SUNSETTING OF THE DIVERSION PROGRAM

NOTE: The Diversion Program has never been a treatment program. It is a monitoring program. Monitoring definition: a case manager “monitors” the participant in the Diversion Program to ensure he/she complying with the Program agreement and is seeking appropriate treatment for his/her impairment. Participants in the Diversion Program seek treatment at various facilities, including Betty Ford, William Farley, Springbrook, AA, etc. The Diversion Program has had approximately 1800 participants since it began in 1980. The Diversion Program is funded from physician renewal fees and the annual cost to the Board to monitor impaired physicians is approximately $1.4 million.

History: The Diversion Program was a monitoring program that allowed physicians impaired due to substance abuse who were violating the Medical Practice Act a pathway to “divert away from” appropriate disciplinary action. The Program was meant to provide public protection by including monitoring controls on impaired physicians to prevent them from working while under the influence. The Program required participants to sign contracts which required them to adhere to conditions including, but not limited to, an evaluation by an evaluation committee, random biological fluid testing, in-patient treatment, psychiatric care, group therapy sessions, AA meetings, worksite monitors, etc. The Program’s responsibility was to monitor impaired physicians to ensure they were complying with the contract. Medical Board Case Managers (civil service employees) were responsible for monitoring compliance.

Physicians entered the Program by either: 1) self-referral (no enforcement action pending or known to the Board); 2) as offered in lieu of discipline during a Board investigation (“Statement of Understanding” [SOU]); or 3) as required by a probationary order. A participant in the Diversion Program was only known to the public if he/she was in the Program as a condition of probation. Those in the Program as self-referral or under a SOU were confidential (approximately 83%). Patients were not informed that their physician was in a monitoring program for substance abuse. Although the intent was that the confidentiality of the Program would encourage impaired physicians to enter the Program, data has not supported this concept.

During their enrollment, the participants’ sobriety was monitored via biological fluid testing. If the physician tested positive, it was not an automatic termination from the Program, but the Diversion Evaluation Committee (DEC) would evaluate each positive test result to determine whether the physician had relapsed. If it was a relapse the DEC had the option of requiring further treatment or terminating the physician. Although such noncompliant participants broke their contract they were not automatically referred to enforcement. The public was not notified that the participant was in the program even when the participant violated the conditions of the contract.

Physicians had to remain in the Diversion Program for at least five years (each participant had to have at least three years sobriety before they could be considered for completion). Participants who were terminated due to noncompliance were referred to the Enforcement Program for the filing of appropriate disciplinary charges seeking revocation of the license or probation.

The laws authorizing the Diversion Program will become inoperative on July 1, 2008.
### With the Diversion Program

**Self Referrals**

Impaired physicians with substance abuse issues can:
- Contact/enroll in a treatment facility of their choosing to find assistance with their problem. *(Even with the Diversion Program impaired physicians had the option of seeking assistance at other treatment facilities.)*
- Call the Diversion Program and request to enroll. These impaired physicians can choose to enter on their own or someone might encourage them to seek assistance (only approximately 20% of self referrals choose to enter completely on their own).
  a. The participant is evaluated by a Diversion Evaluation Committee (DEC) for acceptance into the program and if accepted, enters the program voluntarily.
  b. The fact that the physician, who is impaired due to substance abuse, is in the Diversion Program is kept confidential and the public/patients are not informed.
  c. The participant can either successfully complete the program (with at least three years of continued sobriety) or be terminated and referred to enforcement for further action if found by the DEC to be a danger to the public.

**Diverted from Discipline**

- If the Board receives a complaint alleging a physician has a substance abuse problem, the Board investigates the matter to determine: 1) if the only issue is substance abuse or mental illness (no quality of care or other issue) and 2) if sufficient evidence is found to proceed to disciplinary action.
  a. If there is insufficient evidence to proceed to disciplinary action, the investigation is closed, but kept on file pursuant to law.
  b. If the impaired physician has not only violated the Medical Practice Act due to substance abuse, but appears to have committed other violations, the Enforcement Unit will follow.

### Without the Diversion Program

**Self Referrals**

- Impaired physicians with substance abuse issues can contact/enroll in a treatment facility of their choosing to find assistance.

b. The fact the physician is in treatment is kept confidential and the Board is not aware of a physician’s treatment unless a complaint is received and the matter is brought to the Board’s attention.

**Diverted from Discipline**

- There is no longer any diversion from the discipline process for a physician with a substance abuse problem. If the Board receives a complaint alleging a physician has a substance abuse problem, the Board investigates the matter to determine if sufficient evidence is found to proceed to disciplinary action. The Board must prove by clear and convincing evidence that a violation occurred.
  a. If there is insufficient evidence to proceed to disciplinary action, the investigation is closed, but kept on file pursuant to law.
  b. If there is sufficient evidence to proceed to disciplinary action, the matter is referred to the Attorney General’s office for the filing of an accusation. The disciplinary process will be followed and the
<table>
<thead>
<tr>
<th>With the Diversion Program</th>
<th>Without the Diversion Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>established investigative procedures, including referral for disciplinary action if warranted.</td>
<td>license maybe revoked, surrendered, placed on probation, or some other action taken. (see below for actions taken while on probation without Diversion)</td>
</tr>
<tr>
<td>c. If the investigation does not establish that additional violations of the Medical Practice Act were committed, and there is evidence to proceed to disciplinary action, the impaired physician is offered entrance into the Diversion Program in lieu of disciplinary action. If the participant fails to agree to Diversion, then the participant is referred for disciplinary action. If the participant agrees to Diversion, he or she will sign a “Statement of Understanding” and enter the Diversion Program and must sign an agreement to meet the requirements of the Diversion Program. The investigation is closed and will remain on file while the participant is in Diversion. No disciplinary action is taken unless the physician fails to complete the Diversion Program. 1. The individual is evaluated by a DEC for acceptance into the program and if accepted, enters the program. 2. The fact that the physician, who is impaired due to substance abuse, is in the Diversion Program is kept confidential and the public/patients are not informed. 3. If the impaired physician is deemed unsafe to practice medicine, and has signed an agreement with the Diversion Program, staff can remove the physician from practicing until further notice from Diversion (no court proceeding necessary). 4. If the participant tests positive, the DEC will evaluate the individual. If it is the first relapse, the physician will, in most cases, be required to cease practicing and be required to go to in-patient treatment. The impaired physician cannot work again until authorized by the DEC. 5. Participants can either successfully complete the program (with at least 3 years of continued sobriety) or, when necessary, be terminated and referred to enforcement for further action if found by the DEC to be a danger to the public.</td>
<td>2. When the accusation is filed, the accusation is posted on the Board’s Web site. 3. If the impaired physician is deemed unsafe to practice medicine, enforcement staff must seek an Interim Suspension Order through the administrative court (due process court proceeding) or ask the physician to agree not to practice via a stipulated agreement. 4. See paragraph c below for what happens when a physician is on probation and relapses.</td>
</tr>
</tbody>
</table>
With the Diversion Program

**Probationary Order**
- The license of an impaired physician with a substance abuse problem is placed on probation, either via a stipulated agreement or decision after a hearing. In most circumstances the probationary conditions include the Diversion Program, biological fluid testing, and abstaining from drugs/alcohol.
  a. The requirement of the participant to be in the Diversion Program is public information.
  b. The physician must enter the Diversion Program and comply with the requirements of the Program, including signing an agreement.
  c. If the physician tests positive, the DEC will evaluate the impaired physician. If it is the first relapse, the physician will, in most cases, be required to cease practicing (no court proceeding necessary) and be required to go to in-patient treatment. The impaired physician cannot work again until authorized by the DEC. The probation unit will be notified of the occurrence but further disciplinary action is usually not taken at this point.
  d. The participant will either successfully complete the program and finish the probation term or will be terminated from the Program if he/she fails to comply with the conditions of probation. If terminated from the Program, the participant will be referred to the Probation Unit for further disciplinary action.

**Peer Review Reports**
- If a peer review body, as defined in Business and Professions (B&P) Code section 805, initiates a formal investigation into a physician’s ability to practice medicine safely due to a mental or physical condition, it must, within 15 days, file a report pursuant to B&P Code.

---

Without the Diversion Program

**Probationary Order**
- The license of an impaired physician with a substance abuse problem is placed on probation, either via a stipulated agreement or decision after a hearing. In most circumstances the probationary conditions will include biological fluid testing, abstaining from drugs/alcohol, and a psychiatric evaluation when warranted.
  b. The probation unit will monitor the physician’s compliance with the conditions of probation. The physician must find a collector to perform random drug testing as required by the Board’s Probation Unit. Board staff will submit required testing dates to the collector and the collector and participant must follow through with the required testing. The collector must be one who meets the requirements set out in the terms and conditions of probation.
  c. If the physician tests positive, the Board will investigate the matter to determine if he/she is safe to practice medicine. If not, staff will seek an Interim Suspension Order via the administrative court (due process court proceeding) or ask the physician to agree not to practice via a stipulated agreement. When impaired physicians have positive test results, the Board will file a Petition to Revoke Probation. The Board will go through the disciplinary process and seek to revoke the license. **(zero tolerance on positive tests)**

**Peer Review Reports**
- If a peer review body, as defined in Business and Professions (B&P) Code section 805, initiates a formal investigation into a physician’s ability to practice medicine safely due to a mental or physical condition, it must, within 15 days, file a report pursuant to B&P Code.
<table>
<thead>
<tr>
<th>With the Diversion Program</th>
<th>Without the Diversion Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>to B&amp;P Code 821.5 notifying the Board of the name of the physician and the general nature of the complaint. The report is to be provided to the Diversion Program. (The intent of this section was related to mental health concerns. However, it has been used for substance abusing impaired physicians.)</td>
<td>821.5 notifying the Board of the name of the physician and the general nature of the complaint. The report is to be provided to the Executive Director.</td>
</tr>
<tr>
<td>➢ The Diversion Program Administrator must follow up with the peer review body to determine the status of the entity’s investigation.</td>
<td>➢ The Executive Director must follow up with the peer review body to determine the status of the entity’s investigation.</td>
</tr>
<tr>
<td>➢ If the physician is referred to the Board’s Diversion Program, the Diversion Program Administrator considers the matter closed. The matter is confidential and no information is passed to the Enforcement Unit</td>
<td>➢ If the impaired physician is referred to a treatment program, goes into disabled status, or performs some other action that ensures the objective of public protection, the matter is closed. The matter is confidential and no information is passed to the Enforcement Unit</td>
</tr>
<tr>
<td>➢ If the progress of the peer review body investigation is not adequate to protect the public, the Diversion Program Administrator refers the matter to the Chief of Enforcement who will have staff investigate the matter.</td>
<td>➢ If the progress of the peer review body investigation is not adequate to protect the public, the Executive Director refers the matter to the Chief of Enforcement who will have staff investigate the matter.</td>
</tr>
<tr>
<td>➢ If the peer review body, at any point, takes any action that requires reporting under B&amp;P Code section 805, the matter must be reported to the Board’s Enforcement Unit via an 805 report.</td>
<td>➢ If the peer review body, at any point, takes any action that requires reporting under B&amp;P Code section 805, the matter must be reported to the Board’s Enforcement Unit via an 805 report.</td>
</tr>
</tbody>
</table>