

Agenda Item #13.A.

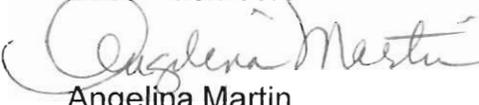


STATE AND CONSUMER SERVICES AGENCY • GOVERNMENT OF CALIFORNIA
BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: February 9, 2011

TO: Board Members

FROM: 
Angelina Martin
Enforcement Division Chief

SUBJECT: Proposed Regulations to Implement Uniform Standards Regarding Substance-Abusing Healing Arts Licensees and Revise Disciplinary Guidelines

STATEMENT OF ISSUES

The Board is mandated to protect consumers from licensees who practice in an unsafe, incompetent, or impaired manner. In accordance with Business and Professions (B&P) Code, sections 2841.1 and 4501.1, protection of the public shall be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions.

B&P Code section 315 (Senate Bill 1441, Chapter 548, Statutes of 2008) established a Substance Abuse Coordination Committee (SACC) to develop uniform standards for substance-abusing healing arts licensees. All healing arts boards are required to use those standards.

Government Code section 11425.50(e) requires that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340). The Board's Disciplinary Guidelines (Guidelines) are established in regulation and were last revised effective October 29, 2008.

Existing regulations relative to the Board's Guidelines must be revised to implement the uniform standards adopted by the SACC and to clean up other sections of the Guidelines (see Attachment A).

BACKGROUND AND SUBJECT REVIEW

The SACC was required to establish uniform and specific standards by January 1, 2010 in sixteen areas (see Attachment B).

The SACC was comprised of the Executive Officers (EO) of all healing arts boards, the Director of the Department of Consumer Affairs (DCA) and the State Medical Director of the Department of Drug and Alcohol Programs. The Board's EO was a member of the SACC

and attended several meetings throughout the year. Additionally, a work group was established to assist the SACC. Marilyn Kimble, Probation Monitor, participated as a member of the work group and also attended several group and SACC meetings throughout the year.

On November 16, 2009, the SACC adopted sixteen uniform standards to be used by all healing arts boards (see Attachment C).

On February 17, 2010, SB 1111 was introduced by Senator Negrete McLeod and sponsored by DCA. The bill included legislative provisions needed to implement the uniform standards requiring legislation. However, SB 1111 failed to make it out of the Senate Business, Professions and Economic Development Committee.

The DCA Director encouraged the boards to promptly implement those standards that do not require legislation or regulatory changes. He also requested that the boards develop proposed statutory and/or regulatory changes, as needed, to fully implement the standards.

Accordingly, Board staff worked on proposed amendments to the vocational nursing (VN) and psychiatric technician (PT) regulations regarding its Guidelines to include the uniform standards and to clean up other sections of the Guidelines. In the meantime, the Board was advised that the DCA established a SACC Subcommittee to review standard #4 relative to required drug testing. A review of this standard was deemed necessary due to numerous concerns expressed during the public meetings regarding the frequency of testing required by this standard which states, in part, as follows:

#4 Uniform Standard – Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees who are practicing shall be randomly drug tested at least 50 times per year and at any time as directed by the board...

The prevailing concern is that the frequency of testing required by this standard is unreasonable and not necessary for every licensee entering probation. Some licensees demonstrate significant progress toward rehabilitation prior to a board issuing its order to place that licensee on probation. Pursuant to B&P Code, section 482, boards are required to establish rehabilitation criteria in regulation to evaluate the rehabilitation of a person when considering the denial, suspension or revocation of a license. Standard #4 does not give boards the discretionary flexibility they need to set the testing frequency according to the licensee's rehabilitation.

Additionally, concerns were expressed regarding the potential prohibitive costs some licensees would incur if required to test as frequently as 104 times in one year. For example, under the current departmental drug testing contract with Phamatech, Inc., the cost per test is \$29.00 plus a collection site fee that ranges from \$15.00 to \$50.00 per test. A licensee required to test 104 times in one year may incur costs ranging from \$4,576 to \$8,216 during the first year of probation for drug testing alone.

A licensee's failure to comply with the random drug testing requirement would be a violation of terms and condition of probation. Therefore, the Board would move forward with a Petition to Revoke Probation. It is anticipated that the majority of probationers would be out of compliance if 104 random tests were required (i.e., twice weekly drug testing).

A draft of proposed regulatory language to implement the uniform standards was developed by the Board and presented at its May 19, 2010 Board Meeting. However, no action was taken by the Board pending the outcome of the SACC's review of standard #4 and possible revisions to that standard.

The SACC subcommittee Met on August 4, 2010. Public comment was received during the meeting. The subcommittee adopted a new testing frequency schedule to present to the SACC as follows:

- Year 1 – 48 random tests;
- Year 2 – 24 random tests;
- Year 3+ – 12 random tests.

Additional meetings of the SACC to consider this issue have not been scheduled.

On February 7, 2011, the DCA Director urged the Board to consider a recommendation similar to the recommendation adopted by the Board of Registered Nursing (BRN) at its February 2, 2011 board meeting. The BRN adopted a recommendation to notice their proposed regulations seeking comment for two options. One option would be to require 104 drug tests per year for the first year and another would be to establish the frequency of testing on a case-by-case basis.

Therefore, the Board's proposed regulatory package also contains both options relative to the frequency of random drug testing. The Board will receive testimony on both options. However, if the SACC Subcommittee meets and modifications to the standards are approved, the Board will have an opportunity to amend the final regulatory language when it is brought before the Board for final adoption (after the scheduled regulation hearing).

The proposed regulatory language is necessary to implement the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees established by the SACC and to clean up other sections of the Disciplinary Guidelines.

Recommendations:

1. The Board approve the regulatory proposal to amend Division 25 of Title 16, California Code of Regulations, to amend sections 2524 (VN Regulations) and 2579.10 (PT Regulations).
2. Direct staff to prepare a rulemaking file for notice and comment.
3. Authorize the Executive Officer to make changes consistent with the intent of the above proposal.

- Attachment A Proposed Regulatory Language for Implementation of Uniform Standards and Revision of Disciplinary Guidelines
- Attachment B Business and Professions Code Section 315
- Attachment C DCA Report on the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (dated April 2009)

**Board of Vocational Nursing and Psychiatric Technicians
Proposed Regulatory Language**

**Disciplinary Guidelines and Uniform Standards
Related to Substance Abuse**

Sections 2524 of Division 25 of Title 16, Article 4 of the California Code of Regulations is amended to read:

2524. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse”, (Rev. 6/19/07[xx/xx/xx]), which are hereby incorporated by reference.

- (a) ~~Deviation from these the guidelines~~ Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) The Uniform Standards Related to Substance Abuse must be used when imposing conditions or terms of probation on a licensee exhibiting a substance abuse problem.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 2875, 2876 and 2878, Business and Professions Code; and Section 11425.50(e), Government Code.

**Board of Vocational Nursing and Psychiatric Technicians
Proposed Regulatory Language**

**Disciplinary Guidelines and Uniform Standards
Related to Substance Abuse**

Section 2579.10 of Division 25 of Title 16, Article 4 of the California Code of Regulations is amended to read:

2579.10. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" (Rev. 6/19/07[xx/xx/xx]), which are hereby incorporated by reference.

- (a) Deviation from these the guidelines—Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) The Uniform Standards Related to Substance Abuse must be used when imposing conditions or terms of probation on a licensee exhibiting a substance abuse problem.

Note: Authority cited: Section 4504, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 4520 and 4521, Business and Professions Code; and Section 11425.50(e), Government Code.

State of California
Board of Vocational Nursing
and Psychiatric Technicians

DISCIPLINARY GUIDELINES
AND
UNIFORM STANDARDS RELATED
TO SUBSTANCE ABUSE

Revised ~~June 19, 2007~~ [insert date]
(*Regulations Effective ~~October 29, 2008~~ [insert date]*)



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INTRODUCTION

Business and Professions Code sections 2841.1 and 4501.1 mandate that protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

To facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known, the Board adopted these Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

Disciplinary Guidelines

The ~~guidelines~~Disciplinary Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

While recognizing the concept that administrative law judges must be free to exercise their discretion, the Board requests that ~~these~~the ~~guidelines~~Disciplinary Guidelines be followed to the extent possible and that any departures be noted and explained in the Proposed Decision.

The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect ~~the respondent's~~ Respondent's conduct had or could have had on the health, safety, and welfare of California consumers.

Uniform Standards Related to Substance Abuse

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs (Department) formulated Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards). The Uniform Standards must be followed in dealing with substance-abusing licensees. The Uniform Standards are incorporated into Conditions of Probation Nos. 25, 26, 27, 28, 29, 30, and 31.

Conditions of Probation Nos. 25, 26, 27, and 28 shall be imposed in cases where an individual's license is placed on probation due to substance abuse.

Conditions of Probation Nos. 29, 30, and 31 shall be considered in substance abuse cases, and, if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

REGULATORY AUTHORITY

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 2. Board of Vocational Nursing and Psychiatric Technicians
Chapters 1 (Vocational Nurses (VN)) and 2 (Psychiatric Technicians (PT))
Article 4. Licenses

Section 2524 (VN) & Section 2579.10 (PT):

Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. 6/19/07 [xx/xx/xx]), which are hereby incorporated by reference.

- (a) ~~Deviation from these the~~ Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example, ~~;~~ the presence of mitigating factors; the age of the case; evidentiary problems.*
- (b) The Uniform Standards Related to Substance Abuse must be used when imposing conditions or terms of probation on a licensee exhibiting a substance abuse problem.*

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- *Nature and severity of the act(s), offense(s), or crime(s) under consideration.*
- *Actual or potential harm to the public.*
- *Actual or potential harm to any patient.*
- *Overall disciplinary record.*
- *Overall criminal actions taken by any federal, state or local agency or court.*
- *Prior warnings on record or prior remediation.*
- *Number and/or variety of current violations.*
- *Mitigation evidence.*
- *In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.*
- *Time passed since the act(s) or offense(s) occurred.*
- *If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.*
- *Cooperation with the Board and other law enforcement or regulatory agencies.*
- *Other rehabilitation evidence.*

SUMMARY LISTS OF ~~THE~~ STANDARD & AND OPTIONAL CONDITIONS OF PROBATION

Standard Conditions of Probation (1 – 14):

The Standard Conditions of Probation (1-14) are those conditions of probation which will generally appear in all cases involving probation as standard terms and conditions.

1. *Obey All Laws*
2. *Compliance With with Probation Program*
3. *Submit Written Reports*
4. *Notification of Address and Telephone Number Change(s)*
5. *Notification of Residency or Practice Outside of State*
6. *Meetings ~~With~~with Board Representative(s)*
7. *Notification to Employer(s)*
8. *Employment Requirements and Limitations*
9. *Supervision Requirements*
10. *Completion of Educational Course(s)*
11. *Maintenance of Valid License*
12. *Cost Recovery Requirements*
13. *License Surrender*
14. *Violation of Probation*

Optional Conditions of Probation (15 -- ~~25~~24):

The Optional Conditions of Probation are those conditions of probation which address the specific circumstances of the case.

- *If relevant to the violation, any of the ~~optional conditions~~ Optional Conditions may be included in the probation requirements.*
- *If the offense involves ~~alcohol and/or drugs~~ substance abuse, including alcohol, conditions Optional Conditions #19 - #~~23~~22 are usually required (in addition to the Standard Conditions #1 - #14 and Uniform Standards Conditions #25-#28). Optional Conditions #16 - #18 are also recommended, if relevant.*
- *If ~~the respondent's~~ Respondent's license has been or will have been expired for over four (4) years by the time a decision is rendered, ~~the~~ Respondent shall be required to take and pass the licensure examination (Condition #~~24~~23).*
- *If the case involves mental illness, Conditions #16-#18 are recommended.*

15. *Suspension of License*
16. *Examination by a Physician*
17. *Psychiatric/Psychological Evaluation*
18. *Psychotherapy*
19. *Rehabilitation Program*
20. *~~Chemical Dependency~~ Addictive Behavior Support & Recovery Groups*
21. *Abstain from Controlled Substances*
22. *Abstain from Use of Alcohol and Products Containing Alcohol*
- ~~23. *Submit Biological Fluid Samples*~~
- ~~24~~23. *Take and Pass Licensure Examination*
- ~~25~~24. *Restrictions on Licensed Practice*

SUMMARY LIST OF
UNIFORM STANDARDS – CONDITIONS OF
PROBATION

Required Conditions of Probation (25 -- 28):

The following Uniform Standards -- Conditions of Probation shall be imposed as probation conditions in cases where Respondent is placed on probation due to substance abuse.

25. Consent for Employer & Supervisor Communications

26. Submit Biological Fluid Samples

27. Positive Drug Test

28. Major and Minor Violations

Optional Conditions of Probation (29 -- 31):

The following Uniform Standards -- Conditions of Probation shall be considered and, if the circumstances of the case warrant, shall be imposed as probation conditions.

29. Clinical Diagnostic Evaluation

30. Group Meetings with Qualified Facilitator

31. Worksite Monitor

DISCIPLINARY GUIDELINES

STANDARD CONDITIONS OF PROBATION [1-14]

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, ~~respondent~~Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the ~~decision~~Decision, unless the Board determines that fingerprints were previously submitted by ~~the respondent~~Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the ~~decision~~Decision.

If ~~respondent~~Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions. Respondent shall submit proof of satisfactory completion of any criminal probation or parole that ends after the effective date of the Board's Decision. Respondent shall submit certified copies of court documents related to the expungement of any conviction(s) if not previously submitted.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of ~~the respondent's~~Respondent's compliance with the Probation Program.

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

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, ~~or~~ or declarations and verifications of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to ~~respondent's~~ Respondent's compliance with all the conditions of the Board's Probation Program.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, ~~respondent~~ Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's ~~decision~~ Decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If ~~respondent~~ Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. ~~The respondent~~ Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, ~~respondent~~ Respondent shall notify his/her employer of the probationary status of ~~respondent's~~ Respondent's license. This notification to ~~the respondent's~~ Respondent's current health care employer shall occur no later than the effective date of the Decision. ~~The respondent~~ Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation/Statement of Issues and Disciplinary Decision.

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with his/her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

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

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, ~~respondent~~ Respondent shall obtain approval from the Board of the supervision provided to ~~the respondent~~ Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify ~~the respondent~~ Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, ~~respondent~~ 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.

Upon successful completion of the course, ~~respondent~~ Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension or period when probation is tolled.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's ~~decision~~Decision.

Should ~~respondent~~Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, ~~respondent's~~Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. COST RECOVERY REQUIREMENTS

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$ ____.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by ~~respondent~~Respondent shall not relieve ~~respondent~~Respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs. 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.

If ~~respondent~~Respondent has not complied with this condition during the probationary period, and ~~respondent~~Respondent presents sufficient documentation of his/her good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from ~~the respondent~~Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, 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.

13. LICENSE SURRENDER

During probation, if ~~respondent~~Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation,

~~respondent~~Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate ~~respondent~~Respondent ~~respondent's~~ Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, ~~respondent~~Respondent ~~respondent~~ Respondent will no longer be subject to the conditions of probation.

Surrender of ~~respondent's~~Respondent's ~~respondent's~~ Respondent's license shall be considered a disciplinary action and shall become a part of ~~respondent's~~Respondent's ~~respondent's~~ Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary ~~decision~~Decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If ~~respondent~~Respondent ~~respondent~~ Respondent violates the conditions of his/her probation, the Board, after giving ~~respondent~~Respondent the ~~respondent~~ Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of ~~respondent's~~Respondent's the ~~respondent's~~ Respondent's license. If during probation, an ~~accusation~~Accusation or ~~petition to revoke probation~~Petition to Revoke Probation has been filed against ~~respondent's~~Respondent's the ~~respondent's~~ Respondent's license or the Attorney General's Office has been requested to prepare an ~~accusation~~Accusation accusation Accusation or ~~petition to revoke probation~~Petition to Revoke Probation against ~~respondent's~~Respondent's the ~~respondent's~~ Respondent's license, the probationary period shall automatically be extended and shall not expire until the ~~accusation~~Accusation accusation Accusation or ~~petition~~Petition has been acted upon by the Board.

OPTIONAL CONDITIONS OF PROBATION [15-2524]

15. SUSPENSION OF LICENSE

Respondent is suspended from practice as a vocational nurse/psychiatric technician for _____ month(s) (period not to exceed one year) beginning on the effective date of this ~~decision~~Decision.

During suspension, all probation conditions are in full force and effect except those relating to actual practice. The period of suspension will not apply to the reduction of this probationary period. The probation shall be automatically extended for the same time period as the length of suspension.

16. EXAMINATION BY A PHYSICIAN

Within sixty (60) days of the effective date of the Decision, ~~respondent~~Respondent shall submit to a physical examination by a physician of his/her choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine ~~respondent's~~Respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Disciplinary Order prior to the examination. The cost of such examination shall be paid by ~~the respondent~~Respondent.

Respondent shall cause the physician to submit to the Board a written medical report in a format acceptable to the Board. This report shall be submitted within ninety (90) days of the effective date of the Decision. If the examining physician finds that ~~respondent~~Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board, verbally within twenty four (24) hours and in writing within five (5) working days. The Board shall notify ~~the respondent~~Respondent in writing of the examining physician's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation.

Respondent shall comply with ~~this condition~~any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance in the manner required by the Board.

17. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION

Within sixty (60) days of the effective date of the Decision, ~~respondent~~Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining ~~respondent's~~Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. The cost of such evaluation shall be paid by ~~the respondent~~Respondent.

Respondent shall cause the evaluator to submit to the Board a written report concerning ~~respondent's~~Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within ninety (90) days from the effective date of the Decision.

If the evaluator finds that ~~respondent~~Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board, verbally within twenty four (24) hours and in writing, within five (5) working days. The Board shall notify ~~the respondent~~Respondent in writing of the evaluator's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, ~~respondent~~Respondent shall participate in a therapeutic program at the Board's discretion. The cost of such therapy shall be paid by ~~the respondent~~Respondent.

18. PSYCHOTHERAPY

Within sixty (60) days of the effective date of the Decision, ~~respondent~~Respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional who has been approved by the Board. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first therapy session. Therapy sessions shall be at least once a week unless otherwise determined by the Board.

Respondent shall continue in such therapy at the Board's discretion. The cost of such therapy shall be paid by the ~~respondent~~Respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning ~~respondent's~~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 in a format acceptable to the Board within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning ~~respondent's~~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~~Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board, verbally within twenty four (24) hours and in writing, within five (5) working days. The Board shall notify ~~respondent~~Respondent in writing of the therapist's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with ~~this condition~~any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance with this condition in the manner required by the Board.

19. REHABILITATION PROGRAM

Within thirty (30) days of the effective date of the Decision, ~~respondent~~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. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within thirty (30) days of completion.

Components of the treatment contract shall be relevant to the violation and to ~~the respondent's~~Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from identified types of addictive behavior (e.g., gambling, drugs, and alcohol, etc.), use of work site monitors, participation in ~~chemical dependency~~addictive rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by ~~the respondent~~Respondent.

20. ~~CHEMICAL DEPENDENCY~~ADDICTIVE BEHAVIOR SUPPORT & RECOVERYGROUPS

Within five (5) days of the effective date of the Decision, ~~respondent~~Respondent shall begin attendance at a ~~chemical dependency~~an addictive behavior support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, Gamblers Anonymous). Verified documentation of attendance shall be submitted by ~~the respondent~~Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

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 Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

22. ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL

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

~~23. SUBMIT BIOLOGICAL FLUID SAMPLES~~

~~Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.~~

2423. TAKE AND PASS LICENSURE EXAMINATION

(Statement of Issues)

Prior to commencing practice, respondent Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decisionDecision. Respondent shall pay the established examination fees.

This probationary period shall not commence until the respondent Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Reinstatement of License)

Prior to resuming practice, ~~respondent~~ Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's ~~decision~~ Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until ~~the respondent~~ Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Current License)

Prior to resuming or continuing practice, ~~respondent~~ Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's ~~decision~~ Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until ~~respondent~~ Respondent has successfully passed the licensure examination and notice has been mailed to ~~the respondent~~ Respondent by the Board.

2524. RESTRICTIONS ON LICENSED PRACTICE

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

UNIFORM STANDARDS
RELATED TO SUBSTANCE ABUSE

UNIFORM STANDARDS – REQUIRED
CONDITIONS OF PROBATION [25 -- 28]

25. CONSENT FOR EMPLOYER & SUPERVISOR COMMUNICATIONS

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with his/her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

[Option 1]

26. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to random and directed biological fluid testing, at Respondent's cost, upon request by the Board or its designee. Respondent shall be subject to a minimum of one-hundred four (104) random tests per year within the first year of probation and a minimum of fifty (50) random tests per year thereafter for the duration of the probation term. Respondent shall make daily contact as directed by the Board to determine if he/she must submit to drug testing. Respondent shall submit his/her specimen on the same day that he/she is notified that a test is required. All alternative collection sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject his/her license to further disciplinary action.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer, and worksite monitor, if any. Respondent will be required to immediately leave work.

/Option 2/

26. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to random and directed biological fluid testing, at Respondent's cost, upon request by the Board or its designee. The frequency of testing shall be determined by the Board on a case by case basis. Respondent shall make daily contact as directed by the Board to determine if he/she must submit to drug testing. Respondent shall submit his/her specimen on the same day that he/she is notified that a test is required. All alternative collection sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject his/her license to further disciplinary action.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer, and worksite monitor, if any. Respondent will required to immediately leave work.

27. Positive Drug Test

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation and the Board shall impose the consequences set forth in Major and Minor Violations.

28. Major and Minor Violations

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
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.

If Respondent commits a major violation, the Board shall order Respondent to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused non-attendance at required meetings;
3. Failure to contact a monitor when required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If Respondent commits a minor violation, the Board shall determine what action is appropriate.

UNIFORM STANDARDS – OPTIONAL CONDITIONS OF PROBATION [3029 -- 321]

29. CLINICAL DIAGNOSTIC EVALUATION

Within thirty (30) 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.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, the Board shall order Respondent to cease practice for a minimum of 30 days pending the results of a clinical diagnostic evaluation. During such time, Respondent shall submit to random drug testing at a minimum of two (2) times per week.

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.

Respondent shall not be returned to practice until the Board determines that he/she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

30. Group Meetings with Qualified Facilitator

Upon recommendation of the clinical evaluator and/or determination by the Board, Respondent shall participate in group support meetings led by a facilitator who meets the following qualifications and requirements:

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.

The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with Respondent in the last five (5) years.

The meeting facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the dates and location of the meetings, Respondent's attendance, and Respondent's level of participation and progress.

The meeting facilitator shall report any unexcused absence within twenty-four (24) hours to the Board.

31. WORKSITE MONITOR

Respondent shall submit the name of the proposed worksite monitor within thirty (30) 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 Respondent and the worksite monitor's requirements and reporting responsibilities. If the worksite monitor terminates the agreement with the Board and Respondent, Respondent shall not practice until another worksite monitor is approved by the Board.

(Revised 6/19/07[xx/xx/xx]; Effective ~~10/29/08~~[xx/xx/xx])

BVNPT- VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[~~date~~]; Effective October 29, 2008 [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
1. Unprofessional Conduct	2878(a)	4521(a)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14
2. Incompetence and/or Gross Negligence	2878(a)(1)	4521(a)(1)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14
3. Conviction of Practicing Medicine	2878(a)(2)	4521(a)(2)	Revocation	---	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice #2524
4. False or Misleading Advertising	2878(a)(3)	4521(a)(3)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14
5. Excessive Force, Mistreatment or Abuse of Any Patient	2878(a)(4)	4521(i)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice #2524 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14 * Restricted Practice #2524 *Other Conditions
6. Failure to Maintain Confidentiality of Patient Medical Information	2878(a)(5)	4521(k)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14
7. Failure to Report Commission of Act Prohibited by Section	2878(a)(6)	4521(l)	Revocation	Revoc. Stayed: 3 Years Standard Conditions 1-14	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14

BVNPT- VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[date]; Effective October 29, 2008[date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
8. Procuring a License by Fraud or Misrepresentation	2878(b)	4521(b)	---	---	Revocation
9. Assisting With Criminal Abortion	2878(c)	4521(c)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14
10. Violating Terms of Licensing Chapter	2878(d)	4521(d)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
11. Making False Statement on Application for Initial License	2878(e)	4521(e)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
12. CONVICTION Substantially Related to Functions of License (Non-Drug Related)	2878(f)	4521(f)	Revocation or Denial of License	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice #2524 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions
13. Impersonating or Acting as Proxy for Applicant on Exams	2878(g)	4521(g)	---	---	Revocation or Denial of License
14. Impersonating a Licensee or Permitting Others to Use License	2878(h)	4521(h)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions

BYNPT- VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[date]; Effective October 29, 2008[date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
15. Assisting Physician to Violate Medical Practice Act	2878(i)	4521(j)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice #2524	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
16. Commission of Any Act Involving Dishonesty	2878(j)	4521(n)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 2524	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
17. Sexual Misconduct Related to Practice	2878(k)	4521(m)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 2524	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
18. Knowing Failure to Follow Infection Control Guidelines	2878(l)	4521(o)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 2524	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
19. Failure to Report Known Violations	2878.1	4521.2	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
20. Illegal Possession, Prescribing, Self-Administration of Controlled Substances or Dangerous Drugs	2878.5(a)	4521(a)(4)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions

BYNPF: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007 [date]; Effective October 29, 2008 [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<p>21. Illegal Use of Drugs/Alcohol Posing Danger to Public & Impairs Ability to Practice</p>	2878.5(b)	4521(a)(5)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician 16 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Restricted Practice #25 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions
<p>22. CONVICTION of Drug or Alcohol Related Crimes</p>	2878.5(c)	4521(a)(6)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Restricted Practice #25 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions

BYNPF- VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007 [date]; Effective October 29, 2008 [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<p>23. Confinement or Commitment for Addiction</p>	2878.5(d)	4521(a)(7)	Revocation	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician #16 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Psychiatric/Psychological Evaluation 17 *Psychotherapy 18 *Drug/Alcohol Rehab- 19 *Rehab Program 19 *Restricted Practice 25 *Diagnostic Evaluation 29 *Qualified Group Meetings 30 *Worksite Monitor 31 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens #23 Communications Consent 25 Drug Screens 26 Positive Drug Tests 27 Major/Minor Violations 28 *Other Conditions
<p>24. Falsify, Make Incorrect, Inconsistent or Unintelligible Entries Pertaining to Drugs</p>	2878.5(e)	4521(a)(8)	---	Revoc. Stayed: 3 Years Probation Standard Conditions 1-14 Drug Screens #23 *Communications Consent 25 *Drug Screens 26 *Positive Drug Tests 27 *Major/Minor Violations 28 *Other Conditions	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

BYNPT- VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19,2007[date]; Effective October 29,2008[date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
25. Disciplinary Action by Another State, Agency or Licensing Board	2878.8	4521.6(a)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
26. Failure to Report Child, Elder or Dependent Adult Abuse (Unprofessional Conduct)	2878(a) CCR 16 2520.1 2520.2 2520.3	4521(a) CCR 16 2577.2 2577.3 2577.4	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

Important Notes:

- Conditions of Probation Nos. 1 through 14 are standard conditions of probation. The Board requests these standard conditions of probation be imposed on all disciplinary cases resulting in probation.
- Conditions of Probation Nos. 15 through 24 are optional conditions of probation, which address specific circumstances of the case.
- Conditions of Probation Nos. 25 through 28 shall be imposed as conditions of probation for all substance abuse cases.
- Conditions of Probation Nos. 29 through 31 shall be considered for all substance abuse cases, and, if the circumstances of the case warrant, shall be imposed as probation conditions.

The Board recognizes that these disciplinary orders and conditions of probation are guidelines, and that each disciplinary case must be assessed individually. If individual circumstances exist which justify omissions or deviations from these guidelines, the Board requests that this information be duly noted in the Proposed Decision issued by the Administrative Law Judge hearing the case. This will help the Board to better evaluate the Proposed Decision and to make an official Decision which accurately reflects the facts of each specific disciplinary matter.

* Optional Conditions of Probation may be added based upon the underlying cause of discipline.

(Revised 6/19/07[xx/xx/xx]; Effective 10/29/08[xx/xx/xx])

**BUSINESS AND PROFESSIONS CODE
SECTIONS 315 - 315.4**

315. Establishment of Substance Abuse Coordination Committee; Members; Duties

- (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.
- (b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government **Code**).
- (c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:
 - (1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.
 - (2) 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 paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) 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.
 - (3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
 - (4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, 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.
 - (5) 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.
 - (6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
 - (7) 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.
 - (8) Procedures to be followed when a licensee tests positive for a banned substance.
 - (9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

- (10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the 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 unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.
- (11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.
- (12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
- (13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the 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; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.
- (14) 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.
- (15) 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.
- (16) 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.

315.2. Cease Practice Order

- (a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.
- (b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) A cease practice order under this section shall not constitute disciplinary action.
- (d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

315.4. Cease Practice Order for Violations of Probation or Diversion Program

- (a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.
- (b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) A cease practice order under this section shall not constitute disciplinary action.
- (d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

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 2010



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
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

Mona Maggio
Board of Optometry

Donald Krpan, D.O.
Osteopathic Medical Board/Naturopathic Medicine

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Munoz
Respiratory Care Board

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#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.

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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, randomness, 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 drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. 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.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. 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.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. 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.

#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 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.

#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 or be another health care professional if no monitor with like practice is available.
3. The worksite monitor 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) year.

#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:

Specimen Collectors:

- a) 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.
- b) 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.
- c) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) 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.
- e) 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.
- f) 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.

- g) 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.
- h) 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.
- i) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) 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.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
 - a) 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.
 - b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.
 - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

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- d) 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.

Treatment Providers

1. Treatment facility staff and services must have:
 - a) Licensure and/or accreditation by appropriate regulatory agencies;
 - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
 - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
 - e) Means to provide treatment/progress documentation to the provider.
2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:
- a) 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.
 - b) 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.
 - c) 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.