

## **AGENDA ITEM 6**

### **REPORT ON PENDING RULEMAKING FILES.**

The following are attached for review:

- Regulations update report
- Updated Disciplinary Guidelines and Uniform Standards

# REGULATIONS UPDATE REPORT

## Pending Rulemaking files: *In-Process*

Rulemaking File Subject	Section(s)	Status	Close of public comment period	Date Pkg Sent to DCA	Date Pkg Rtn'd from DCA	Final Pkg Due to OAL	Actual Submit Date To OAL	Date language goes into effect
Disciplinary Guidelines & Uniform Standards	4101, 4146.5, 4147, 4147.5	Language published March 2013; adopted by Board at May 2013 meeting.	05/06/2013	03/20/2014	06/13/2014	03/22/2014 **	06/17/2014	10/01/2014
Application Review of Appl. License renewal	4110, 4112, 4120, 4121, 4123, 4127*	Language published May 31, 2013; adopted by Board at May 2014 meeting.  *(renumbered from section 4122)	07/29/2013  01/03/2014  06/03/2014	06/10/2014	09/05/2014	06/14/2014 **	09/09/2014	01/01/2015
Accept CHT for hands/PAMs approval	4151 4152	Language published December 20, 2013; adopted by Board at February 2014 meeting.	02/03/2014	10/22/2014		12/20/2014		
Continuing Competency	4161	Language published December 20, 2013; adopted by Board at February 2014 meeting.	02/03/2014	10/31/2014		12/20/2014		
Ethical Standards of Practice	4170	Language published December 20, 2013. Language was considered by the Board at February 2014 meeting. Language to be reconsidered by Board at a future meeting.	02/03/2014			12/20/2014		

\*\* Director issued a 90-day extension

# REGULATIONS UPDATE REPORT

## *Pending Regulatory Amendments: Process Not Yet Started*

Rulemaking File Subject	Section	Priority	Status	Comments
Notification to Consumers	4171	1	Language previously approved by Board. Language publication date to be coordinated with May 22, 2014, meeting.	
Language for OT to request to supervise more than 2 OTAs	tbd		Implement BPC 2570.3(j)(2). Practice Committee to prepare/review language; draft language to be presented to the Board at Summer 2014 meeting.	
Patient record retention requirements when a business is closed/sold or if practitioner is no longer in private practice	tbd		Implement BPC 2570.185. Practice Committee to prepare/review language; draft language to be presented to the Board at Summer 2014 meeting.	

## **§ 4147. Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall consider and apply the **Disciplinary Guidelines [October 2013]** which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; or evidentiary issues.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports, "Quarterly Written Report (4/2011)" and "Work Performance Evaluation (02/2011)" shall be obtained from the Board and are hereby incorporated by reference.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, 475, 480, 481, 482, 490, 496, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Section 11425.50(e), Government Code.

## **§ 4147.5. Uniform Standards Related to Substance Abuse.**

(a) The Board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011)** [hereafter "Uniform Standards"], which are hereby incorporated by reference. The "Uniform Standards" describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the "Uniform Standards."

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all relevant terms and conditions contained in the Disciplinary Guidelines, the "Uniform Standards" shall apply as written and be used in the order placing the licensee on probation.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2570.27, Business and Professions Code; and Section 11425.50(e), Government Code.

**California Board of Occupational Therapy**

**DISCIPLINARY GUIDELINES**

**October 2013**

**Additional copies of this document may  
be obtained by contacting the Board  
at its office in Sacramento, California  
or from its web site at [www.bot.ca.gov](http://www.bot.ca.gov).**

# CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

## DISCIPLINARY GUIDELINES

### TABLE OF CONTENTS

• Introduction	Page 3
• General Considerations	Page 4
• Definition of Penalties	Page 4
• Penalties for Violations - Minimum/Maximum	Page 5
• Standard Terms and Conditions of Probation (1 - 14)	Page 13
• Optional Terms and Conditions of Probation (15 - 32)	Page 17
• Rehabilitation Criteria	Page 25
• Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License	Page 26

# **DISCIPLINARY GUIDELINES**

## **I. INTRODUCTION**

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorneys, administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

~~For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate.~~ The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at [www.bot.ca.gov](http://www.bot.ca.gov).

## **II. GENERAL CONSIDERATIONS**

The Board requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

**Factors to be Considered** - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

## **III. DEFINITION OF PENALTIES**

***Revocation:*** Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

***Suspension:*** Invalidation of a license for a fixed period of time, not to exceed one (1) year.

***Stayed Revocation:*** Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

***Stayed Suspension:*** Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

***Probation:*** A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.



#### **IV. PENALTIES FOR VIOLATIONS - MINIMUM/MAXIMUM**

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages 13-24.

#### **BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act**

##### **2570.185. – Patient Records**

Maximum:	Revocation
Minimum:	Stayed revocation and 1 year probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional condition [28]

##### **Section 2570.23 - Unlicensed Person Engaging in Practice - Sanctions**

Applicant Maximum:	Denial of application for a license
Applicant Minimum:	Thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional conditions [#27 and #31]

##### **Section 2570.28(a)(1),(2),or(3): Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine**

Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional conditions [#24, #26, #27, #29, #31]

##### **Section 2570.28(a)(4): Unprofessional Conduct – False Advertising**

Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional conditions [#27 and #31]

##### **Section 2570.28(a)(5): Unprofessional Conduct – Discipline by Other Government Agency**

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.28(b): Procuring a License by Fraud, Misrepresentation, Mistake

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional condition [#24, #27, #29]

Section 2570.28(c): Violating Any Provision of the Occupational Therapy Practice Act or Regulations

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. a. Standard conditions [#1 - #14]

Section 2570.28(d): False Statement on Application for License or Renewal

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#27 and #31]

Section 2570.28(e): Conviction of Crime Substantially Related to License

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#27, #28, #29, #31]

Section 2570.28(f) or (g): Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#27 and #31]

Section 2570.28(h): Committing Fraud, Dishonest or Corrupt Act

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#27 and #31]

Section 2570.28(i): Committing Any Act Punishable as a Sexually Related Crime

Maximum: Revocation  
Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional Conditions [#16, #17, #25, #27, #31]

Section 2570.28(j): Using Excessive Force, Mistreating or Abusing Patient

Maximum: Revocation  
Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional Conditions [#16, #17, #26, #27, #31]

Section 2570.28(k): Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record or any other record

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.28(l): Changing the Prescription of Physician or Falsifying Verbal or Written Orders

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.28(m): Failing to Maintain Patient Confidentiality

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:

a. Standard conditions [#1 - #14]

Section 2570.28(n): Delegating Services that Require License to Unlicensed Person

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.28(o): Committing Any Act that would be Grounds for Denial under Section 480

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.28(p): Failing to Follow Infection Control Guidelines

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1 - #14]

Section 2570.29(a): Obtain, Possess, Administer to Self, Furnish or Administer to Others, Any Controlled Substance

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #32]

Section 2570.29(b)(1), (2) or (3): Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #32]

Section 2570.29(c): Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1 - #14]
- b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

Section 2570.29(d): Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol

Maximum: Revocation  
 Minimum: Stayed revocation and three (3) years probation on the following conditions:  
 a. Standard conditions [#1 - #14]  
 b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

Section 2570.29(e): Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug

Maximum: Revocation  
 Minimum: Stayed revocation and three (3) years probation on the following conditions:  
 a. Standard conditions [#1 - #14]  
 b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

2570.36. Required Reporting of Violations to the Board

Maximum: Revocation  
 Minimum: Stayed revocation and one year (1) year probation  
 a. Standard conditions [#1 - #14]

**GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE**

Section 119: Misdemeanor Pertaining to Use of a License

Maximum: Revocation  
 Minimum: Stayed revocation and one (1) year probation on the following conditions:  
 a. Standard conditions [#1 - #14]

Section 123. Conduct constituting subversion of licensing examination; penalties and damages

Maximum: Denial of application for licensure or revocation  
 Minimum: Stayed revocation and three (3) years probation on the following conditions:  
 a. Standard conditions [#1 - #14]

**Section 125: Misdemeanor Pertaining to Conspiring with Unlicensed Person for Use of a License**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 125.6: Discrimination by Licensee**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 480(a): Denial of Licenses**

Maximum/Minimum: Denial of license

**Section 480(c): Denial of Licenses**

Maximum/Minimum: Denial of license

**Section 496: Subversion of Licensing Examinations or Administration of Examinations.**

Maximum: Denial or revocation of license  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#24, #27, #31]

**Section 498. Fraud, deceit or misrepresentation as grounds for action against license**

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 499. Action against license based on licentiate's actions regarding application of another**

Maximum: Revocation  
Minimum: Stayed revocation and two (2) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 581. Purchase or fraudulent alteration of diplomas or other writings**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 582. Use of illegally obtained, altered, or counterfeit diploma, certificate, or transcript**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 583. False statements in documents or writings**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and two (2) years probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 584. Violation of examination**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional condition [#28]

**Section 726: Sexual Abuse, Misconduct, or Relations with a Patient or Client**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1 - #14]  
b. Optional conditions [#26, #27, #31]

**Section 730: Performing Medical Evaluation Without Certification**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1 - #14]

**Section 810: Grounds for disciplinary action against health care professional**

**Maximum:** Revocation  
**Minimum:** Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1 - #14]
- b. Optional conditions [#27, #28, #31]

Section 17500. False or misleading statements

Maximum:

Revocation

Minimum:

Stayed revocation and two (2) years probation on the following conditions:

- a. Standard conditions [#1 - #14]



**V. STANDARD CONDITIONS OF PROBATION**  
**(To be included in ALL cases of probation)**

**1. Obey All Laws**

Respondent shall obey all federal, state and local laws. Respondent shall submit, in writing, a full detailed account of any and all arrests and convictions to the Board within five (5) days of occurrence.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**2. Compliance with Probation and Quarterly Reporting**

Respondent shall fully comply with the terms and conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board. Failure by respondent to accept and/or pick up any correspondence sent via express mail, certified mail or registered mail shall constitute a violation of probation.

Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board (Quarterly Written Report, rev. 4/2011).

**3. Personal Appearances**

Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

**4. Notification of Address and Telephone Number Change(s)**

Respondent shall notify the Board staff and his or her Probation Monitor, in writing, within five (5) days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.

Post Office Boxes are accepted for mailing purposes; however, the Respondent must also provide his or her physical residence address as well.

**5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice.**

In the event respondent should leave California to reside or to practice outside the

State for more than thirty (30) days, respondent shall notify the Board or its designee in writing within five (5) days of the dates of departure and return. All provisions of probation, other than the quarterly report requirements, examination requirements, and education requirements, address change and cost recovery requirements, shall be held in abeyance until respondent resumes practice and/or residence in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the period of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of occupational therapy while residing in California, respondent shall notify the Board or its designee in writing within five (5) days of the dates of cessation of practice and the expected return to practice. All provisions of probation shall remain in effect, and the period of probation shall be extended for the period of time respondent was not engaged in the practice of occupational therapy as required by other employment requirement of this order.

#### **6. Notification to Employer(s)**

Respondent shall request and obtain written approval from the Board:

- Within five days of the effective date of the Decision when currently employed,
- Prior to commencing employment, or
- Prior to entering into a contract to provide services,

When currently employed, applying for employment in any capacity, or contracted to provide occupational therapy services, Respondent shall provide a copy of the Board's Decision to each employer, supervisor, or contractor no later than the effective date of the Decision. Respondent shall notify any prospective employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification shall include a copy of the Board's Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

The respondent shall provide to the Board the names, physical addresses, mailing addresses, email addresses, fax numbers and telephone numbers of all employers, supervisors and contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing occupational therapy services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete an authorization and consent forms to allow the Board to communicate with the employer and supervisor or contractor regarding issues including but not limited to the licensee's work status, attendance, performance, and on-going monitoring. (Authorization to Release Information. Form CBOT-ARI Rev 08/2013).

Respondent shall cause each employer and supervisor or contractor to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board (Work Performance Evaluation Form. Rev. 07/2013).

Reporting by the supervisor to the board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within four (4) hours of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, within five (5) days if he/she is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

## **7. Employment Requirements and Limitations**

During probation, respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than forty (40) hours per month.

While on probation, respondent shall not work for a registry, placement agency, third party employer, in home health settings, as a traveler, or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in advance and in writing, by the Board.

If respondent is unable to secure employment in his or her capacity, is issued a cease practice order, or his or her license is temporarily suspended, the period of probation shall be extended for that period of time.

## **8. Supervision Requirements**

Respondent shall obtain approval from the Board when continuing or before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in advance and in writing, by the Board.

## **9. Continuing Education Requirements**

Respondent shall complete continuing education directly relevant to the violation as specified by the Board. Continuing education shall be completed within six months of the effective date of the decision and shall be incorporated as a condition of ~~this~~ the probation period.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as designated or

failure to complete same no later than one year from the date of the Board's written notification shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

**10. Maintenance of Valid License**

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

**11. Cost Recovery Requirements**

Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Respondent must submit a proposed payment plan within 30 days of the effective date of the decision and be approved by a Board representative. Payments shall be completed no later than six (6) months prior to the end of the probation term. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

**12. Instruction of Continuing Competency/Continuing Education Coursework**

While on probation Respondent shall not be an instructor of any coursework for continuing competency, continuing education, presentations, workshops, in-services, institutes, or any courses used to satisfy advanced practice requirements.

**13. Violation of Probation**

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended and respondent shall comply with all probation conditions, until the matter is final.

**14. Completion of Probation**

Upon successful completion of probation, respondent's license will be fully restored.

**VI. OPTIONAL CONDITIONS OF PROBATION**

**15. Examination by a Physician**

Within forty-five (45) days of the effective date of the Decision, respondent shall

submit to a physical examination by a physician and surgeon of his/her choice who meets minimum criteria approved by the Board. The physician and surgeon shall be licensed in California and Medical Board Certified in Family Practice, Internal Medicine or a related specialty. The purpose of the examination shall be to determine respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician and surgeon to complete a written medical report to be submitted directly to the Board within sixty (60) days of the effective date of the Decision. If the examining physician and surgeon finds that respondent is not physically fit to practice or can only practice with restrictions the physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the physician and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. Respondent shall comply with any order to cease practice or restriction of his or her practice until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. Respondent

#### **16. Psychological Evaluation**

Within forty-five (45) of the effective date of the Decision, respondent shall submit to a psychiatric/psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed evaluators for prior approval by the Board. The evaluation shall be performed by a physician and surgeon licensed in California and Board Certified in Psychiatry, or by a clinical psychologist licensed in California and approved by the Board. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within sixty (60) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely or can only practice with restrictions, the evaluator shall orally notify the Board within one (1) working day, and then notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a

therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

#### **17. Psychotherapy**

Within forty-five (45) days of the effective date of the Decision, respondent shall submit to the Board the name of one (1) or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional approved by the Board. Within ten (10) days of receiving notification of approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within sixty (60) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

#### **18. Clinical Diagnostic Evaluation**

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of occupational therapy, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of occupational therapy for minimum of one month pending the results of a clinical diagnostic evaluation and shall,

during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent shall not practice occupational therapy until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

### **19. Rehabilitation Program**

Within thirty (30) days of the effective date of the Decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work settings, random bodily fluid or other matter testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. Cost for participation in this program shall be paid by respondent.

### **20. Support Groups**

#### **20a. Chemical Dependency Support/Recovery Groups**

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous), and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

#### **20b. Facilitated Support Group Meetings**

Within thirty (30) days of the effective date of the Decision, respondent shall begin attendance at a facilitated support group, and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#### **20c. Group Support/Recovery Meetings**

Respondent shall begin and continue attendance at a support/recovery group (e.g., Alcoholics Anonymous, Narcotics Anonymous, or a facilitated group) as ordered by the Board or its designee. When determining the type and frequency of required support group

meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by respondent with each quarterly report or as requested by the board staff. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

- a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
- b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
- c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the



- meeting, the licensee's attendance, and the licensee's level of participation and progress.
- d. The facilitator shall report any unexcused absence within 24 hours.

**NOTE TO ALJ:** Condition 20c is not necessary if 20a or 20b is ordered.

**21. Abstain from Controlled Substances**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness or condition.

If under such prescription, or when obtaining refills, Respondent shall cause to have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

**22. Abstain from use of Alcohol**

Respondent shall completely abstain from the intake of alcohol during the period of probation.

**23. Submit Biological Fluid or Specimen Samples**

23a [This term shall be applied to a Respondent meeting the definition of a substance abusing licensee pursuant to CCR 4147.5]

Respondent shall enroll in the Board's drug-testing program within two (2) business days of the effective date of Probation and shall comply with all contract requirements.

Respondent shall immediately submit to random and directed alcohol and/or drug testing at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum of fifty-two (52) to one-hundred and four (104) random tests per year within the first year of probation, and a minimum of thirty-six (36) to one-hundred and four (104) random tests per year thereafter, for the duration of the probationary term. A respondent shall request in writing any modifications to testing frequency after the first year of probation. If Respondent tests positive in violation of term 21 or term 22, Respondent shall be ordered by the Board to immediately cease any practice of occupational therapy, and may not practice unless and until notified by the Board. Any further analysis or review of a test that is positive for a banned substance shall be at respondent's costs. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

23b [This term shall be applied to a Respondent that committed a violation involving drugs and/or alcohol, but who is not considered to be a “substance abusing licensee” as referenced in CCR 4147.5]

Respondent shall enroll in the Board’s drug-testing program within two (2) business days of the effective date of Probation and shall comply with all contract requirements.

Respondent shall immediately submit to random and directed alcohol and/or drug testing at respondent’s cost, upon request by the Board or its designee. The frequency of testing shall be no less than thirty-six (36) random tests per year for the duration of the probationary term. If Respondent tests positive in violation of term 21 or term 22, Respondent shall be ordered by the Board to immediately cease any practice of occupational therapy, and may not practice unless and until notified by the Board. Any further analysis or review of a test that is positive for a banned substance shall be at respondent’s costs. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Note to Administrative Law Judge (ALJ): In the event a Respondent successfully rebuts the presumption that they are a substance abusing licensee through testimony and/or evidence provided at hearing, and who is found to have committed a violation involving drugs and/or alcohol, the Board wishes to clarify and establish that it might be in the best interest of public protection to order drug/alcohol testing, but at a less intensive level specified in term 23a. The Board requests that the ALJ explain his or her reasoning for imposing this lesser standard so the Board can better understand and evaluate the Proposed Decision.

**24. Take and Pass the Licensure Examination**

Respondent shall take and pass the licensure examination currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition precedent to reinstatement of a license, respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or other terms of probation shall be tolled until the respondent has successfully passed the licensure examination and notice of licensure has been mailed to respondent by the Board.

**25. Worksite Monitor**

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor’s requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the

Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Reporting by the worksite monitor to the board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The consent form shall allow the Board to communicate with the worksite monitor. (Authorization and Consent Form. Dev. 10/2011).

**26. Restriction on Licensed Practice**

Respondent shall practice only with a specified client population, in a specified practice setting, or engage in limited occupational therapy services. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in a manner required by the Board.

**27. Suspension**

Respondent is suspended from the practice of occupational therapy for \_\_\_\_\_ days beginning on the effective date of the Decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension

**28. Restitution**

Within \_\_\_\_\_ days of the effective date of this Decision, respondent shall make restitution to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ and shall provide the Board with proof from \_\_\_\_\_ attesting that the full restitution has been paid. In all cases, restitution shall be made before the termination of probation.

**29. Criminal Probation Reports**

Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

**30. Relinquish License and Wall Certificate**

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and order.

**31. Notification to Clients/Cessation of Practice**

In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

**32. Request for Modification**

“Request” as used in this standard is a request made to the Board’s designee, and is not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board:

- a. Demonstrated sustained compliance with current recovery program.
- b. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
- c. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

## **VII. REHABILITATION CRITERIA**

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.  
The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

## **PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY**

When considering a petition for reinstatement of the license or a petition for reduction in penalty, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section **VII.** above.

**RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION AND REINSTATEMENT OF LICENSE**

Disciplining of a License:

“IT IS HEREBY ORDERED that [occupational therapist or occupational therapy assistant] license No. [#] issued to respondent [name], is REVOKED. However, the order of revocation is STAYED and the license is placed on probation for [#] years subject to the following terms and conditions:”

Applicant Placed on Probation:

“IT IS HEREBY ORDERED that the application for licensure as an [occupational therapist or occupational therapy assistant] of respondent [name], is GRANTED, and upon successful completion of all licensing requirements a license shall be issued, provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the application is ordered denied, and a new application for licensure will be required. Upon issuance, however, said license shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the license is placed on probation for [#] years subject to the following terms and conditions:”

Reinstatement of a License:

“The petition of [name], for reinstatement of licensure is hereby GRANTED. [Occupational Therapist or Occupational Therapy Assistant ] license number [#] shall be reinstated provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the petition is ordered denied, and a new petition for reinstatement will be required. Upon issuance, however, the license shall be immediately revoked. However, the order of revocation shall be STAYED, and petitioner’s license shall be placed on probation for a period of [#] years subject to the terms and following conditions:”

# **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees**

Senate Bill 1441 (Ridley-Thomas)

Implementation by  
Department of Consumer Affairs,  
Substance Abuse Coordination Committee



Brian J. Stiger, Director  
April 2011

STATE OF CALIFORNIA  
**dca**  
DEPARTMENT OF CONSUMER AFFAIRS

**Substance Abuse Coordination Committee**

Brian Stiger, Chair  
**Director, Department of Consumer Affairs**

Elinore F. McCance-Katz, M.D., Ph. D.  
**CA Department of Alcohol & Drug Programs**

Janelle Wedge  
**Acupuncture Board**

Kim Madsen  
**California Board of Behavioral Sciences**

Robert Puleo  
**Board of Chiropractic Examiners**

Lori Hubble  
**Dental Hygiene Committee of California**

Richard De Cuir  
**Dental Board of California**

Linda Whitney  
**Medical Board of California**

Heather Martin  
**California Board of Occupational Therapy**

Mona Maggio  
**California State Board of Optometry**

Teresa Bello-Jones  
**Board of Vocational Nursing and  
Psychiatric Technicians**

Donald Krpan, D.O.  
**Osteopathic Medical Board of California**

Francine Davies  
**Naturopathic Medicine Committee**

Virginia Herold  
**California State Board of Pharmacy**

Steve Hartzell  
**Physical Therapy Board of California**

Elberta Portman  
**Physician Assistant Committee**

Jim Rathlesberger  
**Board of Podiatric Medicine**

Robert Kahane  
**Board of Psychology**

Louise Bailey  
**Board of Registered Nursing**

Stephanie Nunez  
**Respiratory Care Board of California**

Annemarie Del Mugnaio  
**Speech-Language Pathology & Audiology &  
Hearing Aid Dispenser Board**

Susan Geranen  
**Veterinary Medical Board**



Table of Contents

Uniform Standard #1 ..... 4

Uniform Standard #2 ..... 6

Uniform Standard #3 ..... 7

Uniform Standard #4 ..... 8

Uniform Standard #5 ..... 12

Uniform Standard #6 ..... 13

Uniform Standard #7 ..... 14

Uniform Standard #8 ..... 16

Uniform Standard #9 ..... 17

Uniform Standard #10 ..... 18

Uniform Standard #11 ..... 20

Uniform Standard #12 ..... 21

Uniform Standard #13 ..... 22

Uniform Standard #14 ..... 26

Uniform Standard #15 ..... 27

Uniform Standard #16 ..... 28

**#1 SENATE BILL 1441 REQUIREMENT**

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

**#1 Uniform Standard**

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
  - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
  - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
  - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
  - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
  - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
  - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**#2 SENATE BILL 1441 REQUIREMENT**

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

**#2 Uniform Standard**

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**#3 SENATE BILL 1441 REQUIREMENT**

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

**#3 Uniform Standard**

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**#4 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

**#4 Uniform Standard**

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

**TESTING FREQUENCY SCHEDULE**

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

\*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

**EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**

**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

## II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

## III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

## **OTHER DRUG STANDARDS**

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

### **PETITIONS FOR REINSTATEMENT**

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

### **OUTCOMES AND AMENDMENTS**

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

#### **Historical Data - Two Years Prior to Implementation of Standard**

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to



appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

### **Post Implementation Data- Three Years**

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

### **Data Collection**

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier  
License Type  
Probation/Diversion Effective Date  
General Range of Testing Frequency by/for Each Probationer/Diversion Participant  
Dates Testing Requested  
Dates Tested  
Identify the Entity that Performed Each Test  
Dates Tested Positive  
Dates Contractor (if applicable) was informed of Positive Test  
Dates Board was informed of Positive Test  
Dates of Questionable Tests (e.g. dilute, high levels)  
Date Contractor Notified Board of Questionable Test  
Identify Substances Detected or Questionably Detected  
Dates Failed to Appear  
Date Contractor Notified Board of Failed to Appear  
Dates Failed to Call In for Testing  
Date Contractor Notified Board of Failed to Call In for Testing  
Dates Failed to Pay for Testing  
Date(s) Removed/Suspended from Practice (identify which)  
Final Outcome and Effective Date (if applicable)

**#5 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

**#5 Uniform Standard**

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**#6 SENATE BILL 1441 REQUIREMENT**

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

**#6 Uniform Standard**

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

**#7 SENATE BILL 1441 REQUIREMENT**

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

**#7 Uniform Standard**

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

**#8 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee tests positive for a banned substance.

**#8 Uniform Standard**

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

**#9 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

**#9 Uniform Standard**

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

**#10 SENATE BILL 1441 REQUIREMENT**

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

**#10 Uniform Standard**

**Major Violations** include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

**Consequences** for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation, and
  - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.



**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

**#11 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

**#11 Uniform Standard**

**“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.**

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

**#12 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

**#12 Uniform Standard**

**“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.**

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

**#13 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

**#13 Uniform Standard**

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
  - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
    - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
    - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
    - c) Review the licensee's work attendance.
  3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
  4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
    - the licensee's name;
    - license number;
    - worksite monitor's name and signature;
    - worksite monitor's license number;
    - worksite location(s);
    - dates licensee had face-to-face contact with monitor;
    - staff interviewed, if applicable;
    - attendance report;
    - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

**#14 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

**#14 Uniform Standard**

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.



**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

**#16 SENATE BILL 1441 Requirement**

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

**#16 Uniform Standard**

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.