

# **AGENDA ITEM # 5**

## 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 a hearing to be held at the Sacramento Convention Center, 1400 J Street, Sacramento, CA 95814, at 9:00 a.m., on April 25, 2008. 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 April 14, 2008 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 125.3, 2018, 2168.4 and 2436 of the Business and Professions Code, and to implement, interpret or make specific Sections 2125.3, 2168.4, 2435, and 2435.2 of said Code, the Medical Board of California is considering changes to Article 15 of Chapter 1 of Division 13 of Title 16 of the California Code of Regulations as follows:

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1351.5 and Section 1352: Reduction in Initial License Fee and Renewal Fee to Offset Elimination of Diversion Program

Business and Professions Code Sections 2340 et seq., which authorize the Board's Diversion Program, become inoperative July 1, 2008. Section 2435.2 of the B & P Code states that the Board shall reduce license and renewal fees if the Diversion Program is eliminated. Therefore, pursuant to the requirements of the latter section, the board is proposing to amend sections 1351.5 and 1352 to reduce the initial license fee and biennial renewal fee from \$805 to \$783.

### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor savings. Only those agencies which employ physicians and surgeons and pay for the license or renewal fees will be impacted; it would be a reduction of \$22.00 per physician every two years.

Nondiscretionary Costs/Savings to Local Agencies: Minor savings. Again, only those agencies which employ physicians and surgeons and pay for the license or renewal fees will be impacted; it would be a reduction of \$22.00 per physician every two years.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: Minor savings. The board has determined that the proposed regulatory action would have minimal economic impact on California businesses and individuals since the fee reduction will be \$22.00 per physician every two years.

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.

**AND**

The following studies/relevant data were relied upon in making the above determination: 1) The Medical Board's "Budget Summary" (1/18/08), which documents the expiring Diversion Program as -\$1,213,000. 2) The Medical Board's "Workload and Revenue Stats" (8/29/07), which documents 2,000 initial licenses annually, and 53,500 annual license renewals.

**Impact on Jobs/New Businesses:**

The Medical Board 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 estimates the potential cost impact of the proposed regulations on directly affected private persons or entities to be a reduction of about \$22.00 every two years.

**Effect on Housing Costs:** None

**EFFECT ON SMALL BUSINESS**

Minor savings. The board has determined that the proposed regulation would affect small business because a few physicians and surgeons would meet the definition of a small business. The impact would be a reduction of \$22.00 per licensee every two years.

**CONSIDERATION OF ALTERNATIVES**

The Medical Board must determine that no reasonable alternative considered by it 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 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 person designated in this Notice under Contact

Person or by accessing the website listed below.

## 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 designated in this Notice under Contact Person or by accessing the website listed below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the person designated in this Notice under Contact Person or by accessing the website listed below.

### CONTACT PERSON

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

Name: Kevin A. Schunke  
Address: Medical Board of California  
1434 Howe Avenue, Suite 92  
Sacramento, CA 95825  
Tel No.: (916) 263-2368  
Fax No.: (916) 263-2387  
e-mail: [kschunke@medbd.ca.gov](mailto:kschunke@medbd.ca.gov)

The backup contact person is :

Name: Linda Whitney  
Address: Medical Board of California  
1434 Howe Avenue, Suite 92  
Sacramento, CA 95825  
Tel No.: (916) 263-2389  
Fax No.: (916) 263-2387  
e-mail: [lwhitney@medbd.ca.gov](mailto:lwhitney@medbd.ca.gov)

Website Access : Materials regarding this proposal can be found at [www.medbd.ca.gov](http://www.medbd.ca.gov).

**Medical Board of California  
Specific Language of Proposed Regulations**

**Reduction in Initial License Fee and Renewal Fee to Offset  
Elimination of Diversion Program**

Amend Section 1351.1 and Section 1352, Title 16, California Code of Regulations to read as follows:

Section 1351.5. Initial License Fee.

~~The initial fee for licensure as a physician and surgeon or for a special faculty permit shall be \$600 for licensing periods beginning on or after January 1, 1994. The initial license fee for licensure as a physician or surgeon or for a special faculty permit shall be \$805 for licensing periods beginning on or after January 1, 2007. The initial license fee shall be \$783 for licensing periods beginning on or after November 1, 2008.~~

Note: Authority cited: Sections 125.3, 2018, 2168.4 and 2436, Business and Professions Code. Reference: Sections 125.3, 2168.4 and 2435, Business and Professions Code.

Section 1352. Renewal Fee.

~~The biennial renewal fee for licenses or special faculty permits which expire on or after February 28, 1997 shall be \$600. The biennial renewal fee for licenses or special faculty permits which expire on or after January 1, 2007 shall be \$805. The biennial renewal fee for licenses or special faculty permits which expire on or after November 1, 2008 shall be \$783.~~

Note: Authority cited: Sections 125.3, 2018, 2168.4 and 2436, Business and Professions Code. Reference: Sections 125.3, 2168.4 and 2435, Business and Professions Code.

# **MEDICAL BOARD OF CALIFORNIA INITIAL STATEMENT OF REASONS**

## **Reduction in Initial License Fee and Renewal Fee to Offset Elimination of Diversion Program**

Hearing Date: Friday, April 25, 2008

Subject Matter of Proposed Regulations: Reduction in Initial License Fee and Renewal Fee to Offset Elimination of Diversion Program

Section(s) Affected: Amend Title 16, California Code of Regulations sections 1351.5 and 1352

### Specific Purpose

Business and Professions Code Sections 2340 et seq., which authorize the Board's Diversion Program, are inoperative effective July 1, 2008. Section 2435.2 of the B & P Code states that the Board shall reduce license and renewal fees if the Diversion Program is eliminated.

This rulemaking will amend those sections which set forth the initial license fee and the biennial renewal fee.

### Factual Basis

In FY 2008-09, the expenditures of the Diversion Program were forecast to be \$1,213,000.

Annually, there are about 53,500 license renewals and 2000 new licenses issued. (Actually, the number of new licenses issued each year is about double that number. However, the vast majority of those new licenses are issued to residents in training and subject to a reduced fee; thus, the figure of 2000 is used.) This totals 55,500 annual licenses.

The Diversion Program will be inoperative July 1, 2008. Therefore, pursuant to the requirements of Section 2435.2 of the Business and Professions Code:

$\$1,213,000 / 55,500 = \$21.86$  reduction in the fee for the initial license and for renewals  
(The Board has elected to round-off this figure to \$22.00)

Section 1351.5 of the Board's governing regulations set the initial license fee at \$805, and Section 1352 sets the biennial renewal fee at \$805.

Both of those fees should be reduced to \$783.00, which represents a reduction of \$22.00 per licensee every two years.

### Underlying Data

1) The Medical Board's "Budget Summary" (copy attached, dated 1/18/08), which documents the expiring Diversion Program as -\$1,213,000.

2) The Medical Board's "Workload and Revenue Stats" (copy attached, dated 8/29/07), which documents 2,000 initial licenses annually, and 53,500 annual license renewals.

Business Impact

This regulation will have minimal impact on business. Only those businesses which employ physicians and surgeons and pay for the initial license or for renewal fees will be impacted; it will be a reduction of \$22.00 per licensee every two years.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative which was considered would either be more effective than or equally as effective as and less burdensome to affected private persons than the proposed regulation.



## 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 a hearing to be held at the Sacramento Convention Center, 1400 J Street Sacramento, California, at **9:05 a.m.**, on **April 25, 2008**. 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 April 14, 2008** 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, 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 16 CCR Section 1361.

Government Code Section 11425.50(e) provides that a penalty in an administrative disciplinary action may not be based on a guideline unless the guideline has been adopted as a regulation. The board has adopted the "Manual of Disciplinary Guidelines and Model Disciplinary Orders," which has been revised over the years, the current version of which is the 9<sup>th</sup> Edition/2003. This manual sets forth proposed penalties for various violations of the Medical Practice Act.

This proposal would amend the board's regulation section 1361 to incorporate by reference the "Manual of Disciplinary Guidelines and Model Disciplinary Orders" (10<sup>th</sup> Edition/2008).

Two changes in the law necessitate changes to the 2003 version of the Manual of Disciplinary Guidelines and Model Disciplinary Orders:

1. The manual refers to the Division of Medical Quality, which ceased to exist on January 1, 2008. AB 253 (Eng, Chapter 678, Statutes of 2007) abolished the two divisions of the board. This bill instead provided for the board as a whole to handle the responsibilities of the divisions. This proposal would conform the regulation to this change in law.
2. The manual refers to the board's Diversion Program. Business & Professions Code section 2358 sunsets the Diversion Program effective July 1, 2008. This proposal would delete all references to the Diversion Program and modify the term regarding biological fluid testing.

## 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 Section 17561 Requires 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.

### AND

The following studies/relevant data were relied upon in making the above determination:

There are no costs associated with the proposed regulatory action. The proposed only relates to the legal elimination of the Division of Medical Quality and the Board's Diversion Program.

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, which eliminates the Diversion Program and the Division of Medical Quality. The proposed regulation does require physicians with substance abuse history to pay for biological fluid testing, however, under the current regulations, physicians are ordered into the Diversion Program, and must currently pay for their laboratory services. For that reason, this proposed regulation has no more impact than the current regulation. The alternative to requiring physicians to pay for their own biological fluid testing would either be: 1) Revoke the physician's license, eliminating the need for biological fluid testing to ensure public safety, or; 2) the Medical Board to pay for the testing, requiring an increase in licensing fees for all physicians to pay for the few offending physicians on probation.

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.

The proposed regulations reflect two changes in law: 1) the elimination of the Division of Medical Quality as the entity hearing disciplinary cases, replacing them with the full Board (AB 253, Eng, Chap. 678, Stats 2007), and; 2) the elimination of the Diversion Program by B&P Code Section 2358.

The new edition of the *Manual of Disciplinary Guidelines and Model Disciplinary Orders*, incorporated by reference, replace "Division" with "Board" and changes probationary conditions for those with substance abuse violations from referral to the Diversion Program, replacing it with biological fluid testing at an approved laboratory service. Previously, physicians in the Diversion Program paid for their laboratory services, and therefore, there is no anticipated increase in cost than under the existing regulation.

## 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.

The proposed regulation requires physicians with substance abuse history to pay for biological fluid testing, however, under the current regulations, physicians are ordered into the Diversion Program, and must pay for their laboratory services. For that reason, this proposed regulation has no more impact than the current regulation. There are two reasonable alternatives to requiring physicians to pay for their own biological fluid testing: 1) revoke the physician's license, eliminating the need for biological fluid testing to ensure public safety, or; 2) the Medical Board pay for the tests, requiring an increase in licensing fees for all physicians to pay for the few offending physicians on probation.

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 1426 Howe Avenue, Suite 92, Sacramento, California 95825.

## 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:

Name: Janie Cordray  
Medical Board of California  
Address: 1426 Howe Avenue, Suite 92  
Sacramento, CA 95825  
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: 1426 Howe Avenue, Suite 92  
Sacramento, CA 95825  
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 [www.mbc.ca.gov](http://www.mbc.ca.gov).

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

**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 ~~Division of Medical Quality of the~~ Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Disciplinary Guidelines and Model Disciplinary Orders" (~~9<sup>th</sup> Edition/2003~~ 10<sup>th</sup> Edition/2008) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the ~~Division of Medical Quality of 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 Section 11400.20, 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  
~~DIVISION OF MEDICAL QUALITY~~  
MANUAL OF MODEL DISCIPLINARY ORDERS  
AND DISCIPLINARY GUIDELINES  
9<sup>th</sup> 10<sup>th</sup> Edition  
20032008  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
~~DIVISION OF MEDICAL QUALITY~~**

**~~Ronald Wender, M.D.~~ Richard Fantozzi, M. D.  
President  
~~Lori Rice~~ Cesar Aristeiguita, M.D.  
Vice President  
~~Ronald Morton, M.D.~~ Hedy Chang  
Secretary**

~~The 21 member Medical Board of California (MBC) is made up of two autonomous divisions. Each division has exclusive jurisdiction over its own specialized area of responsibility: the Division of Licensing (DOL), licensing of physicians, 7 Board members; and the Division of Medical Quality (DMQ), physician discipline, 14 Board members. The DMQ is divided into two panels of seven members for the purpose of deciding disciplinary cases.~~

The ~~DMQ Board~~ produced this Manual of Model Disciplinary Orders and Disciplinary Guidelines, 9<sup>th</sup> 10<sup>th</sup> 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 ~~DMQ 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:

Medical Board of California  
1426 Howe Avenue, Suite 54  
Sacramento, CA 95825-3236  
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 9<sup>th</sup> 10<sup>th</sup> edition approved by the ~~DMQ Board~~ following open discussion at a public meeting.

### **Summary of Changes**

Model Condition Number:

## **6. Controlled Substances - Surrender of DEA Permit**

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

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

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

## **9. Controlled Substances - Abstain From Use**

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

## **11. Biological Fluid Testing**

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**

Formerly number 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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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

**25. 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**

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**

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.”

**28. Supervision of Physician Assistants**

Formerly # 29, it is re-numbered to reflect the deletion of former #12.

**29. Obey All Laws**

Formerly # 30, it is re-numbered to reflect the deletion of former #12.

**30. Quarterly Declarations**

Formerly # 31, 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. Probation Unit Compliance**

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**

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.”

**33. Residing or Practicing Out-of-State**

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.”

**34. Failure to Practice Medicine- California Resident**

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.”

**35. Completion of Probation**

Formerly # 36, it is re-numbered to reflect the deletion of former # 12.

**36. 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."

**37. Cost Recovery**

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. License Surrender**

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. Probation Monitoring Costs**

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  
~~DIVISION OF MEDICAL QUALITY~~  
MODEL DISCIPLINARY ORDERS AND  
DISCIPLINARY GUIDELINES**

Business and Professions Code section 2229 mandates protection of the public shall be the highest priority for the ~~Division of Medical Quality (DMQ)~~ *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), ~~9<sup>th</sup>~~ *10<sup>th</sup>* Edition. Consistent with the mandates of section 2229, these guidelines set forth the discipline the ~~DMQ Board~~ finds appropriate and necessary for the identified violations. In addition to protecting the public and, where not inconsistent, rehabilitating the licensee, the ~~DMQ 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 ~~DMQ Board~~ expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility and demonstrated willingness to undertake ~~DMQ Board~~ ordered rehabilitation, Administrative Law Judges hearing cases on behalf of the ~~DMQ Board~~ and proposed settlements submitted to the ~~DMQ 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-four (24)~~ *twenty-three (23)* Optional Conditions whose use depends on the nature and circumstances of the particular case; and thirteen (13) Standard Conditions that generally appear in all probation cases. All orders should place the Order(s) first, optional condition(s) second, and standard conditions 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, 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 good faith prior examination, 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 a good faith examination, 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 ~~Division 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 ~~Division Board~~ or its designee.

## **7. Controlled Substances - Partial Restriction**

Respondent shall not order, prescribe, dispense, administer, 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 a good faith prior examination, 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 a good faith examination, 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 ~~Division 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 *Division 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 lawful prescription medications, respondent shall notify the *Division Board* or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

#### **10. Alcohol - Abstain From Use**

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

#### **11. Biological Fluid Testing**

~~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.~~

*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."*

## **12. Diversion Program**

~~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.~~

## **13. 12. Community Service - Free Services**

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the ~~Division 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 ~~Division 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.

#### **14. 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 ~~Division 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 ~~Division 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.

#### **15. 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, approved in advance by the ~~Division Board~~ or its designee. 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 ~~Division Board~~ or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the ~~Division 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 ~~Division 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. 15. Medical Record Keeping Course**

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the ~~Division Board~~ or its designee. 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 ~~Division Board~~ or its designee, be accepted towards the fulfillment of this condition if

the course would have been approved by the ~~Division 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 ~~Division Board~~ or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

#### **~~17.~~ 16. Ethics Course**

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the ~~Division Board~~ or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics 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 ~~Division Board~~ or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the ~~Division 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 ~~Division 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.

#### **~~18.~~ 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, 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 ~~Division 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 ~~Division Board~~ or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the ~~Division 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 ~~Division 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 ~~Division Board~~

or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

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 ~~Division~~ 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 after being notified by the ~~Division~~ Board or its designee that respondent failed to complete the Program.

**~~19.~~ 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").

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 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 ~~Division~~ 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 ~~Division~~ 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.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the ~~Division~~ 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.

**(Option #1: Condition Precedent)**

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the *Division Board* or its designee in writing, except that respondent may practice in a clinical training program approved by the *Division 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 *Division Board* or its designee that respondent failed to complete the clinical training program.

**(Option#3)**

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 *Division 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.

**20. 19. Oral and/or Written Examination**

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 Probation Unit. The *Division Board* or its designee shall administer the oral and/or written examination in a subject to be designated by the *Division Board* or its designee and the oral examination shall be audio tape recorded.

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 *Division 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 *Division Board* or its designee in writing. This prohibition shall not bar respondent from practicing in a clinical training program approved by the *Division 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 *Division 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 *Division Board* or its designee.

**24. 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 *Division Board* or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a *Division Board* -appointed board certified psychiatrist, who shall consider any information provided by the *Division Board* or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the *Division 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 *Division 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 *Division 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.

**22. 21. Psychotherapy**

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the *Division Board* or its designee for prior approval the name and qualifications of a 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 *Division Board* or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the *Division Board* or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the *Division 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 *Division Board* or its designee. The *Division Board* or its designee may require respondent to undergo psychiatric evaluations by a *Division 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 *Division Board* shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the *Division 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.

## **23. 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 *Division Board* or its designee, respondent shall undergo a medical evaluation by a *Division Board* -appointed physician who shall consider any information provided by the *Division Board* or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the *Division Board* or its designee.

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 *Division Board* or its designee. If respondent is required by the *Division Board* or its designee to undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the *Division Board* or its designee for prior approval the name and qualifications of a 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 ~~Division Board~~ or its designee.

The treating physician shall consider any information provided by the ~~Division 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 ~~Division Board~~ or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the ~~Division Board~~ or its designee with any and all medical records pertaining to treatment, that the ~~Division 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 ~~Division Board~~ shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the ~~Division 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 ~~Division 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.

**24. 23. Monitoring - Practice/Billing**

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the ~~Division Board~~ or its designee for prior approval as a \_\_\_\_\_ (i.e., 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 ~~Division 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 ~~Division 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.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's \_\_\_\_\_ (i.e., 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.

The monitor(s) shall submit a quarterly written report to the ~~Division~~ Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of 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 ~~Division~~ 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 ~~Division~~ 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 days of the resignation or unavailability of the monitor, respondent shall be suspended from 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 ~~Division~~ Board or 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.

#### **~~25.~~ 24. Solo Practice**

Respondent is prohibited from engaging in the solo practice of medicine.

#### **~~26.~~ 25. Third Party Chaperone**

During probation, respondent shall have a third party chaperone present while consulting, examining or treating \_\_\_\_\_ (e.g., male, female, or minor) patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to

the ~~Division Board~~ or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial 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, 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 ~~Division 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.

#### **(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., 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 ~~Division 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.

#### **27. 26. Prohibited Practice**

During probation, respondent is prohibited from \_\_\_\_\_ (e.g., practicing, performing, or treating) \_\_\_\_\_ (e.g., a specific medical procedure; surgery; on a specific patient population). After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, orally notify the patient that respondent does not \_\_\_\_\_ (e.g., practice, perform or treat) \_\_\_\_\_ (e.g., a specific medical procedure; surgery; on a specific patient population). 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 ~~Division 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 notification, after the effective date of this Decision, the first 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., practice, perform or treat) \_\_\_\_\_ (e.g., 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 ~~Division~~ 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**

### **~~28.~~ 27. Notification**

Prior to engaging in the practice of medicine the respondent shall provide a true copy of the 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 ~~Division~~ Board or its designee within 15 calendar days.

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

### **~~29.~~ 28. Supervision of Physician Assistants**

During probation, respondent is prohibited from supervising physician assistants.

### **~~30.~~ 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.

### **~~34.~~ 30. Quarterly Declarations**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the ~~Division~~ 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.

### **~~32.~~ 31. Probation Unit Compliance**

Respondent shall comply with the ~~Division's Board's~~ probation unit. Respondent shall, at all times, keep the ~~Division Board~~ informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the ~~Division 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).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the ~~Division 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.

### **~~33.~~ 32. Interview with the ~~Division Board~~ or its Designee**

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

### **~~34.~~ 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 ~~Division 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 ~~Division 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.

**35. 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 ~~Division 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 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 ~~Division 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.

**36. 35. 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.

**37. 36. 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 ~~Division 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 ~~Division Board~~ shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

**38. 37. Cost Recovery**

Within 90 calendar days from the effective date of the Decision or other period agreed to by the ~~Division Board~~ or its designee, respondent shall reimburse the ~~Division 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 ~~Division Board~~ for its costs.

### **~~39.~~ 38. License Surrender**

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The ~~Division Board~~ reserves the right to evaluate respondent's request and to exercise its discretion 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 ~~Division 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.

### **~~40.~~ 39. Probation Monitoring Costs**

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the ~~Division Board~~, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the ~~Division 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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#### **DISCIPLINE BY ANOTHER STATE [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 [29]

#### **MISLEADING ADVERTISING (B&P 651 & 2271)**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education Course [44] [13]
3. Ethics Course [47] [13]
4. Monitoring-Practice/Billing [24] [13]
5. Prohibited Practice [27] [13]

#### **EXCESSIVE PRESCRIBING (B&P 725), or PRESCRIBING WITHOUT A 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 [44] [13]
5. Prescribing Practices Course [45] [14]
6. Medical Record Keeping Course [46] [15]
7. Ethics Course [47] [16]
8. Clinical Training Program [49] [18] or Oral or Written Examination [20] [19]
9. Monitoring - Practice/Billing [24] [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 [44] [13]
3. Medical Record Keeping Course [46] [15]
4. Ethics Course [47] [16]
5. Clinical Training Program [49] [18] or Oral or Written Examination [20] [19]
6. Monitoring - Practice/Billing [24] [23]
7. Prohibited Practice [27] [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 [44] [13]
3. Ethics Course [47] [16]
4. Professional Boundaries Program [48] [17]
5. Psychiatric Evaluation [24] [20]
6. Psychotherapy [22] [21]
7. Monitoring-Practice/Billing [24] [23]
8. Third Party Chaperone [26] [24]
9. Prohibited Practice [27] [26]

#### **SEXUAL EXPLOITATION (B&P 729)**

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. ~~Diversion Program~~ [12]
2. 1. Oral or Written Examination [20] [19]
3. 2. Psychiatric Evaluation [24] [20]
4. 3. Psychotherapy [22] [21]
5. 4. Medical Evaluation and Treatment [23] [22]
6. 5. Monitoring-Practice/Billing [24] [23]
7. 6. Solo Practice [25] [24]
8. 7. Prohibited Practice [27] [26]

**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

Maximum penalty: Revocation

1. Education course [44] [13]
2. Prescribing Practices Course [45] [14]
3. Medical Record Keeping Course [46] [15]
4. Ethics Course [47] [16]
5. Clinical Training Program [49] [18]
6. Oral or Written Examination [20] [19] (preferably Condition Precedent)
7. Monitoring - Practice Billing [24] [23]
8. Solo Practice [25] [24]
9. Prohibited Practice [27] [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 [47] [16]
2. Oral or Written Examination [20] [19]
3. Psychiatric Evaluation [24] [20]
4. Medical Evaluation [23] [22]
5. Monitoring-Practice/Billing [24] [23]
6. Solo Practice [25] [24]
7. Prohibited Practice [27] [26]

**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. Ethics Course [17] [16]
3. Psychiatric Evaluation [24] [20]
4. Medical Evaluation [23] [22]
5. Monitoring-Practice/Billing (if financial dishonesty or conviction of financial crime) [24] [23]
6. Restitution to Victim

#### **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. Ethics Course [17] [16]
2. Oral or Written Examination [20] [19]
3. Psychiatric Evaluation [24] [20]
4. Medical Evaluation and Treatment [23] [22]
5. Monitoring-Practice/Billing [24] [23]
6. Solo Practice [25] [24]
7. Prohibited Practice [27] [26]

#### **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. Ethics Course [17] [16]
3. Psychiatric Evaluation [24] [20]
4. Medical Evaluation and Treatment [23] [22]
5. Monitoring-Practice/Billing (if dishonesty or conviction of a financial crime) [24] [23]
6. 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. Ethics Course [17] [16]
2. Psychiatric Evaluation [24] [20]
3. Medical Evaluation and Treatment [23] [22]
4. 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. ~~Diversión Program [12]~~
8. 7. Education Course [44] [13]
9. 8. Prescribing Practices Course [45] [14]
10. 9. Medical Record Keeping Course [46] [15]
11. 10. Ethics Course [47] [16]
12. 11. Oral or Written Examination [20] [19]
13. 12. Psychiatric Evaluation [24] [20]
14. 13. Psychotherapy [22] [21]
15. 14. Medical Evaluation and Treatment [23] [22]
16. 15. Monitoring-Practice/Billing [24] [23]
17. 16. Prohibited Practice [27] [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. ~~Diversión Program [12]~~
6. 5. Ethics Course [47] [16]
7. 6. Oral or Written Examination [20] [19]
8. 7. Psychiatric Evaluation [24] [20]
9. 8. Psychotherapy [22] [21]
10. 9. Medical Evaluation and Treatment [23] [22]
11. 10. Monitoring-Practice/Billing [24] [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 [44] [13]
5. Prescribing Practices Course [45] [14]
6. Medical Record Keeping Course [46] [15]
7. Ethics Course [47] [16]
8. Clinical Training Program [49] [18]
9. Oral or Written Examination [20] [21]
10. Monitoring-Practice/Billing [24] [23]
11. Prohibited Practice [27] [26]

#### **ILLEGAL CANCER TREATMENT (B&P 2252)**

Minimum penalty: Stayed revocation, 5 years probation

Maximum penalty: Revocation

1. Suspension of 60 days or more [4]
2. Education course [44] [13]
3. Ethics Course [47] [16]
4. Clinical Training Program [49] [18]
5. Oral or Written Examination [20] [19]
6. Monitoring-Practice/Billing [24] [23]
7. Prohibited Practice [27] [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. Ethics Course [47] [16]
3. Medical Record Keeping Course [46] [15]
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 [44] [13]
3. Ethics Course [47] [16]
4. Oral or Written Examination [20] [19]
5. Monitoring-Practice/Billing [24] [23]
6. Prohibited Practice [27] [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)**

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. Diversion Program [12]~~
4. 3. Professional Boundaries Program [48] [17]
5. 4. Clinical Training Program [49] [18]
6. 5. Psychiatric Evaluation [24] [20]
7. 6. Psychotherapy [22] [21]
8. 7. Medical Evaluation and Treatment [23] [22]
9. 8. Third Party Chaperone [26] [25]

**MEDICAL BOARD OF CALIFORNIA  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** April 25, 2008

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines

**(1) Section(s) Affected:** Amend Section 1361 in Article 4 of Chapter 2, Division 13

**Specific purpose of each adoption, amendment, or repeal:**

To amend the board's regulation section 1361 to incorporate by reference the "Manual of Disciplinary Guidelines and Model Disciplinary Orders" (10<sup>th</sup> Edition/2008).

To conform the regulation to changes made to the statutes. Two changes in the law necessitate changes to the 2003 version of the Manual of Disciplinary Guidelines and Model Disciplinary Orders:

1. The manual refers to the Division of Medical Quality, which ceased to exist on January 1, 2008. AB 253 (Eng, Chapter 678, Statutes of 2007) abolished the two divisions of the board. This bill instead provided for the board as a whole to handle the responsibilities of the divisions.
2. The manual refers to the board's Diversion Program. Business & Professions Code section 2358 sunsets the Diversion Program effective July 1, 2008.

**Factual Basis/Rationale**

The *Manual of Model Disciplinary Orders and Disciplinary Guidelines* referenced by the current regulation must be made consistent with current law, and must reflect the elimination of the Division of Medical Quality by AB 253 (Eng, Chap. 678, Stats 2007) and the elimination of the Diversion Program by B&P Code Section 2358.

As referenced above, the 9<sup>th</sup> Edition (2003) of the *Manual of Model Disciplinary Orders and Disciplinary Guidelines* referenced in the regulation is obsolete. Due to legislation (AB 253, Eng, Chap. 678, Stats. of 2007), the Division of Medical Quality no longer exists, and instead, the full Medical Board will be responsible for hearing disciplinary cases. For that reason, the 9<sup>th</sup> Edition deletes all references to the "Division," replacing those references with "Board."

The 9<sup>th</sup> Edition of the Manual has references to the Diversion Program, which will be eliminated by July 1, 2008, pursuant to Business and Professions Code section 2358. For that reason, all references to the Diversion Program are eliminated, and have been replaced by references to biological fluid testing, which would have been performed by

the Diversion Program. The concept and language was discussed and approved as part of the Board's public discussions on November 2, 2007.

The Board has voted to change probationary conditions for those with substance abuse violations from referral to the Diversion Program, replacing it with biological fluid testing at an approved laboratory service. Previously, physicians in the Diversion Program paid for their laboratory services, and therefore, there is no anticipated increase in cost than under the existing regulation.

### **Underlying Data**

1. Manual of Model Disciplinary Orders and Disciplinary Guidelines, 9<sup>th</sup> Edition (2003).
2. Manual of Model Disciplinary Orders and Disciplinary Guidelines, 10<sup>th</sup> Edition (2008).
3. November 2, 2007 Board Meeting Minutes.

### **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 proposed regulation only reflects the current law, which eliminates the Diversion Program and the Division of Medical Quality. The proposed regulation does require physicians with substance abuse history to pay for biological fluid testing; however, under the current regulations, physicians are ordered into the Diversion Program, and must currently pay for their laboratory services. For that reason, this proposed regulation has no more impact than the current regulation.

### **Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

### **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.