).

Further, there are serious questions as to the constitutionality of the proposed guidelines purporting to authorize automatic suspension of the license. For example, in *Ralph Williams Ford v. New Car Dealers policy and Appeals Board* (1973) 30 Cal.App.3d 494, at issue was whether the Director of Motor Vehicles could lawfully suspend a license in the event the licensee violated a condition of probation. Recognizing the constitutional infirmity of the activity, the court stated:

The Fourteenth Amendment protects the pursuit of one's profession from abridgment by arbitrary state action, and a state cannot exclude a person from any occupation in a manner or for reasons that contravene due process of law. (*Endler v. Schutzbank*, 68 Cal.2d 162, 169-170, 65 Cal.Rptr. 297, 436 P.2d 297.) Here, the revocation of probation, and therefore the revocation of Williams' dealer's license, is left to the discretion of the Director of Motor Vehicles. But "an individual must be afforded notice and an opportunity for a hearing before he is deprived of any significant property interest, ..." (*Randone v. Appellate Department*, 5 Cal.3d 536, 541, 96 Cal.Rptr. 709, 488 P.2d 13.) Although Williams received notice and a hearing on its past violations, the conditions of probation dispense with notice and hearing on any future violations that may bring about a revocation of its license.

In criminal law "fundamental principles of due process and fair play demand, ... that after a summary revocation of probation and before sentencing a hearing is required at which the defendant is entitled to be represented by counsel, to be advised of the alleged violation and given an opportunity to deny or explain it, and, if necessary, present witnesses on his own behalf." (*People v. Youngs*, 23 Cal.App.3d 180, 188, 99 Cal.Rptr. 101; *People v. Vickers*, 8 Cal.3d 451, 458-461, 105 Cal.Rptr. 305, 503 P.2d 313; see also, *Morrissey v. Brewer*, 408 U.S. 471, 33 L.Ed.2d 484, 92 S.Ct. 2593.) Due process requires a comparable opportunity for notice and hearing on the revocation of an occupational license. (Cf. *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011.)

Accordingly, CMA believes licensees under probation should be accorded a pre-deprivation hearing on the issue to determine whether the licensee in fact imposes a danger to patients. If the Medical Board truly believes the licensee poses a threat to patient care, the Board can certainly take steps to prevent harm by seeking a temporary restraining order or interim suspension.

B. Section 16. Professionalism Program (Ethics Course)

This section requires respondents to enroll in a professionalism program that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. To be consistent with the other sections of the guidelines that require respondents to participate in educational courses and specify that the courses must be “equivalent to the ... Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program),” we recommend that this section be amended to state that the professionalism program must be “equivalent to the Professionalism Program offered by the Institute for Medical Quality (IMQ).” Providing more information regarding the content of a recognized professionalism program will clarify the type of professionalism program that meets the Medical Board’s standards.

The IMQ Professionalism Program was developed to comply with the requirements established by the Medical Board of California. The program centers on both the legal and ethical dimensions of the practice of medicine in California, and it introduces participants to a range of resources to address present or future problems. Full participation and completion of all assignments are required for completion of the program. The Program is divided into three components.

The pre-course component consists of a background assessment application, a baseline knowledge test and pre course reading. The purpose of this component is to determine the participant’s knowledge/awareness of ethical/legal issues related to the practice of medicine in California, as well as information about the participant’s knowledge of the legal and ethical issues related to the specific case(s) for which the participant has been referred to the program. Participants prepare an assessment of their expectations of the program, recognition of need for change and commitment to change.

The second component is the two-day ethics course. It includes a series of components that move from demonstration to practice and application. Issues covered include: what are ethical issues and when they arise, clarification of legal issues, resources to analyze situations and a decision making model. The course is very interactive, and it is designed to provide participants with a full understanding of the ethical and legal aspects of their own violations and knowledge about how to access resources to deal with future issues.

The third component is required assessments over a one-year period following the course. It consists of the post-course test on California law and ethics given at the end of the two-day course, and 6 month and 12 month follow-up assessments. At 6 months, participants submit information regarding their practice during the period since the course and complete a skills review exercise. At 12 months they provide a final report on changes in their practice profile and

a self-assessment status report. On completion of the course, a report is sent to the Medical Board.

III. Conclusion

In conclusion, the CMA believes that the recommended changes will improve the disciplinary guidelines making it a more useful document for those involved in the physician disciplinary process.

Sincerely,

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