

## **ARTICLE 14. Physician Health and Wellness Program [2340 - 2340.24]**

**This proposal would repeal and replace all of the existing language under Article 14 (Business and Professions Code section 2340 – 2340.8).**

### **2340. Establishment of the Physician Health and Wellness Program**

(a) The board may establish a Physician Health and Wellness Program for the early identification of, and appropriate interventions to support, treat, monitor, and rehabilitate physicians and surgeons and allied healthcare professionals licensed by the board, as well as applicants, prospective applicants, trainees, and students, with impairing or potentially impairing physical or mental health conditions, including substance use disorders, that may impact their ability to practice their profession in a reasonably safe, competent, and professional manner.

(b) For purposes of this article, the following definitions apply:

(1) "Administering entity" means a 501(c)(3) non-profit, third-party independent administering entity that has expertise in mental health disorders including substance use disorders and other potentially impairing health conditions and that has been designated pursuant to a request for proposals to perform any or all of the activities set forth consistent with this article, any applicable regulations, and via contract with the board.

(2) "Applicant" shall mean an individual who has applied for licensure with the board. "Prospective applicant" shall mean an individual who has graduated from a school approved by the board and is contemplating applying for licensure with the board.

(3) "Board" shall mean the Medical Board of California or its designee. Additionally, if the board establishes one or more committees pursuant to this article, "board" may also refer to a board committee to the extent duties have been delegated to the committee, or to its designee.

(4) "Disruptive behavior" shall mean aberrant behavior exhibited through personal interaction with others, including, but not limited to, healthcare professionals, facility staff, or patients, clients, or their family members, which interferes with patient or client care or could reasonably be expected to interfere with the process of delivering health care in a reasonably safe, competent, and professional manner.

(5) "Impaired," "impairing," or "impairment" shall mean the inability to practice medicine or other healthcare profession regulated by the board in a reasonably safe, competent, and professional manner due to 1) mental illness; 2) physical illness; 3) disruptive behavior; or 4) excessive use or abuse of drugs or alcohol.

(6) "Licensee" shall mean an individual licensed by the board.

(7) "Mental illness" shall mean an illness or condition characterized by a clinically significant disturbance in an individual's cognition, emotion regulation, or behavior, including disruptive behavior, that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning.

(8) "Participant" shall mean a licensee, applicant, prospective applicant, trainee, or student who was or is enrolled in the program for evaluation, treatment, and/or monitoring pursuant to an agreement between that person and the program, including voluntary participants and those referred by the board pursuant to an order of probation.

(9) "Physical illness" shall mean an illness or condition that would adversely affect cognitive, motor, or perceptive skills, including, but not limited to, deterioration through the aging process.

(10) "Physician Health and Wellness Program," "PHWP," or "program" shall mean the confidential resource operated by the administering entity for licensees, applicants, prospective applicants, trainees, and students suffering from impairing or potentially impairing health conditions.

(11) "Student" shall mean an individual enrolled in a school approved by the board studying to enter a profession regulated by the board. For such an individual participating in the program, the program shall make any required reports pursuant to this article to the individual's oversight entity, such as the individual's school, program, and/or supervisor as specified in the individual's participation agreement, instead of to the board, unless otherwise specified in this article.

(12) "Substance use disorder" shall mean a disease in which the essential feature is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems.

(13) "Trainee" shall mean an individual who has graduated from a school approved by the board who is in training to enter a profession regulated by the board, and who is currently unlicensed to practice in California, including, but not limited to, those who are practicing during the exemption period under Section 2064.5 or 2065. For such an individual participating in the program, the program shall make any required reports pursuant to this article to the individual's oversight entity, such as the individual's training program and/or supervisor as specified in the individual's participation agreement, instead of to the board, unless otherwise specified in this article.

(14) "Treatment" shall mean a course of in-patient or out-patient care, treatment or rehabilitation services provided or supervised by the administering entity, or its designee authorized to provide such services.

(15) "Voluntary participant" shall mean a participant who voluntarily enrolled in the program for evaluation, monitoring, and/or treatment services, including an individual referred by the board in lieu of the board pursuing disciplinary action, and is not required by the board to participate in the program pursuant to an order of probation.

#### **2340.2. Program requirements.**

(a) If the board chooses to establish a program, the board shall enter into a contract with the administering entity to implement the program. The program shall do all of the following:

(1) Provide for the education of licensees, applicants, prospective applicants, trainees, and students with respect to the early identification and prevention of disruptive behavior, mental illness, physical illness, and substance use disorders.

(2) Enter into relationships supportive of the program with professionals experienced in working with healthcare providers to provide education, evaluation, monitoring, and/or treatment services.

(3) Receive and assess reports of suspected impairment from any source.

(4) Intervene in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment.

(5) Upon reasonable cause, refer suspected or verified impaired participants for evaluation, treatment, and/or monitoring.

(6) Provide consistent and regular monitoring and care management support of program participants.

(7) Advocate on behalf of participants, with their consent, to the board to allow them to participate in the program as an alternative to disciplinary action, when appropriate.

(8) Offer guidance on participants' fitness for duty with current or potential workplaces, when appropriate.

(9) Perform other services as agreed between the program and the board.

(b) Notwithstanding any other law, the board and program shall be exempt from being mandated to impose or follow the requirements of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees adopted by the Substance Abuse Coordination Committee of the department pursuant to Section 315 (Uniform Standards), for those who are voluntary participants. Nothing in this section shall be construed as preventing the board or program from exercising its discretion to impose some or all requirements of the Uniform Standards on a voluntary participant.

(c) A participant who is subject to a board order of probation, including, but not limited to, an order imposing the Uniform Standards, shall comply with the terms of their probation, and the program shall provide the required evaluations, treatment, monitoring, and reports to the board consistent with the participant's order of probation. A participant who commits a violation of their order of probation shall be subject to the consequences required by such order.

#### **2340.4 Third-party independent administering entity qualifications.**

(a) If the board establishes a program, the board shall contract for the program's administration with a 501(c)(3) non-profit, third-party independent administering entity pursuant to a request for proposals. The process for procuring the services for the program shall be administered by the board pursuant to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, Section 10425 of the Public Contract Code shall not apply to this subdivision. The board is authorized to enter into a multiyear contract with the administering entity without having to obtain the approval of the Department of General Services, the Office of Legal Services, or other state entity to justify such a multiyear term.

(b) The administering entity shall have expertise and experience in the areas of impairment and rehabilitation in healthcare providers. The leadership of the administering entity shall have at least one medical director, who is specialty trained

and/or board-certified in addiction and/or psychiatry and has expertise in health programs for healthcare providers.

(c) The administering entity shall identify and use a national treatment resource network that includes in-person and tele-based evaluation and treatment programs and support groups and shall establish a process for evaluating the effectiveness of those resources and programs.

(d) The administering entity shall identify participants and other individuals affiliated with the participant who would benefit from counseling and shall refer them to services appropriate for the circumstances.

(e) The administering entity shall make the program services available to all board licensees, applicants, prospective applicants, trainees, and students, including those who self-refer to the program.

(f) The administering entity shall make prompt and diligent efforts to contact and conduct an appropriate assessment and referral for an independent evaluation, when indicated, with each licensee, applicant, prospective applicant, trainee, and student who has been referred to the program. The program shall attempt to enroll the referred individual if, in the good faith judgment of the program, the individual has a condition that impairs or may impair their ability to practice their profession in a reasonably safe, competent, and professional manner.

(g) The administering entity shall have a board-approved system for immediately reporting a participant to the board when required by this article, including, but not limited to, a participant who withdraws or is terminated from the program prior to completion. This system shall ensure absolute confidentiality in the communication to the board. The administering entity shall not provide this information to any other individual or entity unless authorized by the participant or this article.

(h) The administering entity shall provide regular communication to the board, including, but not limited to, the following:

(1) Participate at board meetings, which may include presenting at meetings and/or providing reports, as requested by the board on matters relevant to the program and participants.

(2) Provide annual reports to the board with program statistics requested by the board.

(3) Provide reports regarding participants and other individuals as required by this article.

(4) Reports provided during an open meeting or published in open meeting materials, including to provide program statistics, shall not disclose any personally identifiable information relating to any participant without the express written consent of the participant.

(i) The administering entity shall submit to periodic quality and compliance evaluations of all or select operations, fund conditions, records, and management related to the program to ensure compliance with the requirements of this article, applicable regulations, and the contract with the board upon request of the board at the program's expense. The evaluation shall be conducted by an independent third-party approved by the board. Any report on the evaluation conducted pursuant to this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the evaluation and shall not disclose any information identifying a program participant.

#### **2340.6 Procedures.**

(a) A contract entered into pursuant to this article with the administering entity shall include procedures on all of the following topics:

(1) Regular participation at board meetings, which may include presenting at meetings and/or providing reports as requested by the board.

(2) Regular reporting of statistical information related to the program and participants, including for the board's annual report.

(3) Periodic disclosure and joint review of such information as the board may deem appropriate regarding referrals, including the contacts, evaluations, and investigations made, and the disposition of each referral. However, with respect to non-board referrals, the administering entity shall not disclose any personally identifiable information to the board except as provided in subdivisions (a)(4), (a)(5), and when required by the board following consideration of information provided under (a)(6) of this section.

(4) Immediate reporting to the board the name, last known contact information, and a factual summary of events and findings regarding any suspected or verified impaired licensee, applicant, or trainee practicing during the exemption period under Section 2064.5 or 2065, who, in the opinion of the program, is probably an imminent danger to themselves or to the public. Other program records pertaining to the participant shall be confidential and not accessible to the board, unless the individual is participating in the program pursuant to an order of probation.

(5) Timely reporting to the board the name, last known contact information, and a factual summary of events and findings regarding any suspected or verified impaired licensee, applicant, or trainee practicing during the exemption period under Section 2064.5 or 2065, who fails to cooperate with the program, fails to submit to an evaluation, treatment, or monitoring, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the program, is probably unable to practice their profession in a reasonably safe, competent, and professional manner. Other program records pertaining to the participant shall be confidential and not accessible to the board, unless the individual is participating in the program pursuant to an order of probation.

(6) Timely reporting to the board, when required under the criteria established pursuant to subdivision (a)(5) of Section 2340.10, for the board's evaluation and direction, deidentified voluntary participants who commit a program violation. After consulting with the program, if the board requests that the individual be identified, the program shall provide to the board the name, last known contact information, and a factual summary of events and findings relating to the individual's participation in the program. Other program records pertaining to the participant shall be confidential and not accessible to the board.

(7) Informing each participant of the program procedures, the responsibilities of participants, and the possible consequences of noncompliance with the program.

(8) Qualifications and requirements for individuals and entities providing services to participants, including, but not limited to, treatment facilities, evaluators, testing locations, laboratories, treatment providers, support group facilitators, and monitors.

(9) Prevention of personal, financial, business, or professional conflicts of interests that may compromise the program's responsibilities, including, but not limited to, conflicts that may unduly influence decisions regarding the selection of treatment options, evaluators, testing locations, laboratories, treatment providers, support group facilitators, or monitors.

(10) Quality assurance and quality improvement principles.

(11) Confidentiality and maintenance of program records.

(12) Identification of the full names of program staff who are available to certify records regarding individuals participating pursuant to an order of probation and be the person most knowledgeable to explain the program's records, if needed.

(13) Standardized data collection to allow for data analysis and research.

(14) Research processes and methodologies.

(15) Education and outreach to stakeholders.

(16) Interstate monitoring to support communication and accountability of program participants across jurisdictions.

(17) Notification of program evaluations, compliance with evaluations, and opportunities to cure deficiencies.

(18) Any other topic pertinent to the program as determined by the board.

#### **2340.8 Voluntary evaluation, treatment, and monitoring; Required reports.**

(a) In lieu of disciplinary action, and if the board determines that the unprofessional conduct may be the result of an impairing or potentially impairing condition, the board may refer the licensee to the program. If the unprofessional conduct involves allegations of patient or client harm or sexual misconduct with a patient, client, or any other person, diversion shall not be an option for avoiding disciplinary action.

(b) Referral of the licensee to the program in lieu of disciplinary action shall be done only with the consent of the licensee. If the licensee does not consent to be referred to the program, or does not successfully complete the program, the board may take appropriate disciplinary action.

(c) The cost of evaluation and treatment shall be the sole responsibility of the participant, and this responsibility does not preclude payment by an employer, insurer, or other sources.

(d) Evaluation, monitoring, and treatment shall be conducted by providers with expertise in working with healthcare professionals with impairing or potentially impairing conditions approved by the administering entity or the board. The administering entity or the board may also approve the use of out-of-state programs with expertise in working with healthcare professionals with impairing or potentially impairing conditions.

(e) Upon receiving a report from the program that is required under the criteria established pursuant to subdivision (a)(5) of Section 2340.10 that a deidentified voluntary participant committed a program violation, the board shall have the option to 1) encourage continued program participation with additional conditions, in lieu of disciplinary action, when the board determines that the licensee is able to continue to practice in a reasonably safe, competent, and professional manner; 2) to request the participant's identity, last known contact information, and a factual summary of events and findings relating to the individual's participation in the program so that the board

may investigate and pursue disciplinary action, as warranted; or 3) take other action consistent with the agreed upon procedures.

(f) Each participant shall sign a waiver allowing the program to release information to the board as required by this article or their program agreement, including, but not limited to, if the participant does not comply with their program agreement, or, in the opinion of the program, is unable to practice in a reasonably safe, competent, and professional manner. The program shall report to the board any participant who fails to comply with their program agreement, when required under the criteria established pursuant subdivision (a)(5) of Section 2340.10, or who, in the opinion of the program, is unable to practice their profession in a reasonably safe, competent, and professional manner.

(g) The program shall report to the board any licensee, applicant, or trainee practicing during the exemption period under Section 2064.5 or 2065, who fails to enter into a program agreement, and who, in the opinion of the program, is unable to practice their profession in a reasonably safe, competent, and professional manner.

(i) Licensees, applicants, or trainees practicing during the exemption period under Section 2064.5 or 2065, shall notify the board in writing on a form approved by the board within three (3) calendar days from the date they withdraw or are terminated from the program without completing the program's requirements.

(j) Licensees, applicants, or trainees practicing during the exemption period under Section 2064.5 or 2065, who previously withdrew or were terminated from the program without completing the program's requirements may, upon the agreement of the program and the board, reenter the program.

(k) This section does not restrict the authority of the board to take disciplinary action against a licensee or to deny a license to an individual who withdraws or is terminated from the program without completing the program's requirements, and/or for any other unprofessional conduct, including, but not limited to, its authority under Section 820.

#### **2340.10. Participant's written agreement.**

(a) A participant shall, as a condition of participation in the program, enter into an individual agreement with the program. The agreement shall include but not be limited to all of the following, to the extent they are applicable to the services to be provided by the program to the individual participant:

(1) A jointly agreed-upon plan and mandatory conditions and procedures for monitoring of compliance with the program. For individuals who are referred to the program pursuant to an order of probation, the program's written agreement

shall require compliance with the terms of their order of probation, in addition to any other program requirements.

(2) Criteria for compliance with terms and conditions of evaluation, treatment, and/or monitoring.

(3) Criteria for program completion.

(4) Criteria for termination from the program.

(5) Criteria for when the participant will be reported to the board for non-compliance with the program requirements.

(6) Agreement to maintain an active release authorizing communication between the program and the board, and other entities and individuals as required by the program.

(7) Acknowledgment that withdrawal or termination prior to completion of program requirements shall be reported to the board. Such a report shall include the participant's name, last known contact information, and a factual summary of events and findings relating to the individual's participation in the program.

(8) Acknowledgment that the program shall report to the board if the program determines that the participant is unable to practice their profession in a reasonably safe, competent, and professional manner. Such a report shall include the participant's name, last known contact information, and a factual summary of events and findings relating to the individual's participation in the program.

(9) Acknowledgement that participation in the program shall not be a defense to any disciplinary or licensing action that may be taken by the board.

(10) Acknowledgment that expenses related to evaluation, treatment, monitoring, laboratory tests, and other activities specified by the program shall be paid by the participant or other sources available to the participant.

#### **2340.12 Confidentiality of records; exceptions.**

(a) Program records including, but not limited to, case notes, progress notes, laboratory reports, evaluation and treatment records, electronic and written correspondence within the program, and between the program and the participant, board, or other involved entities including, but not limited to, employers, credentialing bodies, referents, or other collateral sources, relating to participants are confidential and exempt from disclosure

under the California Public Records Act (Gov. Code sections 7920.000, et seq.) and shall not be subject to discovery by subpoena or admissible as evidence except:

(1) To defend program professionals in any civil or administrative action involving a participant regarding the restriction or revocation of that individual's clinical or staff privileges, or termination of the individual's employment, or from a school or training program. In such an action, the program will, upon subpoena issued by any party to the action, and upon the requesting party seeking a protective order for the requested disclosure, provide to the parties to the action written disclosure that includes all of the following information:

(A) Verification of the individual's participation in the program as it relates to aspects of program involvement at issue in the action.

(B) The dates of participation.

(C) Whether or not the program identified an impairing or potentially impairing health condition.

(D) Whether the individual was compliant with their program agreement.

(E) Whether the individual successfully completed the program.

(2) Records provided to the board as required by this article.

(b) Records held by the board under this section are also exempt from the California Public Records Act (Gov. Code sections 7920.000, et seq.) and are not subject to discovery by subpoena. Such records are available to the individual only pursuant to Government Code section 11507.6, and the board may use such records as evidence in a licensing or disciplinary action against the individual.

#### **2340.14 Immunity.**

(a) A person who, in good faith, reports information or takes action in connection with this article is immune from civil liability for reporting information or taking the action.

(1) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section. The persons and entities entitled to immunity shall include:

(A) The approved program, board, and committees.

(B) Members, employees, and agents of the program, board, and committees.

(C) Persons reporting a licensee, trainee, applicant or prospective applicant for licensure as being possibly impaired or providing information about the subject's impairment to the board or program.

(D) Professionals supervising or monitoring the course of the program participant's treatment or rehabilitation, including when they report progress or noncompliance to the board as warranted.

(2) The courts are strongly encouraged to impose sanctions on program participants and their attorneys whose allegations under this section are not made in good faith and are without either reasonable objective or substantive grounds, or both.

(3) The immunity provided in this section is in addition to any other immunity provided by law.

(b) Nothing in this section shall require the board to defend or indemnify a person in an action under subdivision (a), unless otherwise required by law.

#### **2340.16. Advisory committee.**

(a) If the board establishes a program pursuant to this article, the board may establish one or more advisory committees to assist it in carrying out its duties under this article. A committee created under this article operates under the direction of the board's executive director or their designee.

(b) Appointments to a committee shall be by the affirmative vote of a majority of members appointed to the board. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion, the board may stagger the terms of the initial committee members appointed, and also may remove a committee member for any reason.

(c) Any committee established by the board shall have at least three members, who are unaffiliated with the program or any contractors thereof, including at least one member who is not licensed by the board and who is knowledgeable in a board-recognized field relating to substance use disorders, mental illness or physical illness. Each licensee appointed shall have experience in the evaluation or management of healthcare professionals who are impaired due to substance use disorders, mental illness, or physical illness. At least one licensee appointed shall specialize in the diagnosis and treatment of substance use disorders in healthcare professionals.

(d) A majority of the members of a committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those

members present at a meeting constituting at least a quorum, or a majority of the members on the committee if a decision is made through electronic voting. Each committee shall elect from its membership a chairperson and a vice chairperson.

(e) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session, in person or remotely, to review information relating to any participant, any licensee being considered for diversion, or any individual the program is required to report to the board pursuant to this article. A meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of individuals being reviewed.

(f) Each member of a committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

#### **2340.18. Advisory committee duties.**

(a) Each committee may have the following duties and responsibilities as determined by the board or its designee:

- (1) To evaluate licensees who request participation in the program through diversion and to make recommendations to the executive director or their designee. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of licensees to the diversion program.
- (2) To review information concerning individuals participating in the program, and any individual the program is required to report to the board pursuant to this article, and to make recommendations to the executive director or their designee.
- (3) To consider information provided by the program and make recommendations to the executive director or their designee as to whether the program should report the participant to the board for noncompliance or continue to evaluate, treat and/or monitor the participant, and under what conditions.
- (4) To call meetings as necessary to consider the requests of licensees to participate in the diversion program, to consider reports regarding participants in the program or regarding any individual the program is required to report to the board pursuant to this article, and to consider any other matters referred to it by the board.

(5) To periodically hold open public meetings to evaluate the program's progress, to prepare reports to be submitted to the board, to consider proposals for changes in the program, and to consider other matters as requested by the board.

(b) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No board or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith pursuant to this article.

**2340.20. Physician Health and Wellness Program Account established; Funding and fees.**

(a) The Physician Health and Wellness Program shall have its own fund under the control of the board. Any funds collected by the board for the support of the program shall be deposited into the Physician Health and Wellness Program account and shall be available, upon appropriation by the Legislature, for the support of the program.

(b) Subject to appropriation by the Legislature, the board may use moneys from the Physician Health and Wellness Program account to support any costs incurred by the board related to the program established under this article, except these moneys shall not be used to cover any costs for individual participants in the program.

**2340.22. Mandatory reporting of licensees with potential impairment.**

(a) If the board establishes the program, a licensee shall report to the program or the board, the name and current contact information of another licensee if they, in their good faith judgment, believe that the other licensee may have a mental or physical illness, including a substance use disorder, that impacts the ability of that licensee to practice medicine or their profession in a safe, competent, and professional manner.

(b) The program or board shall not disclose the name of the referring individual to the referred licensee under any circumstances, except with the express written permission of the referring individual, or if otherwise required by law.

**2340.24. Exclusion.**

This article shall not apply to the Osteopathic Medical Board of California nor to its licensees.