

**OSTEOPATHIC MEDICAL
BOARD
OF CALIFORNIA**

**Board Meeting, Thursday, May 17, 2018
10:00 a.m.**

**Chino Valley Medical Center
5451 Walnut Ave.
Conference Room
Chino, CA 91710**

OMBC Phone (916) 928-8390

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TABLE 1



OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

BOARD MEETING AGENDA AND NOTICE

Date: Thursday, May 17, 2018
Time: 10:00 a.m. – 5:00 p.m. (or until the end of business)

Location(s): **Chino Valley Medical Center**
5451 Walnut Ave.
Conference Room
Chino, CA 91710
(916) 928-8390

Teleconference Location:

San Diego Public Library Foundation
330 Park Blvd, 4th Floor
Conference Room 443
San Diego, CA 92101
(619) 238-6695

AGENDA

(Action may be taken on any items listed on the agenda and may be taken out of order, unless noticed for a certain time.) The Board plans to webcast this meeting on its website at <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical meeting location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

1. Call to Order and Roll Call / Establishment of a Quorum
2. Public Comment for Items Not on the Agenda
Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]
3. Review and Approval of January 18, 2018 Board Meeting Minutes
4. Regulations Update, Discussion, and Possible Action:
 - Initial License Fee Schedule: Add Title 16, California Code of Regulations (CCR) section 1610.5
 - Citable Offenses: Amend Title 16, CCR section 1659.31
 - Disciplinary Guidelines: Amend Title 16, CCR section 1663

5. Update, Discussion, and Possible Action:
 - SB 798 (Hill) Healing Arts: Boards – Kathleen S. Creason, Executive Director, Osteopathic Physicians and Surgeons of California (OPSC)

6. Pending Legislation: Discussion and Possible Action:
 - AB 505 (Caballero) Physicians and Surgeons: Probation
 - AB 710 (Wood) Cannabidiol
 - AB 1368 (Calderon) Health Professionals: Authorization Forms
 - AB 1752 (Low) Controlled Substances: CURES Database
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 - AB 1795 (Gipson) Emergency Medical Services: Behavioral Health Facilities And Sobering Centers
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 - AB 2783 (O'Donnell) Controlled Substances: Hydrocodone Combination Products: Schedules
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 - SB 1426 (Stone) Pharmacists: Authority to Prescribe and Dispense Dangerous Drugs and Devices
 - SB 1448 (Hill) Controlled Substances: Healing Arts Licensees: Probation Status: Disclosure

7. Presentation on the Bureau of Cannabis Control – Sara Gardner, Attorney III

8. Board President's Report
9. Executive Director's Report – Angie Burton
 - Licensing
 - Staffing
 - Budget
 - CURES
 - Enforcement Report / Discipline – Corey Sparks
10. Suggestions for Future Agenda Items
11. Future Meeting Dates
12. Adjournment

For further information about this meeting, please contact Machiko Chong at 916-928-7636 or in writing 1300 National Drive, Suite 150 Sacramento, CA 95834. This notice can be accessed at www.ombc.ca.gov

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting. (Gov. Code, sections 11125, 11125.7(a).)

In accordance with the Bagley Keene Open Meeting Act, all meetings of the Board are open to the public and all meeting locations are accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting, may make a request by contacting Machiko Chong, ADA Liaison, at (916) 928-7636 or via e-mail at Machiko.Chong@dca.ca.gov or may send a written request to the Board's office at 1300 National Drive, Suite 150, Sacramento, CA 95834-1991. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

TAB 2



BOARD MEETING MINUTES

Thursday, January 18, 2018

BOARD MEMBERS PRESENT: Joseph Zammuto, D.O., President
James Lally, D.O., Vice-President
Cyrus Buhari, D.O., Secretary/ Treasurer
Claudia Mercado, Board Member
Andrew Moreno, Board Member
Megan Blair, Board Member

STAFF PRESENT: Angelina Burton, Executive Director
Terri Thorfinnson, Asst. Executive Director
Sabina Knight, Esq., Legal Counsel, DCA
Machiko Chong, Executive Analyst
Corey Sparks, Lead Enforcement Analyst

BOARD MEMBERS ABSENT: Elizabeth Jensen, D.O., Board Member
Cheryl Williams, Board Member

The Board meeting of the Osteopathic Medical Board of California (OMBC) was called to order by President, Joseph Zammuto, D.O. at 10:10 a.m. at Department of Consumer Affairs (HQ2) - 1747 North Market Blvd., Sacramento CA 95834.

Dr. Zammuto called for a moment of silence to acknowledge the unexpected passing of the Board's Medical Consultant and former Executive Director, Dr. Donald J. Krpan.

1. Roll Call

Mrs. Chong called roll and Dr. Zammuto determined that a quorum was present.

2. Public Comment for Items Not on the Agenda

No Public Comment was received by the board.

3. DCA Update – Dean R. Grafilo, Director, DCA

Dean R. Grafilo, Director, DCA, introduced himself and apologized for the delay in introduction to the Board. He briefly discussed the revisions to the Executive Staff within DCA Headquarters and noted that he believes these changes will be of benefit to the continuity of the Board.

Christopher Castrillo added that DCA has added additional dates to the required board member trainings for the 2018 year (March 21st, June 6th, September 18th, and December 5th). Reminder emails will also be sent out so that all newly appointed and reappointed members may attend as a requirement.

Dr. Zammuto expressed concerns with the Budget Change Proposal (BCP) process noting that the lack of expansive explanation provided at the time of the BCP denial is not beneficial to the Board as it does not indicate what the Board should change moving forward in order to ensure a packet approval. Additionally, he addressed the concern with the lack of budgetary information that has been provided to ensure that the Board may properly function throughout the year.

Mr. Castrillo thanked Dr. Zammuto for his concerns and noted that although he was not completely aware of the BCP process, he stated that once he is able to better understand what goes into the BCP procedure from commencement through completion he would be more than willing to assist the Board in the submission process.

With regards to the budgetary process and delivery of the information to the individual boards/ bureaus /committees the Budget Office is working tirelessly to ensure that the Fi\$Cal System that has recently gone live is able to produce the most accurate information in a timely manner.

4. Election of Officers

Board President

- Dr. Zammuto asked if there were any motions/nominations for election of Board President.
- Joseph Zammuto, D.O. was nominated for President
- Dr. Zammuto opened the floor to additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mr. Moreno, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None

- **Absent** –Dr. Jensen, Mrs. Williams
- Dr. Zammuto was unanimously elected for Board President.

Vice President

- Dr. Zammuto asked if there were any motions/nominations for election of Board Vice President.
- James Lally, D.O. was nominated for Vice President
- Dr. Zammuto opened the floor to additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mr. Moreno, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** –Dr. Jensen, Mrs. Williams
- Dr. Lally was unanimously elected for Board Vice President.

Secretary/Treasurer

- Dr. Zammuto asked if there were any motions/nominations for election of Secretary/Treasurer
- Cyrus Buhari, D.O. was nominated for Secretary/Treasurer
- Dr. Zammuto opened the floor to any additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mr. Moreno, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** –Dr. Jensen, Mrs. Williams
- Dr. Buhari was unanimously elected as Secretary/Treasurer.

5. Administrative Hearings

10:30 a.m.

- Anthony Benjamin Karam, D.O. (20A 9178)– Petition for Reinstatement of Revoked License
- Arsen Nalbandyan, D.O. (20A 9339) – Petition for Early Termination of Probation

The Office of Administrative Hearing (OAH) Administrative Law Judge (ALJ) Danette Brown conducted the above hearings.

6. Closed Session

The Board met in closed session to deliberate on the Petitions for Early Termination of Probation and Reinstatement of Revoked License of the licensees listed above pursuant to Government Code section 11126(c)(3).

Return to Open Session

7. Review and Approval of Minutes

Dr. Zammuto called for a motion regarding approval of the Board Meeting minutes of October 7, 2016.

- **Motion to approve the October 19, 2017 Board meeting minutes with no corrections. Motion** – Dr. Lally **Second** – Mrs. Mercado
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mr. Moreno, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Mrs. Williams
- Motion carried to approve minutes with no corrections.

8. President-elect Report

Dr. Zammuto had nothing to report, however he used this time to pay tribute to the late Dr. Krpan opting to play a recording of the Lifetime Achievement Award presented to him by the American Osteopathic Foundation (AOF) in 2010.

9. Naturopathic Medicine Committee Update – David Field, N.D., Chair

David Field, N.D., Chair and Dara Thompson, N.D. presented an informative presentation regarding the Naturopathic Medicine Committee (NMC) and what they would like to accomplish.

Ms. Mercado inquired what the NMC was seeking from the Board and was informed that the presentation was merely for informational purposes. Additionally, the NMC

wanted to provide other boards/bureaus/committees with supplementary knowledge of the innerworkings of how all health professions correlate with each other with respect to providing the best patient care possible.

Ms. Mercado also inquired how the NMC was considering handling the recent implementation of the medicinal marijuana laws.

Rebecca Mitchell, Executive Officer, NMC, stated that she would be meeting with representatives from the Bureau of Cannabis Control (BCC) to see if they would be willing to provide NDs with recommendation privileges so that they could at the very least consult with patients regarding the use of cannabis.

10. Budget Update – Mark Ito, DCA Budget Office

Mark Ito provided the Board with a detailed overview of the Board's current fund condition for the fiscal year thus far.

Dr. Lally inquired how much control the Board really had over the budget line items, and was informed by Mr. Ito that if the Board is able to absorb the costs then there is a possibility that the budget may be realigned, however if not then the Budget Office will have to sit with Mrs. Burton to discuss the Board's options.

The Board is currently working on trying to absorb the cost of the high-density file system that is needed for the remodel, therefore the Budget Office is working closely with the Board to ensure that the procurement is possible.

11. Title 16 California Code of Regulations:

Discussion section 1663 - Disciplinary Guidelines and Uniform Standards

Ryan Marcroft, Deputy Director Legal Affairs, Department of Consumer Affairs, provided the Board with an update on the current status the California Code of Regulations, Title 16, section 1663 - Disciplinary Guidelines and Uniform Standards. He noted that the regulation would update the Board's Disciplinary Guidelines, incorporate the Uniform Standards into the Disciplinary Guidelines, and would also set standards regarding proposed disciplinary decisions involving sexual misconduct cases.

He informed the Board that the initial packet was originally submitted to the Office of Administrative Law (OAL) in 2016, however that packet was disapproved by OAL and at that time, provided the Board with in depth documentation regarding their decision for the packet denial.

Currently, OMBC staff, legal counsel, and the DCA legislative unit are working together to amend the packet and address the concerns presented by OAL. The language will then be brought back to the Board for approval so that it may be resubmitted for consideration and implementation. Mr. Marcroft's hope is to have the drafted documentation completed for presentation to the Board for discussion at the May Board meeting.

Dr. Lally inquired on what the Board would be including and/or approving at the time the language is brought forth using the Board's no tolerance for sexual misconduct as an example, and was informed by Mr. Marcroft and Ms. Knight that this would be the avenue that the Board would use to implement and enforce those disciplinary matters more specifically revocation of licensure when sexual misconduct occurred.

Mrs. Burton thanked both Ms. Knight and Mr. Marcroft for the assistance that has been provided to the Board with regards to the drafting of the Board's regulatory packets.

Discussion section 1606 - Notice to Consumers

Mrs. Thorfinnson provided the Board with background information regarding the notice to consumers regulation packet. She noted that she incorporated into the notice additional verbiage that pertained specifically to the OMBC.

Dr. Zammuto inquired if the Board would be distributing the finalized information to all licensed physicians of the Board via email once the regulation was approved. Mrs. Thorfinnson advised that the Board would be sending out an email blast to all physicians regarding the change in posting requirements, and noted that because email address disclosure is optional and infrequently updated by licensees, it may be difficult to reach all physicians accordingly. However, a list serve subscription list for *physicians only* has been created so that the Board is able to acquire accurate email information for notifications. Ms. Knight also recommended that upon language approval and acceptance by OAL the Board also updates its website so that it is listed there.

Dr. Lally inquired how we would reach those consumers of Spanish speaking origin or any other language for that matter. Ms. Knight recommended that the Board look into language finalized by other boards to see how non-English speaking consumers are included. Mrs. Burton noted that during regulatory implementation the language need not be printed in any other language being that the language is primarily for the physician for the purpose of posting in the office. Because of that the physician may make language specific postings for their specific patient's language if they feel that it is necessary.

Motion to approve the proposed modified text for a 45-day public comment period, and if there are no adverse comments received

during the commenting period delegate to the executive director the authority to adopt the proposed regulatory changes as modified and complete the rule making file including making any technical or non-substantive changes. Motion – Dr. Lally, Second – Dr. Buhari

- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mr. Moreno, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** –Dr. Jensen, Mrs. Williams
- Motion carried to accept changes as presented

12. Discussion Regarding Guidelines for the Recommendation of Cannabis for Medical Purposes, Medical Board of California (MBC)

The Board decided that the best course of action while it awaited further discussion of the topic of the recommendation of cannabis for medical purposes was to add a link to the guidelines created by MBC on the Board's site for review by licensees.

13. Executive Director's Report

Angie Burton updated the Board on licensing statistics, staffing, Board budget activity, and diversion program statistics which were included in the board packet.

Dr. Zammuto inquired on the process and status of solicitations for a new medical consultant for the Board and was informed by Mrs. Burton that the Board has created and posted an Examination and Certification Online System (ECOS) listing for the position to begin the process of filling the vacancy and noted that the Board should consider conducting interviews utilizing at least a 2-person panel once they are ready to begin interviewing candidates.

CURES – Board members were provided with a breakdown of the CURES percentages.

Enforcement/ Discipline - The Board's Lead Enforcement Analyst Corey Sparks presented the enforcement report to the Board.

14. Agenda Items for Next Board Meeting

- CMA Medical Marijuana Bureau (*Ms. Mercado*)

15. Future Meeting Dates

- Thursday, May 17, 2018 @ 10:00 am - Pomona, CA
- Thursday, September 27, 2018 @ 10:00 am – San Diego, CA
- Thursday, January 17, 2019 @ 10:00 am - Sacramento, CA
- Thursday, May 16, 2019 @ 10:00 am – Pomona, CA

16. Adjournment

There being no further business, the meeting was adjourned at 3:45 p.m.

TAB 3

Section 1610.5 – Initial License Fee Schedule

Proposed Language

Changes to the current language are shown by underlining for new text and strikethrough for deleted text.

The Osteopathic Medical Board of California hereby amends its regulations in Article 4, Division 16 of Title 16 of the California Code of Regulations to read as follows:

1. To amend Section 1610.5. of Division 16 of Title 16 of the California Code of Regulations to read as follows:

Article 4. Physician and Surgeon Applications

§1610.5 Initial License Fee Schedule

When the Board determines an application is complete and approves the application, the licensee shall be charged an initial license fee that is prorated. The applicant's initial license fee and renewal shall be determined based on the applicant's birth month, as follows:

(a) The initial licensing fee shall be prorated by the number of months of licensure based on the license expiring at midnight on the last day of the applicant's birth month. No license shall be issued for less than 12 months or more than 24 months.

(b) Once the initial license fee has been paid; thereafter, the full license fee shall be due biennially before the last day of the licensee's birth month.

Initial Licensing Fee Schedule in Dollars

<u>Birth Month</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
<u>January</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>
<u>February</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>
<u>March</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>
<u>April</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>
<u>May</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>
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<u>July</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>
<u>August</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>
<u>September</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>	<u>367</u>
<u>October</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>	<u>384</u>
<u>November</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>	<u>400</u>
<u>December</u>	<u>400</u>	<u>384</u>	<u>367</u>	<u>350</u>	<u>334</u>	<u>317</u>	<u>300</u>	<u>284</u>	<u>267</u>	<u>250</u>	<u>234</u>	<u>217</u>

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats, 1923, p. xciii), Sections 1, 2018 and 3600-1, and Business and Professions Code. Reference: Sections 152.5, 152.6, and 2455 Business and Professions Code.



MEMORANDUM

DATE	May 17, 2018
TO	Board Members
FROM	Terri Thorfinnson, J.D., Assistant Executive Director
SUBJECT	Proposed Regulatory Language for Initial Fee Schedule

Policy Issue: *Current initial licensing fee schedule needs to be amended so it can be implemented by Breeze to create an online licensing process for the Board.*

Background: The history of the current initial licensing prorated fee schedule is that it was implemented to ensure that the workload was spread out over two years and prevent staff from having to process renewals every month. In the early days of the Board, there were three staff who performed licensing, renewals, enforcement and administration. The workload would have been impossible to handle if they had to process renewals every month. Spreading out the renewals over a two year period reduced the workload to a point that was manageable. Over the past decade, the workload has dramatically increased due to the growing need for D.O.'s in the health care system. The Board has expanded its staff and continues to need to expand its staffing further to meet the increasing workload.

In 2013, DCA replaced its CAS data base system with Breeze data base system during Release 1. In 2016, the Board implemented an online renewal system in Breeze. The Board wanted to also have their two step initial licensing process online: step one is the application and step two is the billing and payment. Since the Board's even/odd birth month schedule was not in regulations, the Board could not implement the billing portion online. The Board decided to wait until such time when the regulations were in place. In the meantime, the Board wrote proposed language to implement the prorated license fee based on our policy of even birth month renewal every even year and odd birth month renewal every odd year. However, Breeze could not implement an algorithm to support this. Therefore, in order to allow OMBC to move to an online initial license application process, we need to change the proposed regulations to proceed with a birth month renewal biennially with the first licenses being issued for no less than 12 months and no more than 24 months.

So, we are proposing a simpler licensing fee prorated model that can be implemented by Breeze. This new licensing fee schedule reduces the complexity by eliminating the even-odd months, but retains the birth month prorated system. The exact fee schedule is included in the proposed language, which facilitates the Breeze implementation. Once

this regulation is approved, the Board can begin the Breeze implementation of an online initial licensing process.

Discussion: Automating our initial licensing process is a top priority for the Executive Director. Automating our licensing system will create workload efficiencies and streamline our licensing process. Although the entire initial licensing process will not be 100% automated due to the number of primary source documents that are required, having the application online and the ability for applicants to pay by credit card would be both convenient and more efficient.

Eliminating the even-odd years system will impact the renewal workload. Existing licensees' renewals will remain unchanged. The impact will be on issuance of licenses and the prorated fee charged. With the elimination of the even/odd months proration, the new renewals will occur every month, not every two months; the number of renewals each month is expected to increase as well as a result of the elimination of the even/odd month proration. However, the impact will occur after the self-certification and audit system for renewals is implemented, which will make the workload manageable. Overall, this new system would be simpler and more efficient for both staff and licensees.

The current licensing workload exceeds our staffing levels. The Board each year requests additional staff to address current workload deficiencies and, thus far, those requests have been denied. In the meantime, automating the initial licensing process would assist the Board in partially managing the increasing licensing workload. This proposed language would facilitate the Breeze implementation of the initial licensing process. This is the primary reason to approve this proposed language.

Recommendation: Approve proposed regulatory language for the initial license fee schedule.

Section 1659.31 – Citable Offenses



MEMORANDUM

DATE	May 17, 2018
TO	Board Members
FROM	Terri Thorfinnson, J.D.
SUBJECT	Proposed Citation and Fine Regulatory Language

Policy Issue: Board needs to update its citation authority to enforce existing statutes and regulations and delete ones that are disciplinary in nature.

Background: The Board has a current list of statutes and regulations for which it has the authority to issue citations and fines for non-compliance. Citations and fines are technically not a form of discipline. However, they are a way that the Board can enforce statutes and regulations for which the Board would not otherwise consider formal discipline. Over the years, many laws have been passed and the Board has not updated its list of statutes and regulations for which it has authority to issue citations and fines. Citations and fines are sometimes the only way the Board can enforce compliance with a statute or regulation. Many of the statutes within the Business and Professions Code, Health and Safety Code and other codes rely on the Board to enforce them.

Unlike formal discipline in which the Board members make the final determination for formal discipline, the Executive Director has the final authority to issue citations and fines and make determinations based on appeal. Citation and fines are not meant to replace formal discipline and are not meant to be used for serious unprofessional conduct, but they can enhance the Board's overall enforcement and protection of public safety. Citations and fines make physicians and surgeons aware of their violation(s) of statute or regulations and the fines provide an added compliance incentive.

Discussion: The attachments include the proposed language, a spreadsheet that displays both existing and proposed citation authority and compares the Medical Board of California's citations with those of the Osteopathic Medical Board, a reference sheet that lists the proposed citable offenses to be added to and deleted from the Board's citation and fine authority regulation Title 16 California Code of Regulations(CCR) section 1659.31.

Adding these citable offenses to the Board's citation and fine authority will significantly strengthen the Board's overall enforcement and regulation of the profession. These additional offenses provide the Board with the additional enforcement tools it needs to

enforcement violations of statutes and regulations. The six citable offenses being deleted are causes of action for formal discipline and should not be among the citable offenses and for this reason are being proposed to be deleted from the code.

Recommendation: Approve the proposed regulatory language.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Citable Offenses Proposed Language

Changes to the current language are shown by underlining for new text and strikethrough for deleted text.

The Osteopathic Medical Board of California hereby amends its regulations in Division 16 of Title 16 of the California Code of Regulations to read as follows:

1. Amend Section 1659.31 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

16 CCR § 1659.31 Citable Offenses.

The amount of any fine to be levied by the executive director shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and also the extent to which such person has mitigated or attempted to mitigate any damage or injury caused by the violation. The fine shall be within the range set forth below.

(a) The executive director may issue a citation under section 1659.30 for a violation of the provisions listed in this section. The fine for a violation of the following code sections shall not exceed \$2500, except as specified in items ~~3432~~ and ~~4140~~ below:

- (1) Business and Professions Code Section 119
- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 475(a)(1)
- ~~(5) Business and Professions Code Section 490~~
- ~~(6) Business and Professions Code Section 580~~
- ~~(7) Business and Professions Code Section 581~~
- ~~(8) Business and Professions Code Section 582~~
- ~~(9) Business and Professions Code Section 583~~
- ~~(10)~~ (5) Business and Professions Code Section 650
- (6) Business and Professions Code Section 650.1
- ~~(11)~~ (7) Business and Professions Code Section 651
- ~~(12)~~ (8) Business and Professions Code Section 654
- ~~(13)~~ (9) Business and Professions Code Section 654.1
- ~~(14)~~ (10) Business and Professions Code Section 654.2
- ~~(15)~~ (11) Business and Professions Code Section 655.5
- ~~(16)~~ (12) Business and Professions Code Section ~~655.6~~ 655.7
- ~~(17)~~ (13) Business and Professions Code Section 702
- ~~(18)~~ (14) Business and Professions Code Section 730
- ~~(19)~~ (15) Business and Professions Code Section 732

~~(20)~~(16) Business and Professions Code Section 802~~(b)~~(a)
~~(21)~~(17) Business and Professions Code Section 802.1
~~(22)~~(18) Business and Professions Code Section 810
~~(23)~~(19) Business and Professions Code Section 2021
~~(24)~~(20) Business and Professions Code Section 2052
~~(25)~~(21) Business and Professions Code Section 2054
~~(26)~~(22) Business and Professions Code Section 2216
~~(27)~~(23) Business and Professions Code Section 2216.1
~~(28)~~(24) Business and Professions Code Section 2216.2
~~(29)~~(25) Business and Professions Code Section 2221.1
(26) Business and Professions Code Section 2225 (e)
(27) Business and Professions Code Section 2234(h)
~~(30)~~(28) Business and Professions Code Section 2236
~~(31)~~(29) Business and Professions Code Section 2238
~~(32)~~(30) Business and Professions Code Section 2240
(31) Business and Professions Code Section 2243
~~(33)~~(32) Business and Professions Code Section 2244 (\$1,000)
~~(34)~~(33) Business and Professions Code Section 2250
~~(35)~~(34) Business and Professions Code Section 2250
~~(35)~~(35) Business and Professions Code Section 2255
~~(36)~~(36) Business and Professions Code Section 2256
~~(37)~~(37) Business and Professions Code Section 2257
~~(38)~~(38) Business and Professions Code Section 2259
~~(39)~~(39) Business and Professions Code Section 2261
~~(40)~~(40) Business and Professions Code Section 2262 (\$500)
~~(41)~~(41) Business and Professions Code Section 2263
~~(42)~~(42) Business and Professions Code Section 2264
~~(43)~~(43) Business and Professions Code Section 2266
~~(44)~~(44) Business and Professions Code Section 2271
~~(45)~~(45) Business and Professions Code Section 2272
(46) Business and Professions Code Section 2273
(47) Business and Professions Code Section 2274
~~(47)~~(48) Business and Professions Code Section 2276
(49) Business and Professions Code Section 2278
~~(48)~~(50) Business and Professions Code Section 2285
(51) Business and Professions Code Section 2286
(52) Business and Professions Code Section 2305
(53) Business and Professions Code Section 2400
~~(49)~~(54) Business and Professions Code Section 2415
(55) Business and Professions Code Section 2426
(56) Business and Professions Code Section 2440
~~(58)~~(57) Business and Professions Code Section 2454.5
~~(50)~~(58) Business and Professions Code Section 2456.1
(59) Business and Professions Code Section 2457.5

- (60) Business and Professions Code Section 3516
- (61) Business and Professions Code Section 4080
- ~~(52)~~(62) Business and Professions Code Section 17500
- (63) Civil Code 56.10
- (64) Health and Safety Code Section 102795
- (65) Health and Safety Code Section 102800
- (66) Health and Safety Code Section 103785
- (67) Health and Safety Code Section 109275
- (68) Health and Safety Code Section 109277
- (69) Health and Safety Code Section 109278
- (70) Health and Safety Code Section 109282
- (71) Health and Safety Code Section 11165.1 (a) (1) (A) (i)
- (72) Health and Safety Code Section 120250
- (73) Health and Safety Code Section 120370 (a)
- (74) Health and Safety Code Section 121148
- (75) Health and Safety Code Section 121362
- (76) Health and Safety Code Section 121363
- ~~(53)~~(77) Health and Safety Code Section 123110
- (78) Penal Code Section 11166
- ~~(54)~~(79) Title 16 Cal. Code Regs. 1604
- (80) Title 16 Cal. Code Regs. 1610.5
- ~~(55)~~(81) Title 16 Cal. Code Regs. 1633
- (82) Title 16 Cal. Code Regs. 1635
- (83) Title 16 Cal. Code Regs. 1636
- (84) Title 16 Cal. Code Regs. 1641
- ~~(56)~~(85) Title 16 Cal. Code Regs. 1685
- (86) Title 17 Cal. Code Regs. 2500

(b) In his or her discretion, a board official may issue a citation under Section 1659.31 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

~~(b)~~ (c) Notwithstanding the administrative fine amounts specified in subsection (a), a citation may include a fine between \$2501 and \$5000, if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person;
2. The cited person has a history of two or more prior citations of the same or similar violations;
3. The citation involves multiple violations that demonstrate a willful disregard of the law;
4. The citation involves a violation or violations perpetrated against a senior citizen or a disabled person.

Note: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY

1. New section filed 9-6-2005; operative 10-6-2005 (Register 2005, No. 36).
This database is current through 3/24/17 Register 2017, No. 12
16 CCR § 1659.31, 16 CA ADC § 1659.31

Citations added

BPC 650.1 Unearned rebates, refunds and discounts

BPC 655.7 Unearned Rebates, Refunds and Discounts

BPC 802 (a) Failure to Report Settlements to the Board

BPC 2052 Unlicensed Practice by Physician and Surgeon (due to inactive, suspended, revoked, or delinquent and expired license)

BPC 2225 (e) Failure to Comply with Investigation

BPC 2234 (h) Unprofessional Conduct

BPC 2273 Employment of Runners, Cappers or Steerers or Persons Procure Patients

BPC 2274 Improper Use of Certificate or Letters, Prefix, Affix, Suffix or Use of D.O.

BPC 2278 Using title Doctor or Dr. and Omitting Type of Certificate held

BPC 2286 Violation of Moscone-Knox Professional Corporation Act (Note: authority to cite for failure to report address change to board CCR 1604 covers Fictitious name permits cite and fine authority.)

BPC 2305 Discipline by Other State that would be Grounds for Discipline in CA.

BPC 2400 Corporate Exemption for Services Provided to Charitable Institutions

BPC 2426 Required Reporting of Financial Interests and Definition of Financial Interests

BPC 2440 Military Exemption Practice Restrictions

BPC 2457.5 Unconscionable Fee for Services

BPC 3516 Conditions and Restrictions on Physician Assistant Supervision

BPC 4080 Authority of Inspectors to Inspect Dangerous Drugs/Devices

BPC 4081 (a) All Records Pertaining to Dangerous Drugs/Devices Open to Inspection

CIV 56.10 Disclosure of Medical Information by Provider

HSC 11165.1 (a) (1) (A) (i) CURES Registration

HSC 102795 Duty of Registering Death

HSC 102800 Required Timeframe for Registering Death

HSC 103785 Vital records Requirements—Non-Compliance is Misdemeanor

Reference Sheet for OMBC Citations Added

HSC 109275 Failure to Inform Patients of Alternative Forms of Treatment

HSC 109277 Failure to Post Sign Requiring Provider to Offer Alternative Breast Cancer Treatment

HSC 109278 Failure to Inform Patients of Symptoms and Diagnosis Methods for Gynecological Cancer

HSC 109282 Failure to Post Sign Requiring Provider to Inform Alternative Treatments for Prostate Cancer

HSC 120250 Requirement to Report Infectious Disease to Health Officer

HSC 120370 (a) Child Immunization Exemption Requirements

HSC 123148 Patient Access to Health Records

HSC 121362 Tuberculosis Reporting Requirements to Local Health Officer

HSC 121363 Tuberculosis Examination or Referral Requirements of Household Contacts

HSC 11165.1 (a) (1) (i) CURES Registration and use requirement

PC 11166 Mandated Reporting for Child Abuse Note: PC section 11166.02 defines who are mandatory reporters—physicians and surgeons are mandatory reporters.

CCR 16 1610.5 Notice to Consumers

CCR 16 1635 Required CME

CCR 16 1636 CME Progress Report (self-certification form completion)

CCR 16 1641 Sanctions for Non-Compliance

CCR 17 2500 Diseases and Conditions Reportable to Local Health Officer

Citations Deleted

BPC 490 Conviction of a crime—substantial relationship required

BPC 580 Selling of medical degree

BPC 581 Unlawful procurement of medical credentials

BPC 582 Use of fraudulent records

BPC 583 False statement in affidavits

BPC 2242 Prescribing drugs without a prior examination

Code	Section	MBC	OMBC	Description	Notes
BPC	119	yes	yes	Requirements and conditions of invalid licenses	
BPC	125	yes	yes	Aiding unlicensed practice of medicine	
BPC	125.6	yes	yes	Discrimination in rendering service	
BPC	475(a)(1)	yes	yes	False statements in license application	
BPC	490	no	yes	Conviction of a crime - substantial relationship required [note: delete]	
BPC	580	no	yes	Selling of medical degree [note: delete]	
BPC	581	no	yes	Unlawful procurement of medical credentials [note: delete]	
BPC	582	no	yes	Use of fraudulent records [note: delete]	
BPC	583	no	yes	False statements in affidavits [note: delete]	
BPC	650	yes	yes	Obtaining any fee	
BPC	650.1	yes	no	Unearned rebates, refunds and discounts	
BPC	651	no	yes	Licensee disseminates false, misleading, or deceptive statement	
BPC	654	yes	yes	Prohibited arrangements: opticians and physicians	
BPC	654.1	yes	yes	Prohibited referrals	
BPC	654.2	yes	yes	Prohibited referrals and billings	
BPC	655.5	yes	yes	Solicitation of payments for laboratory services	
BPC	655.6	no	yes	Billing for cytologic examination of gynecologic services [note: repealed content added to 655.7]	
BPC	702	yes	yes	Prohibited practice	
BPC	725	no	no	Excessive prescribing and excessive treatments [note: discipline--do not add]	
BPC	730	yes	yes	Required certification	
BPC	732	yes	yes	Refund of payment	
BPC	802(a)	yes	no	Failure to report settlements to Board [note: change from (b) to (a)]	
BPC	802.1	yes	yes	Reporting requirements for physicians	
BPC	810	yes	yes	Unprofessional conduct (insurance fraud)	
BPC	2021	yes	yes	Information for directory	
BPC	2052	yes	no	Unlicensed Practice by Physician and Surgeon (due to inactive, suspended, revoked, or delinquent and expired license)	
BPC	2054	yes	yes	Unlawful representation as a physician	
BPC	2216	no	yes	Using general anesthesia in outpatient settings	
BPC	2216.1	yes	yes	Unprofessional conduct; minimum number of staff persons and with ACLS for outpatient surgery	
BPC	2216.2	no	yes	Failure to provide adequate security by liability insurance -outpatient surgery	
BPC	2221.1	yes	yes	Failure to follow infection control guidelines	
BPC	2225(e)	no	no	Failure to comply with an investigation	
BPC	2234	no	no	Unprofessional conduct, repeated failure to participate in interview while under investigation	
BPC	2236	yes	yes	Conviction of a crime	
BPC	2238	yes	yes	Violation of drug statutes	
BPC	2240	yes	yes	Outpatient settings-reporting requirements for death or emergency	
BPC	2242	no	no	Prescribing drugs without prior examination [note: discipline--do not add]	
BPC	2243	yes	yes	Failure to provide service as required by Federal Grant Agreement	
BPC	2244	yes	yes	Collection biological specimens	
BPC	2250	yes	yes	Failure to comply with requirements for sterilization	
BPC	2255	yes	yes	Violation of laws relating to patient referrals	
BPC	2256	yes	yes	Violation of laws relating to patient rights	
BPC	2257	yes	yes	Violation of laws relating to informed consent for breast cancer treatment	
BPC	2259	yes	yes	Patient information - cosmetic surgery	
BPC	2261	yes	yes	Making false statements	
BPC	2262	yes	yes	Alteration of medical records	
BPC	2263	yes	yes	Violation of professional confidence	
BPC	2264	yes	yes	Aiding unlicensed practice of medicine	
BPC	2266	yes	yes	Records maintenance	
BPC	2271	yes	yes	False or misleading advertisement	
BPC	2272	yes	yes	Advertising without use of name	
BPC	2273	yes	no	Employment of runners, cappers or steerers or persons procure patients	
BPC	2274	yes	no	Improper use of certificate or letters, prefix, affix, suffix	
BPC	2276	no	yes	Use of D.O	
BPC	2278	no	no	Using "Doctor" or "Dr." and omitting type of certificate held	
BPC	2285	yes	yes	Practice under false or fictitious name	
BPC	2286	yes	no	Violation of the Moscone-Knox Professional Corporation Act	
BPC	2305	yes	no	Discipline imposed by another state	
BPC	2400	yes	no	Corporation exemption conditions	
BPC	2415	yes	yes	Fictitious name permits	
BPC	2426	yes	no	License renewal - financial interest disclosure requirement	
BPC	2440	yes	no	Military exemption practice restrictions	
BPC	2441	yes	no	Disability status [note: Bd does not have status]	
BPC	2454.5	no	yes	Adoption and administration of Continuing Education Standards	
BPC	2456.1	no	yes	Expiration and renewal of certificate	
BPC	2457.5	no	no	Unconscionable fee for services	
BPC	3516	yes	no	Conditions and restrictions on PA supervision	
BPC	4080	yes	no	Authority of inspectors to inspect dangerous drugs and devices	
BPC	4081(a)	yes	no	All records pertaining to dangerous drugs/devices open to inspection	
BPC	17500	yes	yes	False and misleading advertisement	
Civil	56.10	yes	no	Disclosure of medical information by provider	
HSC	11165.1(a)(1)(A)(i)	yes	no	CURES registration	
HSC	102795	yes	no	Duty of registering death	
HSC	102800	yes	no	Required timeframe for registering death	
HSC	103785	yes	no	Vital records requirements--Non-compliance is misdemeanor	
HSC	109275	yes	no	Failure to inform patient of alternative breast cancer treatments	
HSC	109277	yes	no	Failure to post sign requiring provider to offer alternative breast cancer treatments	
HSC	109278	yes	no	Failure to inform patient of symptoms and diagnosis methods for gynecological cancers	
HSC	109282	yes	no	Failure to post sign requiring provider to inform alternative treatments for prostate cancer	
HSC	120250	yes	no	Requirement to report infectious disease to health officer	
HSC	120370(a)	yes	no	Child immunization exemption requirements	
HSC	121362	yes	no	Tuberculosis reporting requirements	
HSC	121363	yes	no	Tuberculosis examination requirements	
HSC	123110(a), (b)	yes	yes	Records request compliance	
HSC	123148	yes	no	Patient access to health records	
PC	11166	yes	no	Mandated reporting for child abuse. Note: PC section 11166.02 defines physicians and surgeons as mandatory reporters	
CCR	1604	no	yes	Filing of addresses by licensee	
CCR	1610.5	no	no	Notice to consumer of licensing board (OMBC)	
CCR	1633	no	yes	Minimum standards for infection control	
CCR	1635	no	no	CME requirements (OMBC only)	
CCR	1636	no	no	CME Progress Report (self-certification)	

CCR	1641	no	no	Sanctions for CME non-compliance
CCR	1685	no	yes	Display of name and earned degree
CCR 17	2500	yes	no	Reportable diseases or conditions to local health authority

Section 1663– Disciplinary Guidelines



MEMORANDUM

DATE	May 17, 2018
TO	Board Members
FROM	Terri Thorfinnson, J.D.
SUBJECT	Proposed Updated Disciplinary Guidelines and Sexual Offenses Regulatory Language

Policy Issue: Board needs to update its Disciplinary Guidelines and Add Stronger Sexual Exploitation and Sexual Offenses Disciplinary Language

Background: The Disciplinary Guidelines have not been updated in the regulation since 1996. These updates were included in prior Uniform Standards for Substance Abusing Licensees regulatory packets, which were rejected by the Office of Administrative Law. To expedite the implementation of these changes, the Uniform Standards language was removed to be dealt with in a future regulatory package. These regulations also include stronger sexual offense and sexual exploitation language that would require revocation without stay for these violations.

Discussion:

Strengthening Sexual Exploitation and Sexual Offenses Discipline

The Board has already approved this language in past regulatory packages, this is a more detailed explanation of what the Board's policy is towards violations that include sexual contact, sexual exploitation and sexual offenses. See the proposed language that includes the proposed amendment to Title 16 1663.2.

The stronger sexual offense language is a combination of two separate statutory violations. First, the Education Code Section 44010 lists what constitutes "sexual offenses" including statutory inclusion of the statutory list of violations that would require someone to register as a "sexual offender." Second, Business and Professions Code Section 729 (b) lists the violations that constitute "sexual exploitation," which includes "sexual contact" violations. BPC section 729 (b) lists various offenses that constitute sexual exploitation violations. Some violations are for one violation and some are for 2 or more violations. Adding subsection (b) would require one or more violations to be the grounds for revocation without stay. Adding this language to the Board's Disciplinary Guidelines would strengthen the Board's disciplinary actions against those who violate patient trust and commit sexual exploitation, sexual contact, and sexual offenses. Adding this amendment would require Administrative Law Judges to order revocation without stay in their orders in such matters before them.

In past Board discussions on this topic the Board has expressed a "zero tolerance" policy on this issue. Sexual exploitation of patients is not only a breach of trust by the physician and surgeon, it is also a crime that harms patients who are shocked that their physicians and surgeons would violate their trusted vow in doing no harm to their patients. Under the current statute BCP 2246 it only requires revocation for 2 or more violations. This allows for physicians and surgeons to potentially violate more patients before their license can be revoke. This does not adequately protect public safety.

Statutes

Education Code

§ 44010.

"Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

- (a) Any offense defined in Section 220, 261, 261.5, 262, 288.2, subdivision (c) of Section 290, 311.2, 313.1, 647b, or subdivision (a) or (d) of Section 647 of the Penal Code.
- (b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed before September 15, 1961, to the same extent that an offense committed before that date was a sex offense for the purposes of this section before September 15, 1961.
- (c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- (d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and before September 15, 1961.
- (e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed before September 15, 1961, to the same extent that an offense committed before that date was a sex offense for the purposes of this section before September 15, 1961.
- (g) Any offense defined in Section 286 or 288a of the Penal Code before the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed before the effective date of the amendment.
- (h) Any attempt to commit any of the offenses specified in this section.
- (i) Any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

(Amended by Stats. 2017, Ch. 167, Sec. 1. (AB 872) Effective January 1, 2018.)

Business and Professions Code

§ 729.

(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) “Intimate part” and “touching” have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

(Amended by Stats. 2011, Ch. 15, Sec. 6. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

§ 2246.

Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(Added by Stats. 2002, Ch. 1085, Sec. 22. Effective January 1, 2003.)

Disciplinary Guidelines Update

The Board has already approved the updated language to the Disciplinary Guidelines of 2019 (guidelines), so this memo highlights in more detail the proposed changes to the proposed guidelines for your review and approval. The first change is to separate the guidelines into four parts: Part I providing the overview, general considerations and definitions of types of discipline; Part II explains the Board's diversion program; Part III provides model language for disciplinary orders including the list of standard and optional terms; Part IV which adds categories for the types of violations that include standard of care administrative violations, substance abuse violations, criminal crime violations, deception/misrepresentation, dishonesty and non-serious violations of probation.

In Part III, the following new standard terms were added: # 9 notification to Board of employer and notification to employers of discipline; #10 supervision of Physician Assistants and Advanced Practice Nurses is prohibited during probation. The following new optional terms were added: a prescribing course was added to pharmacology course; professional boundary course; record keeping course; clinical assessment and training program; medical evaluation was changed to physical health evaluation; oral/practical or written exam was simplified to written examination. The biological fluid testing was deleted as a separate term and added to #33 diversion program that handles all of the testing for the Board's diversion program.

Other changes in Part IV focused on adding new violations that have been created in statute since 1996 when the guidelines were last updated. Not included in the updated language are the addition of the Uniform Standards for Substance Abusing Licensees, which are in the

process of being further amended by a DCA workgroup. There were violations that had no guidance included, so guidance was added for all violations that were missing recommended discipline. Guidance was added to the following violations: gross negligence, repeated negligent acts, insurance fraud, dishonesty, making or signing false document, false medical records, drug related conviction, violation of drug statute, furnishing drugs to an addict, self-abuse of drugs or alcohol, failure to comply with sterilization consent provisions, use of silicone, deceptive advertising, anonymous advertising, employment of runners, cappers and steerers, misuse of title, use of "M.D.," and misuse of "D.O.," The following new violations were added: sexual exploitation and violation of probation.

Recommendation: Approve the proposed regulatory language.

Proposed Language

Changes to the current language are shown by underlining for new text and strikethrough for deleted text.

The Osteopathic Medical Board of California hereby amends its regulations in Division 16 of Title 16 of the California Code of Regulations to read as follows:

1. To amend Section 1663. of Division 16 of Title 16 of the California Code of Regulations to read as follows:

§ 1663. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Osteopathic Medical Board of California shall consider and apply the disciplinary guidelines entitled “Osteopathic Medical Board of California Disciplinary Guidelines of 2019 (Rev 1/19),” ~~1996~~—which are hereby incorporated by reference. Deviation from the guidelines and orders, including the standard terms of probation, is appropriate where the Osteopathic Medical Board of California in its sole discretion determines that the facts of the particular case warrant such a deviation; ~~—~~for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Sections 1, 2018, 2451, and 3600-1, Business and Professions Code; Reference: Section 11425.50(e), Government Code.

2. Amend Section 1663.2 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

§1663.2 Sexual Contact and Sexual Offenses

(a) Notwithstanding the Disciplinary Guidelines, any proposed decision or order issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that: (1) the licensee engaged in any act of sexual exploitation with a patient, client or customer; and/ or (2) the licensee has been convicted of or committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license or placing the licensee on probation.

(b) For purposes of this section, "sexual exploitation" has the same meaning as defined in subdivision (b) of Section 729 of the Business and Professions Code and "sex offense" has the same meaning as defined in Section 44010 of the Education Code.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Sections 1, 2018, 2451, and 3600-1, Business and Professions Code. Reference: Sections 726 and 729, 2246 Business and Professions Code; Section 11425.50(e), Government Code; Section 44010, Education Code.

OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA
DISCIPLINARY GUIDELINES



Revised: (OAL to insert effective date)

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The Osteopathic Medical Board of California (Board) is a consumer protection agency with the primary mission of protecting consumers of osteopathic physician and surgeon services within the State of California. In keeping with its mandate, the Board has adopted the following recommended guidelines for disciplinary orders and model terms and conditions of probation for violations of the Osteopathic and Medical Practice Acts.

The Disciplinary Guidelines are designed for use by administrative law judges (ALJs), attorneys, the Board, and others involved in the disciplinary process.

In addition, the guidelines incorporate relevant factors to be considered by the Board when imposing discipline upon a licensee, including consideration of probationary terms and conditions, and discipline guidelines for specific offenses.

The terms and conditions of probation are divided into two general categories:

Standard Terms and Conditions are those terms and conditions, which will generally appear in all cases involving probation.

Optional Terms and Conditions are those terms and conditions, which may be used to address the sustained violations and any significant mitigating or aggravating circumstances of a particular case.

ORGANIZATION OF DISCIPLINARY GUIDELINES

The Disciplinary Guidelines consist of four parts:

I. Board Policies and Guidelines –an overview of the purpose and organization of these guidelines as well as relevant factors and considerations that ALJs and other users of the guidelines should take into account when a disciplinary matter is being resolved;

II. Diversion Program – for those licensees with a violation related to alcohol and/or a controlled substance, or whose license is on probation due to a substance abuse violation;

III. Model Disciplinary Orders – language for proposed terms and conditions of probation; and

IV. Discipline Guidelines - contains recommended penalties and is organized by violation.

GENERAL CONSIDERATIONS

Each disciplinary matter must be considered on a case-by-case basis. The Board should carefully consider the totality of the circumstances of each disciplinary case, including any mitigating or aggravating factors present.

If at the time of hearing, the ALJ finds that the respondent or applicant, for any reason, is not capable of safe practice, the Board expects outright revocation or denial of the license.

Proposed Decisions

The Board requests that Proposed Decisions include the following:

1. Specific code section(s) violated.
2. Clear description of the acts or omissions that constitute a violation.
3. Respondent's explanation of the violation in the Findings of Fact if he/she is present at the hearing.
4. Findings regarding aggravation, mitigation, and rehabilitation, where appropriate.
5. Explanation for deviation from the Board's Disciplinary Guidelines, if any.

In determining whether revocation, suspension, or probation is to be imposed in a given case, the following factors should be considered:

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

Reinstatement/Reduction of Disciplinary Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Petition for Reinstatement or Modification of Discipline set forth in California Code of Regulations, Title 16, Section 1657; and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board will not retry the original revocation or probation case. The Board will consider, pursuant to Section 1657, the following criteria of rehabilitation:

- (1) The nature and severity of the act(s) or crime(s) for which the petitioner was disciplined. (2) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) for which the petitioner was disciplined which also could be considered as grounds for denial under Code Section 480.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) above.
- (4) The extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed.
- (5) Petitioner's activity during the time the certificate was in good standing. (6) Evidence, if any, of the rehabilitation submitted by the petitioner.
- (7) Petitioner's professional ability and general reputation for truth.

The Board requests that comprehensive information be elicited from the petitioner regarding his or her

rehabilitation. The petitioner should provide details that include:

- A. Why the discipline should be modified or why the license should be reinstated.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. Continuing education pertaining to the offense and its effect on his or her practice of medicine.
- D. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- E. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- F. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Rehabilitation is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation for why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice medicine. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.

In the Petition Decision, the Board requests a summary of the offense and the specific codes violated that resulted in the revocation, surrender, or probation of the license. If the Board should deny a request for reinstatement of licensure or disciplinary relief, the Board requests that the ALJ provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches that demonstrate rehabilitation. If a petitioner fails to appear for his or her scheduled reinstatement or disciplinary relief hearing, the Board has the discretion to proceed without the petitioner to render a decision or to allow inaction to result in a default decision to deny reinstatement of the license or registration or reduction of disciplinary action.

~~In the Petition Decision, the Board requires a summary of the offense and the specific codes violated that resulted in the revocation, surrender, or probation of the license. If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.~~

DEFINITIONS

Revocation: The license is revoked as a result of disciplinary action rendered by the Board. No practice is permitted and practice must cease. Once the license is revoked, respondent may take affirmative action to petition the Board for reinstatement of his/her license and demonstrate to the Board's satisfaction that he/she is rehabilitated pursuant to the Board's applicable regulations.

Suspension: Invalidation of a license for a temporary, fixed period. The licensee must cease practice immediately and is not permitted to practice during any period of suspension.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation order. The stay of revocation is conditioned on full compliance with the terms and conditions of probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation order. The stay of a suspension order is conditioned on full compliance with the terms and conditions of probation.

Probation: A period of time during which a respondent's discipline is stayed in exchange for respondent's compliance with specified terms and conditions set forth in the order relating to the violation(s).

Diversion Program

There are two pathways into the Board's drug and alcohol recovery monitoring program:

1) Participants with drug and/or alcohol issues who have self-referred to the program and are not under a disciplinary order;

2) Participants who have been ordered into the Board's Diversion Program as a result of violations related to drug and/or alcohol use.

Self-Referrals

A licensee can enroll in the Board's Diversion program at any time. In these self-referral cases, the Board may not have any conviction related information, or evidence of alcohol or substance abuse to warrant disciplinary action. When a licensee enrolls in the Board's Diversion program as a self-referral, the participation is confidential. Each licensee who requests participation in the Diversion program shall agree to cooperate with the Board's Diversion program designed for him or her. Any failure to comply with the program may result in the licensee's termination of participation in the program.

If a self-referred participant is determined to be too great a risk to the public health, safety, and welfare to continue practicing, the facts shall be reported to the Board's Executive Director and all documents and information pertaining to and supporting that determination shall be provided to the Executive Director. The matter may be referred for investigation and disciplinary action by the Board.

Probationary Participants

Probationary participants are required to comply with terms and conditions of probation or otherwise risk losing their license. A clinical diagnostic evaluation will be ordered as a term of probation.

Model Disciplinary Orders are divided into three categories. The first category consists of **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements. The second category consists of the **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Disciplinary Guidelines depending on the nature and circumstances of each particular case.

STANDARD TERMS AND CONDITIONS OF PROBATION

The ten standard terms and conditions generally appearing in every probation case are as follows:

- (1) Obey all Laws
- (2) Quarterly Reports
- (3) Probation Surveillance Program
- (4) Interviews with Medical Consultants
- (5) Cost Recovery
- (6) License Surrender
- (7) Probation Violation/Completion of Probation
- (8) Notification to Board of Employers; Notification to Employers of Discipline
- (9) Supervision of Physician Assistants and Advanced Practice Nurses

Specific Language for Standard Terms and Conditions of Probation

1. Obey all Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

2. Quarterly Reports

Respondent shall submit quarterly reports to the Board using the Quarterly Declaration Report of Compliance Form, OMB 10 (5/97) (1/19), which is hereby incorporated by reference, declaring under penalty of perjury whether there has been compliance with all the conditions of probation.

3. Probation Surveillance Program

Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of Business and residence, which shall both serve as addresses of record for purposes of service of process. Changes of such addresses shall be immediately communicated in writing to the Board. A

post office box shall not be permitted to serve as an address of record.

Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than thirty (30) calendar days.

4. Interviews with Medical Consultants

Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.

5. Cost Recovery

Respondent shall reimburse the Board the amount \$ _____ [insert amount] within 90 calendar days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

6. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

7. Tolling for Out-of-State Practice or In-State Non- Practice (Inactive)

In the event respondent shall leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Board or its designee in writing within ten (10) calendar days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Section 2051 and /or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of the state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of

non- practice within California, as defined in this condition will extend the probationary period by the period of out-of-state residence or non-practice. Respondent's period of non-practice while on probation shall not exceed two (2) years.

8. Probation Violation/Completion of Probation

If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be automatically extended until the matter is final. Respondent shall comply with all financial obligations (e.g., cost recovery) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's license will be fully restored.

9. Notification to Board of Employers; Notification to Employers of Discipline

Respondent 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.

Respondent shall notify any employer of the terms of this probation by providing a copy of this decision to each and every employer within 30 calendar days of this effective date of the decision, asking each employer to acknowledge receipt in writing, and submitting such acknowledgement to the Board.

10. Supervision of Physician Assistants and Advanced Practice Nurses.

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

OPTIONAL TERMS AND CONDITIONS OF PROBATION

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

- (11) Suspension
- (12) Controlled Drugs – Total Restriction
- (13) Controlled Drugs – Surrender of DEA Permit
- (14) Controlled Drugs – Partial Restriction
- (15) Controlled Drugs – Maintain Record
- (16) Pharmacology/Prescribing Course

- (17) Record Keeping Course
- (18) Education Course
- (19) Professional Boundaries Course
- (20) Medical Ethics Course
- (21) Clinical Assessment and Training Program
- (22) Written Examination
- (23) Third-Party Presence
- (24) Prohibited Practice
- (25) Psychiatric Evaluation
- (26) Psychotherapy
- (27) Physical Health Evaluation
- (28) Medical Treatment
- (29) Community Service
- (30) Restitution
- (31) Monitoring – Billing/Practice
- (32) Solo Practice Prohibition/Supervised Structure

11. Suspension

Respondent shall be suspended from the practice of medicine for [insert] beginning the effective date of this decision.

[Optional: Respondent shall be suspended from the practice of medicine until terms [insert] are completed and evidence of the completion is received and acknowledged by the Board.]

12. Controlled Drugs: Total Restriction

Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substance Act (Act) except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

13. Controlled Drugs: Surrender of DEA Permit

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.

14. Controlled Drugs: Partial Restriction

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act, except for those drugs listed in Schedule(s) [insert] of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.

(OR)

Respondent is permitted to prescribe, administer, dispense or order controlled substances list in schedules [insert] of the California Uniform Controlled Substances Act for inpatients in a hospital setting, and not otherwise.

NOTE: Use the following additional paragraph only if there is an actual elimination of the authority to prescribe a Scheduled Controlled Substance.

[OPTION]

Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.

15. Controlled Drugs: Maintain Record

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following: (1) the name and address of the patient; (2) the date; (3) the character and quantity of the controlled substances involved; and (4) the pathology and purpose for which the controlled substance was furnished. Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

16. Pharmacology/Prescribing Course

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in Pharmacology/Prescribing practices course equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the

course within one (1) year of enrollment. The prescribing practices/pharmacology course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirement for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board within fifteen (15) calendar days after successful completion.

17. Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in record keeping which respondent shall successfully complete during the first year of probation. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

18. Education Course

Within 90 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course and enroll in the approved educational course(s) related to the violations charged in the Accusation that would be equivalent to similar courses offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of probation enrollment. All courses shall be at

the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

An education course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

19. Professional Boundaries Course

Within 90 calendar days of the effective date of this decision, respondent, with prior approval from the Board, shall enroll in a Board approved Professional Boundaries course related to the violations charged in the Accusation that would be equivalent to similar courses offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of probation enrollment. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A Professional Boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

20. Medical Ethics Course

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

21. Clinical Assessment and Training Program

Within 90 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical assessment and training program equivalent to the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the Accusation. Respondent shall successfully complete the program within six (6) months from the date of enrollment and may be required to pass an examination administered by the Board or its designee related to the program's contents.

The program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health, basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to the area of practice to which the violation(s) related and, at a minimum, a 40 hour program of clinical education in the area of practice to which the violations related and that takes into account the assessment, decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the program.

Based upon respondent's performance and test results in the assessment and clinical education, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional education or training, treatment needed for any medical or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the recommendations of the program.

The Board may immediately order respondent to cease the practice of medicine without a hearing if the respondent should fail to enroll, participate in, or successfully complete the program within the time specified. The respondent may not resume the practice of medicine until enrollment or participation in the program is complete.

Respondent shall submit written evidence of successful completion of the program to the Board within fifteen (15) calendar days after successful completion.

OPTION # 1: Condition Precedent

Respondent shall not practice medicine until respondent has successfully enrolled, participated in, completed, and submitted written evidence of successful completion to the Board and the Board has confirmed receipt of such evidence of completion.

NOTE: The condition precedent option is preferred in all cases where the physician's fitness to practice should be evaluated.

OPTION #2: Additional Professional Enhancement Program

Within 60 calendar days after respondent has successfully completed the clinical assessment and training program, respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in such professional enhancement program at the respondent's own expense during the term of probation, or until the Board, or its designee, determines that further participation is no longer necessary.

22. Written Examination

Within 60 calendar days of the effective date of this decision, (or upon completion of the required education course) (or upon completion of the required clinical training program) respondent shall take and pass a written examination administered by the Board or its designee. The written exam will be the COMVEX. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The respondent shall pay the costs of all examinations.

(Use either of the following two options with the above paragraph.)

OPTION # 1: Condition Precedent

Respondent shall not practice medicine until respondent has passed this examination and has been so notified by the Board in writing.

Note: The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence where the physician's fitness to practice should be evaluated before he/she may practice, or any other case where public protections requires confirmation of respondent's skills prior to a return to practice medicine.

OPTION #2: Condition Subsequent

If respondent fails to take and pass this examination by the end of the first six (6) months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.

23. Third-Party Presence

During probation, respondent shall have a third-party present while examining or treating [insert: male, female, minor] patients. Respondent shall, within 30 calendar days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will act as the required third-party present. The respondent shall execute a release authorizing the third-party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.

The respondent shall provide written notice to respondent's patients that the respondent is on probation and as a condition of probation the respondent must have a third-party monitor that shall be present during all consultations, examinations, or treatment with [insert: male, female or minor] patients. The patient must sign the notice acknowledging receipt of the notice and the respondent shall maintain a copy of the original notification in the patient's file; and shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain notification for the entire term of probation. The practice monitor shall inspect all patient files and confirm in a report to the Board the status of compliance with such notice and maintenance of signed acknowledgement in patient's file.

NOTE: Sexual contact, as defined in Business and Professions Code (BPC) Section 729, and BPC Section 2246 requires revocation without stay of probation. Additionally, Title 16 of the California Code of Regulations, Section 1663(b), requires revocation without stay of probation. This term should be used where public protection requires monitoring of a licensee's contact with specific patient populations.

24. Prohibited Practice

During probation, respondent is prohibited from practicing [insert practice prohibition] .

25. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.

In the event further treatment is recommended by the evaluating psychiatrist to ensure public protection, respondent may be required by the Board or its designee to undergo psychiatric treatment. Respondent shall within 30 calendar days of notice by the Board,

submit to the Board for its prior approval the name and qualification of a psychiatrist of respondent's choice to provide the further treatment. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status reports to the Board indicating whether or not the respondent is capable of practicing medicine safely.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until further notified by the Board of its determination that respondent is mentally fit to practice safely.

26. Psychotherapy

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluation by a Board appointed psychiatrist. Respondent shall pay all costs of the psychotherapy and the psychiatric evaluation.

NOTE: This condition is for those cases where the evidence suggests that the respondent has been impaired.

27. Physical Health Evaluation

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a physical health evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the physical health evaluation.

In the event further treatment is recommended by the evaluating physician to ensure public protections, respondent may be required by the Board or its designee to undergo such further treatment. Respondent shall, within 30 calendar days of the written notice by the Board, submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall pay the cost of such medical treatments.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until notified by the Board of its

determination that respondent is medically fit to practice safely.

28. Medical Treatment

Within 60 calendar days of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of physician of respondent's choice. Upon approval, respondent shall undergo and continue until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports of the periodic medical evaluations. Respondent shall pay the costs of such medical treatments. Respondent shall comply with any treatment recommended by the physician that the physician determines is required to ensure that respondent may continue to practice safely.

29. Community Service

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program, in which respondent provides free medical services on a regular basis to a community or charitable facility or agency for at least [insert] hours a month for the first [insert] months of probation.

NOTE: Not for quality of care issues.

30. Restitution

Respondent shall provide restitution to [insert] in the amount of [insert] prior to the completion of the first year of probation.

31. Monitoring: Practice/Billing

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval a [insert: practice, billing or practice and billing monitor(s)], the names and qualifications of one or more licensed physicians (D.O. or M.D.) whose licenses are valid and in good standing. A monitor shall have no prior business relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to be neutral and objectively monitor the respondent. Respondent shall pay for all monitoring costs. The monitor shall be provided with copies of all decision(s), accusation(s) and other information deemed relevant by the Board or its designee. Failure to comply with this term and condition may result in an automatic order from the Board for the Respondent to cease the practice of medicine until such a monitor has been approved by the Board.

32. Solo Practice Prohibition/Supervised Structure

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a licensed physician (D.O. or M.D.) whose license is valid and in good standing and who will supervise the respondent. Respondent shall not engage in the solo practice of medicine, and shall be employed as a physician, in which there is a supervised structure and environment, and wherein respondent reports to directly to another licensed physician (D.O. or M.D.). The Respondent shall pay all costs incurred by supervision of the respondent by the licensed physician.

Notice of changes to the Respondent's employment or nature of practice shall be provided to the Board or its designee within five (5) calendar days of such change. Respondent shall cease the practice of medicine when the respondent is no longer in a supervised environment. The Respondent shall not engage in the practice of medicine until such time as the Board appoints another licensed physician to supervise the Respondent.

33. Diversion Program: Alcohol and Drugs

Within thirty (30) calendar days of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Failure to comply with the requirements of the Diversion program, quitting the Diversion Program without the Board's permission, or being expelled from the program for cause shall constitute a violation of probation by respondent. Respondent's probation shall be automatically extended until respondent successfully completes the program.

Respondent shall comply with all components of the Board's Diversion program. Respondent shall sign a release authorizing the Board's Diversion program to report all aspects of participation of the Diversion program as requested by the Board or its designee. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.

34. Abstain from Controlled Substances

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

35. Abstain from Use of Alcohol

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

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the Osteopathic Medical Board of California and the appropriate range of discipline for each violation. Each disciplinary action listed is followed in parenthesis by a number, which corresponds with a number under Part III (Model Disciplinary Orders). Optional terms and conditions listed are those the Board deems most appropriate for the particular violation; optional terms and conditions not listed as potential minimum penalties, should nonetheless be imposed where appropriate.

If there are deviations from the guidelines in a Proposed Decision, the Board requires that the ALJ hearing the case include an explanation of the deviations, including all mitigating factors considered by the ALJ in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

STANDARD OF CARE VIOLATIONS

B & P 2234(b) GROSS NEGLIGENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted] (16)
4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 2234 (c) REPEATED NEGLIGENT ACTS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted](16)
4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 2234 (d) INCOMPETENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted] (16)
4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 725 EXCESSIVE PRESCRIBING OR TREATMENTS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions and

1. Controlled Drugs: Total DEA restriction (12)
2. Controlled Drugs: Surrender DEA permit (13)
3. Controlled Drugs: Partial DEA Restriction (14)
4. Controlled Drugs: Maintain Records (15)
5. Pharmacology/ Prescribing Course (16)
6. Education Course (18)
7. Written Examination (22)
8. Clinical Assessment and Training Program (21)
9. Monitoring: Practice/Billing (31)
10. If warranted, suspension: 30 calendar days or more (11)

B & P 820 MENTAL OR PHYSICAL ILLNESS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Psychiatric Evaluation/Psychotherapy (25),(26) 2. Physical Health Evaluation (27)
3. Written Examination (22)
4. Solo Practice Prohibition/Supervised Environment (32)
5. Prohibited Practice (24)
6. Monitoring: Practice/Billing (31)

7. Clinical Assessment and Training Program (21)

B & P 2241 FURNISHING DRUGS TO AN ADDICT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

1. Suspension: 10 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Course (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Controlled Drugs: Total DEA Restriction (12)
7. Controlled Drugs: Surrender of DEA Permit (13)
8. Controlled Drugs: Partial DEA Restriction (14)
9. Controlled Drugs: Maintain Record (15)
10. Psychiatric Evaluation/Psychotherapy (25),(26)
11. Monitor: Practice (31)

B & P 2242 PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 10 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Controlled Drugs: Total DEA Restriction (12)
7. Controlled Drugs: Surrender of DEA Permit (13)
8. Controlled Drugs: Partial DEA Restriction (14)
9. Controlled Drugs: Maintain Record (15)
10. Psychiatric Evaluation/Psychotherapy (25),(26)
11. Monitor: Practice (31)

B & P 2250 FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Education Course (18)
2. Pharmacology /Prescribing Course [if warranted] (16)
3. Written Examination (22)

4. Clinical Assessment and Training Program (21)
5. Monitor: Practice/ Billing (31)
6. Solo Practice Prohibiting/Supervised Structure (32)
7. Prohibited Practice (24)
8. Medical Ethics Course (20)

B & P 2251 USE OF SILICONE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Prohibited Practice [if warranted] (24)

B & P 2252 ILLEGAL CANCER TREATMENT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Monitor: Practice/ Billing (31)
7. Prohibited Practice (24)
8. Solo Practice Prohibition/ Supervised Structure (32)

B & P 2306 PRACTICE DURING SUSPENSION

Maximum Discipline: Revocation

Minimum Discipline: Revocation

B & P 2305 DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY

Minimum discipline: add actual period of suspension

Maximum discipline: impose stayed disciplinary action

SUBSTANCE ABUSE

B & P 2239 SELF ABUSE OF DRUGS OR ALCOHOL

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 10 calendar days or more (11)
2. Controlled Drugs: Total DEA Restriction (12)
3. Controlled Drugs: Surrender of DEA Permit (13)
4. Controlled Drugs: Partial DEA Restriction (14)
5. Controlled Drugs: Maintain Record (15)
6. Psychiatric Evaluation/Psychotherapy (25), (26)
7. Monitor: Practice (31)
8. Medical Ethics Course (20)
9. Diversion Program (33)
10. Abstain from Controlled Substances (34)
11. Abstain from Alcohol (35)

B & P 2280 INTOXICATION WHILE TREATING PATIENTS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions,

1. Suspension: 10 calendar days or more (11)
2. Controlled Drugs: Total DEA Restriction (12)
3. DEA: Surrender of DEA Permit (13)
4. Controlled Drugs: Partial DEA Restriction (14)
5. Controlled Drugs: Maintain Record (15)
6. Psychiatric Evaluation/ Psychotherapy (25),(26)
7. Monitor Practice (31)
8. Medical Ethics Course (20)
9. Diversion Program (33)
10. Abstain from Controlled Substances (34)
11. Abstain from Alcohol (35)

CRIMINAL

B & P 726 SEXUAL MISCONDUCT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 10 years probation, standard terms and conditions, and

1. Suspension: 90 business days or more (11)
2. Education Course (18)

- 3. Clinical Assessment and Training Program (21)
- 4. Psychiatric Evaluation/Psychotherapy (25),(26)
- 5. Third-Party Presence (23)
- 6. Professional Boundaries Course (19) 7. Medical Ethics Course (20)

Note: If violation constitutes sexual contact or sexual exploitation, revocation must be ordered and not stayed. Sexual exploitation, as specified in BPC Section 2246 requires revocation without stay of probation.

B & P 729 SEXUAL EXPLOITATION

Maximum Discipline: Revocation

Minimum Discipline: Revocation

Note: Pursuant to BPC Section 2246 and Title 16, California Code of Regulations, Section 1663.2 and This cause of action is grounds for revocation. Revocation may not be stayed by the Administrative Law Judge or Board.

B & P 810 INSURANCE FRAUD

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

- 1. Suspension: 30 calendar days or more (11) 2. Education Course (18)
- 3. Clinical Assessment and Training Program (21) 4. Monitor: Practice/Billing (31)
- 5. Solo Practice Prohibition/Supervised Structure (32) 6. Medical Ethics Course (20)
- 7. Restitution (30)

Note: Suspension or revocation may be mandated by law's provision. See Business and Professions Code Section 810 subdivision (c).

B & P 2236 CRIMINAL CONVICTION: FELONIES/MULTIPLE MISDEMEANORS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

- 1. Suspension: 30 calendar days or more (11)
- 2. Psychiatric Evaluation/Psychotherapy (25),(26) 3. Education Course (18)
- 4. Clinical Assessment and Training Program (21) 5. Monitor: Practice/ Billing (31)
- 6. Medical Ethics Course (20) 7. Community Service (29)
- 8. Restitution (30)

B & P 2236 CRIMINAL CONVICTION; SINGLE MISDEMEANOR

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Education Course (18)
2. Psychiatric Evaluation/Psychotherapy (25),(26)
3. Monitor: Practice/ Billing (31)
4. Medical Ethics Course (20)
5. Community Service (29) 6. Restitution (30)

B & P 2237 DRUG RELATED CONVICTION

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

1. Suspension: 90 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Clinical Assessment and Training Program (21)
4. Medical Ethics Course (20)
5. Controlled Drugs: Total DEA Restriction (12)
6. Controlled Drugs: Surrender of DEA Permit (13)
7. Controlled Drugs: Partial DEA Restriction (14)
8. Controlled Drugs: Maintain Record (15)
9. Psychiatric Evaluation/ Psychotherapy (25),(26)
10. Monitor: Practice (31)

B & P 2238 VIOLATION OF DRUG STATUTE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

1. Suspension: 90 calendar days or more (11) 2. Pharmacology/Prescribing Course (16)
3. Clinical Assessment and Training Program (21) 4. Medical Ethics Course (20)
5. Controlled Drugs: Total DEA Restriction (12)
6. Controlled Drugs: Surrender of DEA Permit (13)
7. Controlled Drugs: Partial DEA Restriction (14)
8. Controlled Drugs: Maintain Record (15)
9. Psychiatric Evaluation/Psychotherapy (25),(26)
10. Monitor: Practice (31)

B & P 2264 AIDING AND ABETTING UNLICENSED PRACTICE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 90 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitor: Billing / Practice (31)
5. Prohibited Practice (24)
6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2235 OBTAINING LICENSE BY FRAUD

Maximum Discipline: Revocation.

Minimum Discipline: Revocation

DECEPTION/MISREPRESENTATION

B & P 2271, 651 DECEPTIVE ADVERTISING

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2272 ANONYMOUS ADVERTISING

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2274 MISUSE OF TITLE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)

2. Education Course (18)

3. Community Service (29)

B & P 2275 USE OF “M.D.”

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)

2. Education Course (18)

3. Community Service (29)

B & P 2276 MISUSE OF “D.O. “

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)

2. Education Course (18)

3. Community Service (29)

B & P 2285 USE OF FICTITIOUS NAME WITHOUT PERMIT

Maximum Discipline: Revocation.

Minimum Discipline: 90 calendar days suspension, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)

2. Education Course (18)

3. Community Service (29)

DISHONESTY

B & P 2234 (e) DISHONESTY

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 year probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Clinical Assessment and Training Program (21)
4. Monitor: Practice/ Billing (31)
5. Solo Practice Prohibition/Supervised Structure (32)
6. Medical Ethics Course (20)
7. Community Service (29)
8. Restitution (30)

B & P 2261 MAKING OR SIGNING FALSE DOCUMENT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Record Keeping Course (17)
4. Medical Ethics Course (20)
5. Monitoring: Practice/ Billing (31)
6. Prohibited Practice (24)
7. Solo Practice Prohibition/ Supervised Structure (32)

B & P 2262 ALTERATION OF MEDICAL RECORDS/ FALSE MEDICAL RECORDS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Record Keeping Course (17)
4. Pharmacology/ Prescribing Course (16)
5. Medical Ethics Course (20)
6. Monitoring: Billing/ Practice (31)
7. Prohibited Practice (24)
8. Solo Practice Prohibition/Supervised Structure (32)

B & P 2263 VIOLATION OF PROFESSIONAL CONFIDENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitoring: Billing/ Practice (31)
5. Prohibited Practice (24)

6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2273 EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS

Maximum Discipline: Revocation

Minimum Discipline: stayed revocation, 3 years probation, standard terms and conditions, and

1. Suspension: 90 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitor: Billing/ Practice (31)
5. Prohibited Practice (24)
6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2288 IMPERSONATION OF APPLICANT IN EXAM

Maximum Discipline: Revocation

Minimum Discipline: Revocation

PROBATION

VIOLATION OF PROBATION: REPEATED VIOLATIONS

A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum discipline. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 calendar days or more, as well as other appropriate terms and conditions.

~~OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA
DISCIPLINARY GUIDELINES OF 1996~~

~~[LOGO]~~

~~Osteopathic Medical Board of California
2720 Gateway Oaks Drive,
Suite 350 Sacramento, CA 95833~~

~~(916)263-310~~

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DISCIPLINARY GUIDELINES OF 1996

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I. Disciplinary Penalties

The following disciplinary penalties for selected Business and Professions Code violations are guidelines for use by administrative law judges at hearings as well as for use in settlement of cases. Individual penalties may vary depending upon the particular circumstances of the case resulting in aggravation or mitigation of offenses alleged. If probation is imposed as part of a penalty, the probation should include: (1) standard conditions, which will appear in all cases; and (2) the optional conditions, which will be tailored according to the nature of the offense.

A. STANDARD CONDITIONS OF PROBATION

The standard of probation conditions are as follows:

- (1) Obey all laws (1) *;
- (2) File quarterly reports (2);
- (3) Probation surveillance program (3);
- (4) Interviews with medical consultants (4);
- (5) Cost Recovery (5);
- (6) License Surrender (6);
- (7) Tolling of probation, if out of state (7); and
- (8) Probation violation/completion of probation (8)

** The number in parentheses refers to the sample model orders found in Part II: Sample Model Orders*

B. OPTIONAL CONDITIONS OF PROBATION

The following conditions of probation, generally listed by statute order as set forth by Business and Professions Code, are recommended by the Board for proven or stipulated violations. In all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation. Additionally, violations of Business and Professions Code Sections 2235 (obtaining license

by fraud), 2288 (impersonation of an applicant in an examination), and 2306 (practice under suspension) shall all result in an order of revocation.

~~B & P 725 – EXCESSIVE PRESCRIBING~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. Drugs _____ Total DEA restriction (10)~~
- ~~_____ Surrender DEA (11)~~
- ~~_____ (or) _____ Partial DEA restriction (12) _____~~
- ~~_____ 2. Pharmacology course (18)~~
- ~~_____ 3. If warranted, education course (19)~~
- ~~_____ 4. If warranted, supervised structured environment (29)~~
- ~~_____ 5. If warranted, oral/practical examination (22)~~
- ~~_____ 6. If warranted, suspension of at least 90 days (9)~~
- ~~_____ 7. If warranted, maintain drug records for review (13)~~

~~B & P 725 – EXCESSIVE TREATMENTS _____~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. Education course (20)~~
- ~~_____ 2. If warranted, supervised structured environment (29)~~
- ~~_____ 3. If warranted, oral/practical examination (22)~~
- ~~_____ 4. If warranted, suspension of at least 90 days (9)~~

~~B & P 726 – SEXUAL MISCONDUCT~~

~~Minimum penalty: Stayed revocation, 10 years probation~~

- ~~_____ 1. Education course (19)~~
- ~~_____ 2. Psychiatric evaluation (25)~~
- ~~_____ Or, psychotherapy (26)~~
- ~~_____ 3. If warranted, supervised structured environment (29)~~
- ~~_____ 4. Required third part present when examining patients (23)~~

~~B & P 820 – MENTAL OR PHYSICAL ILLNESS~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. If warranted, restricted practice (24)~~
- ~~_____ 2. If warranted, monitoring (29)~~

~~B & P 2234 (b) – GROSS NEGLIGENCE~~

~~B & P 2234 (c) – REPEATED NEGLIGENT ACTS~~

~~B & P 2234 (d) – INCOMPETENCE~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. Pharmacology course (18)~~
- ~~_____ 2. Education course (19)~~
- ~~_____ Clinical training program (21)(where deficiency is noted by the physician is not a present danger to the public)~~
- ~~_____ 3. Oral/practical examination (22)~~
- ~~_____ 4. If warranted, supervised structured environment (29)~~
- ~~_____ 5. If warranted, restricted practice (24)~~
- ~~_____ 6. If warranted, medical evaluation (27)~~
- ~~_____ 7. If warranted, medical treatment (28)~~

~~B & P 810 – INSURANCE FRAUD~~

~~B & P 2234 (e) – DISHONESTY~~

~~B & P 2261 – MAKING OR SIGNING FALSE DOCUMENT~~

~~B & P 2262 – FALSE MEDICAL RECORDS~~

~~B & P 2263 – VIOLATION OF PROFESSIONAL CONFIDENCE~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. If warranted, community service program (30)~~
- ~~_____ 2. If warranted, actual suspension (9)~~
- ~~_____ 3. If warranted, restitution (31)~~
- ~~_____ 4. Education course (19)~~

~~B & P 2236 – CRIMINAL CONVICTION~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

~~Terms and conditions depend on the underlying facts of the criminal offense.~~

~~B & P 2237 – DRUG RELATED CONVICTION~~

~~B & P 2238 – VIOLATION OF DRUG STATUTE~~

~~B & P 2241 – FURNISHING DRUGS TO AN ADDICT~~

~~B & P 2242 – PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. Drugs — total DEA restriction (10)~~
- ~~Or — surrender DEA permit (11)~~
- ~~Partial DEA permit (11)~~
- ~~2. Pharmacology course (18)~~
- ~~3. Education Course (19) and/ or a clinical training program (21)~~
- ~~4. If warranted, oral/ practical examination (22)~~
- ~~5. If warranted, supervised structured environment (29)~~
- ~~6. If self-user or drugs: See B & P 2239~~
- ~~7. If warranted, suspension of at least 90 days (9)~~
- ~~8. If warranted, maintain drug records for review (13)~~
- ~~9. If warranted, monitoring (29)~~

~~NOTE: Unless there is extensive mitigation, outright revocation for conviction of illegal sales of controlled drugs is the proper penalty.~~

~~B & P 2239 — SELF ABUSE OF DRUGS OR ALCOHOL~~

~~B & P 2250 — FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS~~

~~B & P 2251 — USE OF SILICONE~~

~~B & P 2252 — ILLEGAL CANCER TREATMENT~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. If warranted, period of actual suspension (9)~~
- ~~2. Community service (30)~~
- ~~3. Education (19)~~
- ~~4. If warranted, monitoring (29)~~

~~B & P 2264 — AIDING AND ABETTING UNLICENSED PRACTICE~~

~~Minimum penalty: Stayed revocation, at least 3 years probation~~

- ~~1. If warranted, suspension of at least 60 days (9)~~
- ~~2. If warranted, oral/practical or written examination (22)~~
- ~~3. If warranted, monitoring (29)~~
- ~~4. If warranted, restricted practice (24)~~

~~B & P 2265 — USE OF QUALIFIED PHYSICIAN ASSISTANT WITHOUT APPROVAL~~

~~Minimum penalty: 90 days stayed suspension, one year probation~~

- ~~1. If warranted, period of actual suspension (9)~~
- ~~2. If warranted, community services (30)~~

B & P 2271, 651 — DECEPTIVE ADVERTISING

B & P 2272 — ANONYMOUS ADVERTISING

B & P 2273 — EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS

B & P 2274 — MISUSE OF TITLE

B & P 2275 — USE OF “M.D.”

B & P 2276 — MISUSE OF “D.O.”

B & P 2280 — INTOXICATION WHILE TREATING PATIENTS

Minimum penalty: Stayed revocation, 5 years probation

- _____ 1. If drugs — total DEA restriction (10)
- _____ Or — surrender or DEA permit (11)
- _____ Partial DEA restriction (12)
- _____ 2. If alcohol — abstain from alcohol (16)
- _____ 3. If warranted, in case of drug abuse, abstain from alcohol (16)
- _____ 4. Drugs — abstain from use (15)
- _____ 5. Biological fluid testing (17)
- _____ 6. Psychiatric evaluation (25)
- _____ 7. If warranted, psychiatric treatment (26)
- _____ 8. If warranted, drug or alcohol rehabilitation program (14)
- _____ 9. Medical evaluation (27) and/or medical treatment (28)
- _____ 10. Pharmacology course (18)
- _____ 11. Education course (19)
- _____ 12. If warranted, oral/practical examination (22)
- _____ 13. If warranted, supervised structured environment (29)
- _____ 14. If warranted, maintain drug records for review (13)

B & P 2285 — USE OF FICTITIOUS NAME WITHOUT PERMIT

Minimum penalty: 90 days stayed suspension, 3 years probation

- _____ 1. If warranted, actual suspension (9)
- _____ 2. If warranted, community service (30)
- _____ 3. If warranted, restitution (31)
- _____ 4. If warranted, education course (19)

B & P 2305 — DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY

Minimum penalty: add actual period of suspension Maximum penalty: impose penalty that was stayed

A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum penalty. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 days or more.

II. ~~SAMPLE MODEL ORDERS~~

A. ~~STANDARD CONDITIONS OF PROBATION~~

1. ~~Obey all laws~~

~~Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.~~

2. ~~Quarterly reports~~

~~Respondent shall submit to the Board quarterly declaration under penalty of perjury on the Quarterly Report of Compliance Form, OMB 10 (5/97) which is hereby incorporated by reference, stating whether there has been compliance with all the conditions of probation.~~

3. ~~Probation surveillance program~~

~~Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of Business and residence, which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Board. Under no circumstance shall a post office box serve as an address of record.~~

~~Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than thirty (30) days.~~

4. ~~Interviews with medical consultants~~

~~Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.~~

5. ~~Cost recovery~~

~~The respondent is hereby ordered to reimburse the Board the amount \$ _____ within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.~~

6. ~~License surrender~~

~~Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.~~

~~7. Tolling for out of state practice or residence, or in state non practice (inactive license).~~

~~In the event respondent shall leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non compliance within California. Non practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 2051 and /or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of the state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non practice within California, as defined in this condition shall not apply to the reduction of the probationary period.~~

~~8. Probation violation/completion of probation~~

~~If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Upon successful completion of probation, respondent's certificate will be fully restored.~~

~~B. OPTIONAL CONDITIONS OF PROBATION~~

~~9. Actual suspension~~

~~Respondent shall be suspended from the practice of medicine for _____ beginning the effective date of this decision.~~

~~10. Controlled drugs total restriction~~

~~Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~11. Controlled drugs surrender of DEA permit~~

~~Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that the respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.~~

~~12. Controlled drugs partial restriction~~

~~Respondent shall not prescribe, administer, dispense, order or possess any controlled substance as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s) _____ of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~_____ (or)~~

~~Respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedule(s) _____ of the Act for in-patients in a hospital setting, and not otherwise.~~

~~Note: Use the following paragraph only if there is an actual elimination of authority to prescribe a Scheduled Controlled Substance.~~

~~Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.~~

~~13. — Controlled drugs — maintain record —~~

~~Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing the following: (1) the name and address of the patient (2) the date, (3) the character and quantity of controlled substances involved and (4) the pathology and purpose for which the controlled substance was furnished.~~

~~Respondent shall keep these records in a separate file or ledger, in chronological order and shall make them available for inspection and copying by the Board or its designee, upon request.~~

~~14. — Diversion program — alcohol and drugs —~~

~~Within 30 days of the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation by respondent.~~

~~15. — Drugs — abstain from use —~~

~~Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined the Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~16. — Alcohol — abstain from use —~~

~~Respondent shall abstain from the use of alcoholic beverages.~~

~~17. — Biological fluid testing —~~

~~Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.~~

~~18. — Pharmacology course —~~

~~Within 60 days of the effective date of this decision, respondent shall enroll in a course in Pharmacology course, approved in advance by the Board or its designee, and shall successfully complete the course during the first year of probation.~~

~~19. — Education course —~~

~~Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval an education program or course related to the violations charged in the accusation. This shall be completed during the first year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure.~~

~~Following the completion of each course, the Board or its designee may administer an examination to test the respondent's knowledge of the course. Respondent shall provide proof of attendance for both continuing medical education requirements and education course on a yearly basis.~~

~~20. — Medical ethics course —~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation.~~

~~21. — Clinical training program —~~

~~Within 90 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the accusation. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Board or its designee related to the program's contents.~~

~~22. — Oral/practical or written examination —~~

~~Within 60 days of the effective date of this decision, (or upon completion of the required education course)(or upon completion of the required clinical training program) respondent shall take and pass a(n) oral/practical and/or written) examination to be administered by the Board or its designee.~~

~~Written examination may be the Special Purpose Exam. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The respondent shall pay the costs of all examinations.~~

~~(Use either of the following two options with the above paragraph)~~

~~OPTION #1: Condition precedent~~

~~Respondent shall not practice medicine until respondent has passed this examination and has been so notified by Board in writing.~~

~~OPTION # 2: Condition subsequent~~

~~If respondent fails to take and pass this examination by the end of the first six months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.~~

~~23. — Third party presence —~~

~~During probation, respondent shall have a third party present while examining or treating (male, female, minor) patients. Respondent shall within 30 days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will act as the third party present. The respondent shall execute a release authorizing the third party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.~~

NOTE: Sexual transgressors should normally be placed in a supervised structured environment.

~~24. Prohibited practice~~

~~During probation, respondent is prohibited from practicing _____.~~

~~25. Psychiatric evaluation~~

~~Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.~~

~~If respondent is required by the Board or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status report to the Board indicating whether the defendant is capable of practicing medicine safely.~~

~~(OPTIONAL)~~

~~Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is mentally fit to practice safely.~~

~~26. Psychotherapy~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status report to the Board. The Board may require response to undergo psychiatric evaluation by a Board appointed psychiatrist. Respondent shall pay all cost of the psychiatric evaluation.~~

~~NOTE: This condition is for those cases where the evidence demonstrated that the respondent has had impairment (impairment by mental illness, alcohol abuse and drug self abuse) related to the violations but is not at present a danger to his/her patients.~~

~~27. — Medical evaluation —~~

~~Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the medical evaluation.~~

~~If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a physician of the respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further medical treatment is necessary. Respondent shall not engage in the practice of medicine until notified by the Board of its determination that the respondent is medically fit to practice safely. Respondent shall pay the costs of such medical treatment.~~

~~NOTE: This condition is for those cases where the evidence demonstrates drug or alcohol impairment or medical illness or disability was a contributing cause of the violations.~~

~~28. — Medical treatment —~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, response shall undergo and continuing treatment until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports of the periodic medical evaluations by a Board appointed physician. Respondent shall pay the cost of such medical treatments.~~

~~29. — Supervised structured environment —~~

~~Respondent is prohibited from engaging in solo practice. With 30 days of the effective date of this decision, respondent shall submit to the Board and receive its prior approval, for a plan of practice limited to a supervised structured environment in which respondent's activities will be overseen and supervised by another physician, who shall provide reports to the Board.~~

~~30. — Community services —~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least ___ hours a month for the first _____ months of probation.~~

NOTE: Not for quality of care issues.

31. ~~Restitution~~

~~Respondent shall provide restitution to _____ in the amount of _____ prior to the completion of the first year of probation.~~

NOTE: For patients only.

TAB 4



OSTEOPATHIC
Physicians & Surgeons
OF CALIFORNIA

KATHLEEN S. CREASON, MBA
EXECUTIVE DIRECTOR

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DOs: Physicians Treating People, Not Just Symptoms

December 12, 2017

The Honorable Jerry Hill
Senator
California State Legislature
State Capitol, Room 5035
Sacramento, CA 95814

RE: SB 798 Physician Training License Provisions

Dear Senator Hill:

I am writing on behalf of the Osteopathic Physicians and Surgeons of California (OPSC) to provide comments and concerns related to the physician postgraduate training license provisions included in SB 798 (Chapter #775, 2017).

We have appreciated the time and attention your staff has provided in reviewing these provisions with us, but we remain strongly concerned with the impact these changes will have on patient access to physician services and the ability for physicians to provide needed reimbursable health care services in the state. We recently met with Sarah Mason with the Senate Business and Professions Committee along with Robert Sumner with the Assembly Business and Professions Committee. It was a positive and encouraging conversation and we are looking forward to working with you and committee staff to address our concerns which include the following:

Physicians will be prohibited from providing patient services outside their specific residency program

SB 798 includes provisions that we believe limit the opportunity for physicians to work outside their specialty residency area. This limitation will prohibit physicians from being able to provide patient care services in other specialties and at other facilities. An example would be a neurology resident who wishes to provide support and gain experience by working in the Emergency Department. Provisions in SB 798 would prohibit this, thereby limiting options for the physician and potentially creating a workforce issue.

Many physicians complete only two-year residency programs so will not have the requisite training required

There are residency programs in California that are only two years in duration. These programs would no longer provide physicians with the needed requirements under SB 798 thus, limiting a physician's ability to qualify for a license beginning in 2020. Examples of two year residency programs include Aerospace Medicine, Medical Genetics, and Public Health and Preventive Medicine.

It is unclear if physician residents at community clinics can provide care after one year under their training license

The language in SB 798 is unclear as to whether or not physician residents at community clinics will be able to provide patient services after one year, as allowed under current statute.

Senator Jerry Hill
December 12, 2017
Page Two

Clarification needed about length of training license

SB 798 does not specify the length of time a physician can provide services as a training licensee. Additionally, the legislation does not indicate options for physician residents who have a gap in their residency training.

Alternative pathways should be provided for physicians that do not complete three years of residency.

Because some physicians gain their experience and training outside a specific residency program - especially in California where residency programs are extremely limited – there should be alternative pathways for physicians to complete requirements for licensure.

Patient access to physician services should be monitored and protected

Areas in California that are rural and underserved are at highest risk of losing access to physician services with the new licensure requirements mandated by SB 798. These communities are high utilizers of physician residents and those with varied experience levels. The state should have mechanisms in place to monitor access and provide these underserved areas with options.

It is unclear how the state will handle physicians who come from other states

SB 798 provisions do not clearly address requirements for physicians who come from other states. Provisions should be added to address this issue.

We look forward to discussing these issues and concerns with you and your staff and hope to work together to resolve them in the near future. If we can provide any additional information or background please don't hesitate to contact Kathleen Creason at Kathleen@opsc.org or 916-822-5246.

Sincerely,



Brian Loveless, DO
President

CC: Assembly Member Evan Low, Chair, Assembly Business & Professions Committee
Angie Burton, Executive Director, Osteopathic Medical Board of California
Dean Grafilo, Director, Department of Consumer Affairs
Kimberly Kirchmeyer, Executive Director, California Medical Board
Dustin Corcoran, CEO, California Medical Association

TAB 5



LEGISLATIVE SUMMARY

AB 505 (Caballero) Physicians and Surgeons: Probation

Status: In Senate, hearing postponed by the Committee on Business, Professions & Economic Development.

This bill would prevent the Board from entering into a stipulated settlement for a disciplinary action with a physician if the underlying accusations of the complaint allege a felony conviction resulting in harm to patient safety; drug or alcohol abuse directly resulting in harm to patient safety or, sexual acts or sexual exploitation.

AB 710 (Wood) Cannabidiol

Status: Active; Set for hearing in the Senate Committee on Public Safety on May 15th.

This bill would allow a physician, pharmacist, or other healing arts licensee authorized to prescribe, furnish, or dispense a product that contains cannabidiol if the product is approved under federal law.

AB 1368 (Calderon) Health Professionals: authorization forms.

Status: In Senate, ordered to Inactive File

This bill would allow a nurse practitioner or physician assistant to sign any authorization form required by the Department of Health Care Services for benefits and services for the Medi-Cal program, the Genetically Handicapped Persons Program, and the Child Health Disability Prevention Program.

AB 1752 (Low) Controlled Substances; CURES database

Status: In Assembly, referred to Appropriations Committee Suspense File.

This bill would add Schedule V drugs to the Controlled Substance Utilization Review and Evaluation System (CURES) database. This bill would also change the timeline for drug dispensers to submit data to CURES from seven days to one working day.

AB1791 (Waldron) Physicians and surgeons: continuing education.

Status: In Senate, referred to Committee on Business, Professions and Economic Development

This bill would require the Medical Board to consider including a course that is consistent with the most recent guidelines published by the United States Public Health Service and the Centers for Disease Control and Prevention in integrating HIV/AIDS pre-exposure and post-exposure prophylaxis medication and counseling when determining continuing education requirements for physicians and surgeons.

AB 1795 (Gipson) Emergency Medical Services: Behavioral Health Facilities and Sobering Centers.

Status: In Assembly, re-referred to Committee on Appropriations

Authorizes local emergency medical services agency to submit, as part of emergency medical services plan, to transport specified patients who meet triage criteria to a behavioral health facility or a sobering center.

AB 1998 (Rodriguez) Opioids; Safe Prescribing Protocol.

Status: In Assembly, first hearing 5/9/18; Referred to Appropriations suspense file

This bill would require, by June 1, 2019, every health care practitioner authorized to prescribe opioids classified as Schedule II and Schedule III to adopt a safe prescribing protocol, as specified. The bill would require the health care practitioner to note the reason the safe prescribing protocol was not followed if, in the health care practitioner's professional judgment, adherence to the safe prescribing protocol is not appropriate for a patient's condition. The bill would make the failure to develop or adhere to the protocol, except as specified, unprofessional conduct and enforceable by the health care practitioner's licensing board.

AB 2086 (Gallagher) Controlled Substances: CURES Database

Status: In Senate, read first time 5/3/18: To Senate Rules for assignment

This bill allows prescribers of controlled substances to review a list of patients for whom they are listed as prescriber in the CURES database.

AB 2138 (Chiu) Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

Status: In Assembly, referred to Committee on Appropriations

This bill would ease the restrictions regarding licensure requirements for prior offenders by limiting a board's discretion to deny a new license application, or suspend or revoke an existing license to cases where the applicant or licensee was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board. Nonviolent offenses older than five years would also not be eligible for license denial or suspension.

AB 2174 (Waldron) Heroin and Opioid Public Education (HOPE) Act

Status: In Assembly Referred to Appropriations, suspense file.

Requires CA Dept. of Public Health, upon appropriation by the Legislature or receipt of adequate state or federal grant, to develop a comprehensive, multicultural public awareness campaign, designed to combat the growing heroin and opioid medication epidemic in the state.

AB 2193 (Maienschein) Maternal Mental Health

Status: In Assembly re-referred to Committee on Appropriations

This bill would require an obstetrician-gynecologist, or licensed health care practitioners supervised by obstetrician-gynecologists, to screen the mother for maternal mental health conditions during pregnancy and the postpartum period, and to report the findings of the screening to the mother's primary care physician as specified.

AB 2483 (Voepel) Indemnification of Public Officers and Employees Antitrust Awards
Status: In Senate, referred to Committee on Rules for assignment.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board.

AB 2487 (McCarty) Physicians and Surgeons: education: opiate-dependent patient treatment management.

Status: In Assembly, on Third Reading File.

This bill would require a physician and surgeon to complete a continuing education course on opiate-dependent patient treatment and management, as specified, within 6 months of first receiving, or next renewing, a federal Drug Enforcement Administration registration to dispense narcotic drugs for patient treatment, unless the physician and surgeon meets the requirements of a qualifying physician within the federal Comprehensive Addiction Recovery Act of 2016.

AB 2539 (Mathis) California Physicians Corps Program: Practice setting.

Status: In Senate, referred to Committee on Rules for assignment.

This bill would expand eligibility for the California Physician Corps Program in rural areas by revising the definition of "practice setting" to include a clinic that has at least 30% of patients in rural areas; and, a physician owned and operated medical practice setting that provides primary care located in a medically underserved area and has at least 30% of patients in rural areas.

AB 2682 (Burke) Nurse-Midwives

Status: In Assembly, re-refer to Committee on Appropriations

Authorizes a certified nurse-midwife to attend cases of normal childbirth without the supervision of a physician and surgeon.

AB 2741 (Burke) Prescription Drugs; Opioid Medications: Minors

Status: In Senate, read first time. To Committee on Rules for assignment.

This bill would prohibit a prescriber from prescribing more than a 5-day supply of an opioid medication to a minor except in specified instances.

AB 2760 (Wood) Prescription Drugs: Naloxone Hydrochloride

Status: In Assembly, re-referred to Committee on Appropriations.

This bill would require a prescriber to offer naloxone hydrochloride or another opioid antagonist to patients when they are prescribed a large dosage of opioid medication, prescribed an opioid and benzodiazepine, or have an increased risk for overdose. This bill would also require the prescriber to provide education on overdose prevention and the use of the opioid antagonist.

AB 2783 (O'Donnell) Controlled Substances: Hydrocodone Combination Products: Schedules.

Status: In Assembly, read second time. Ordered to Consent Calendar.

This bill would reclassify specified hydrocodone combination products as Schedule II controlled substances. This bill would expand the scope of existing crimes that apply to Schedule II controlled substances, and impose a state-mandated local program.

AB 2968 (Levine) Psychotherapist-Client Relationship: Victim of Sexual Behavior and Sexual Contact: Informational Brochure

Status: In Assembly, read second time, ordered to Consent Calendar.

This bill would update requirements for psychotherapists relating to outreach on psychotherapist-patient sexual contact.

SB 641 (Lara) Controlled Substance Utilization Review and Evaluation System: Privacy

Status: First hearing canceled at the request of author.

Prohibits the Department of Justice from releasing data in the CURES system to a law enforcement agency except pursuant to a warrant.

SB 1109 (Bates) Controlled Substances: Schedule II Drugs; Opioids

Status: Set for hearing on May 14.

This bill would: (1) amend existing mandatory continuing education course content requirements for physicians and surgeons, physician assistants, certified nurse-midwives, nurse practitioners, dentists, osteopathic physicians and surgeons, and optometrists to require instruction to include information on the risks of addiction associated with the use of Schedule II drugs; (2) encourage the Medical Board of California (Board) to include instruction on the risks of addiction associated with the use of Schedule II drugs as part of its continuing education requirements; (3) require the Board to periodically develop and disseminate informational materials regarding the risks of addiction associated with the use of Schedule II drugs; (4) require pharmacies and pharmacists to display on the label or container of a prescription drug containing an opioid, a notice that warns of the risk of overdose and addiction; (5) require prescribers to first discuss the risks of addiction and overdose associated with the use of opioids before prescribing opioid medications to a minor; (6) require schools and youth sports organizations to annually provide athletes with an information sheet regarding the risks of opioid addiction; (7) expresses legislative intent to codify the Board's existing Guidelines for Prescribing Controlled Substances for Pain (Guidelines).

SB 1163 (Galgiani) Postmortem Examination or Autopsy: Unidentified Body or Human Remains: Medical Examiner: Attending Physician and Surgeon.

Status: In Assembly, read first time. Held at Desk.

Requires a postmortem examination or autopsy upon an unidentified body or human remains be conducted by an attending physician and surgeon or the chief medical examiner who is a board certified forensic pathologist certified by the American Board of Pathology.

SB 1238 (Roth) Patient Records: Maintenance and Storage

Status: In Senate, re-referred to Committee on Appropriations

Requires certain health care providers to provide a statement to a patient at the time an initial patient record is created that informs the patient of their right to inspect and copy their medical records, and of the intended retention period for the records. Also requires a health care provider to provide a patient with his/her original medical records that the provider plans to destroy if the patient makes a request for the records to the provider before the date of the proposed destruction of the records. Authorizes issuance of citation and fine penalties for violations of these provisions.

SB 1240 (Stone) Prescription Drugs: CURES Database.

Status: Second hearing canceled at the request of the author.

(This bill failed the policy committee deadline for fiscal bills and is now dead).

This bill would have required a written or electronic prescription to include an International Statistical Classification of Diseases, 10th revision (ICD-10) Code or a legible clear notice of the condition or purpose for which the drug was being prescribed, and permitted these notices to be shared between a patient's pharmacies. This bill would have also added Schedule V drugs to the Controlled Substance Utilization Review and Evaluation System (CURES) database.

SB 1336 (Morrell) Public Health: End of Life Option Act

Status: This bill failed passage in the Senate Committee on Health.

Existing law requires the Department of Public Health to annually create a report containing specified information collected from attending physicians that have administered aid-in-dying drugs to patients. This bill would require the report to further include the areas of practice of each physician who wrote a prescription for an aid-in-dying drug, the motivating reason or reasons behind a patient's decision to request the aid-in-dying drug, and the number of patients who received a mental health specialist assessment prior to receiving the aid-in-dying drug. Finally, the bill would require the Medical Board to make conforming changes to reporting forms to capture the additional data.

SB 1426 (Stone) Pharmacists: Authority to Prescribe and Dispense Dangerous Drugs and Devices.

Status: In Senate, first hearing canceled at the request of the author.

Requires Pharmacy Board to convene a Public Health and Pharmacy Formulary Advisory Committee to advise the board in promulgating regulations to establish a formulary of drugs and devices that an advanced practice pharmacist may furnish to a patient. The bill would require the board to establish a formulary of dangerous drugs and devices that an advanced pharmacist may furnish to a patient, and would authorize an advanced pharmacist to furnish a dangerous drug or dangerous device included in the formulary to a patient pursuant to a diagnosis by a health care practitioner.

SB 1448 (Hill) Healing Arts Licensees: Probation Status Disclosure.

Status: In Senate, re-referred to Committee on Appropriations.

This bill would, on and after July 1, 2019, require the Medical Board, the Podiatric Medical Board, the Osteopathic Medical Board, the Naturopathic Medicine Committee, the Chiropractic Board, and the Acupuncture Board to require a licensee to provide a separate disclosure to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019. The bill would also require those regulatory boards to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.

**AB 505 (*Caballero*) Physicians and Surgeons:
Probation**

AMENDED IN ASSEMBLY MARCH 27, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 505

Introduced by Assembly Member Caballero

February 13, 2017

An act to add Section 2227.1 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 505, as amended, Caballero. Physicians and surgeons: probation.

Under existing law, a physician and surgeon whose matter has been heard by an administrative law judge, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the Medical Board of California, is authorized to be subject to, among other things, license revocation, suspension, or probation, as specified. Existing law authorizes the board to discipline a licensee by placing him or her on probation subject to specified conditions.

This bill would prohibit the board from entering into any stipulation for disciplinary action, ~~including placing~~ *action if the stipulation places* a licensee on ~~probation, if~~ *probation and* the operative accusation includes specified acts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2227.1 is added to the Business and
- 2 Professions Code, to read:

1 2227.1. Notwithstanding Sections 2227 and 2228, the board
2 may not enter into any stipulation for disciplinary ~~action, which~~
3 ~~includes placing~~ *action if the stipulation places* a licensee on
4 ~~probation, if probation and~~ the operative accusation includes any
5 of the following:
6 (a) Felony conviction involving harm to patient safety or health.
7 (b) Drug or alcohol abuse directly resulting in harm to patient
8 safety or health.
9 (c) Sexual act or sexual exploitation as defined in Section 726
10 and subdivision (a) of Section 729.

**AB 1998 (*Rodriguez*) Opioids: Safe
Prescribing Protocol**

AMENDED IN ASSEMBLY APRIL 11, 2018

AMENDED IN ASSEMBLY MARCH 12, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1998

Introduced by Assembly Member Rodriguez

February 1, 2018

An act to ~~amend Section 11190 of, and to add Section 11154.5 to,~~ *add Section 11153.1* to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Rodriguez. Opioids: ~~prescription limitations.~~ *safe prescribing protocol.*

Existing law, the Uniform Controlled Substances Act, classifies opioids as Schedule II controlled substances and places restrictions on the prescription of those drugs, including prohibiting refills and specifying the requirements of a prescription for these drugs. Violation of these provisions *and the Uniform Controlled Substances Act* is a misdemeanor.

This bill would require, by June 1, 2019, every health care practitioner authorized to prescribe opioids classified as Schedule II and Schedule III to adopt a safe prescribing protocol, as specified. The bill would require the health care practitioner to note the reason the safe prescribing protocol was not followed if, in the health care practitioner's professional judgment, adherence to the safe prescribing protocol is not appropriate for a patient's condition. The bill would make the failure to develop or adhere to the protocol, except as specified, unprofessional conduct and enforceable by the health care practitioner's licensing

board. Because violation of these provisions is also a crime, the bill would create a new crime, thereby imposing a state-mandated local program.

The bill would require the State Department of Public Health, utilizing data from the CURES database for the year ending December 31, 2016, to monitor progress toward stated goals and to report this information to the Legislature annually.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would prohibit a prescriber from prescribing an opioid in an amount greater than the patient needs for a 3-day period unless the prescriber believes, in his or her professional judgment, that a larger prescription is needed to treat a medical condition or that a larger prescription is necessary for the treatment of chronic pain. The bill would require a prescriber who writes a prescription for an opioid that is either larger than the 3-day supply or that is the 4th prescription without the dosage decreasing to include in the patient's record why the excess or additional prescription was needed, what other medications were considered, the patient's injury or illness, and the milligram dosage of the prescription. The bill would require the prescriber to take specified actions prior to prescribing an opioid, including informing the patient of the risks and treatment options for opioid addiction. By creating new crimes, this bill would impose a state-mandated local program.

Existing law imposes reporting requirements on practitioners prescribing Schedule II controlled substances and makes a violation of those reporting requirements a misdemeanor.

This bill would require, when a prescription is for an amount larger than that needed for 3 days or when the prescription is the 4th prescription without the dosage decreasing, the prescriber to report, in detail, why the excess or additional prescription was needed, what other medications were considered, the patient's injury or illness, and the milligram dosage of the prescription. The bill would also require a prescriber who fails to submit the report required to be referred to the appropriate licensing board for administrative action, as deemed appropriate by that board. By creating a new crime, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11153.1 is added to the Health and Safety
2 Code, to read:

3 11153.1. (a) It is the intent of the Legislature that by January
4 1, 2022, there shall be a ____% reduction in the number of
5 prescriptions issued in California for opioids classified as Schedule
6 II and Schedule III, as defined in Sections 11055 and 11056,
7 respectively. It is also the intent of the Legislature that by January
8 1, 2022, there shall be a reduction of ____% in the quantity of
9 doses authorized pursuant to prescriptions for opioids classified
10 as Schedule II and Schedule III.

11 (b) By June 1, 2019, every health care practitioner authorized
12 to prescribe opioids classified as Schedule II and Schedule III
13 pursuant to Sections 11055 and 11056, respectively, shall adopt
14 a safe prescribing protocol, as described in subdivision (c). A
15 group of practitioners may adopt a safe prescribing protocol that
16 applies to all parties as part of a business affiliation or contract
17 with an organized provider group.

18 (c) The safe prescribing protocol shall be a written document
19 promoting the appropriate and optimal selection, dosage, and
20 duration of opioid prescriptions for patients, with the goal of
21 reducing the misuse of opioids. The protocol shall include, but is
22 not limited to, all of the following:

23 (1) The maximum dose and duration of prescriptions for adult
24 patients experiencing acute pain.

25 (2) The maximum dose and duration of prescriptions for
26 pediatric patients experiencing acute pain.

27 (3) Alternatives to opioid treatment, including
28 nonpharmacological treatment options.

29 (4) Refill authorization practices.

- 1 (5) *Coprescription of opioid antagonists to at-risk patients,*
2 *including, but not limited to, patients who meet any of the following*
3 *criteria:*
- 4 (A) *An opioid dosage of 90 morphine milligrams or more per*
5 *day.*
- 6 (B) *Patients who are prescribed benzodiazepines.*
- 7 (C) *Patients with a history of substance use disorder.*
- 8 (6) *Referral guidelines and policies between primary care and*
9 *specialty care, including, but not limited to, pain specialists.*
- 10 (7) *Mechanisms for prescriber peer-to-peer review and*
11 *cooperation.*
- 12 (8) *Procedures for periodic review of the protocol for*
13 *effectiveness in reducing opioid prescription.*
- 14 (9) *Procedures for updating the protocol, as appropriate.*
- 15 (10) *Mechanisms for patient education on the side effects of*
16 *opioids, including the risk of addiction and overdose.*
- 17 (d) *The development of a safe prescribing protocol shall include*
18 *review and consideration of evidence-based science, literature,*
19 *research, and guidelines, including relevant recommendations*
20 *and research from academia and consideration of existing*
21 *guidelines and recommendations from groups including, but not*
22 *limited to, the federal Centers for Disease Control and Prevention,*
23 *the federal Centers for Medicare and Medicaid Services, the*
24 *Medical Board of California, and the American Society of*
25 *Addiction Medicine.*
- 26 (e) *A health care practitioner or a group of practitioners may*
27 *adopt the federal Centers for Medicare and Medicaid Services*
28 *opioid prescribing guidelines as the safe prescribing protocol.*
- 29 (f) *If, in the health care practitioner's professional judgment,*
30 *adherence to the safe prescribing protocol is not appropriate for*
31 *a patient's condition, the practitioner shall note in the patient's*
32 *medical record the reason the protocol was not followed.*
- 33 (g) *This section does not apply to a health care practitioner*
34 *who is authorized to prescribe opioids if the prescription of those*
35 *opioids is limited to patients undergoing treatment for chronic*
36 *pain, cancer, substance use disorder, or hospice or end-of-life*
37 *care.*
- 38 (h) *Failure to develop or adhere to the protocol established*
39 *pursuant to this section, except as provided in subdivision (f), is*

1 *unprofessional conduct and enforceable by the health care*
2 *practitioner's licensing board.*

3 *(i) The State Department of Public Health, utilizing data from*
4 *the CURES database for the year ending December 31, 2016, shall*
5 *monitor progress toward the goal stated in subdivision (a) and,*
6 *notwithstanding Section 10231.5 of the Government Code, shall*
7 *report this information to the Legislature annually. The report*
8 *shall be submitted in compliance with Section 9795 of the*
9 *Government Code.*

10 *SEC. 2. No reimbursement is required by this act pursuant to*
11 *Section 6 of Article XIII B of the California Constitution because*
12 *the only costs that may be incurred by a local agency or school*
13 *district will be incurred because this act creates a new crime or*
14 *infraction, eliminates a crime or infraction, or changes the penalty*
15 *for a crime or infraction, within the meaning of Section 17556 of*
16 *the Government Code, or changes the definition of a crime within*
17 *the meaning of Section 6 of Article XIII B of the California*
18 *Constitution.*

19 ~~SECTION 1. Section 11154.5 is added to the Health and Safety~~
20 ~~Code, to read:~~

21 ~~11154.5. (a) A prescriber shall not prescribe an opioid listed~~
22 ~~in subdivision (b) or (c) of Section 11055 in an amount greater~~
23 ~~that the patient needs for a three-day period unless the prescriber~~
24 ~~believes, in his or her professional judgment, that a larger~~
25 ~~prescription is needed to treat a medical condition or that a larger~~
26 ~~prescription is necessary for the treatment of chronic pain. If a~~
27 ~~prescription is written for more than a three-day supply, the~~
28 ~~prescriber shall include in the patient's record, in detail, why the~~
29 ~~excess prescription was needed, what other medications were~~
30 ~~considered, the patient's injury or illness, and the milligram dosage~~
31 ~~of the prescription.~~

32 ~~(b) When a prescriber writes a fourth prescription for an opioid~~
33 ~~listed in subdivision (b) or (c) of Section 11055 where the dosage~~
34 ~~of the prescription has not decreased, the prescriber shall include~~
35 ~~in the patient's record, in detail, why the additional prescription~~
36 ~~is needed, what other medications were considered, the patient's~~
37 ~~injury or illness, and the milligram dosage of the prescription.~~

38 ~~(c) Prior to prescribing an opioid listed in subdivision (b) or (c)~~
39 ~~of Section 11055, a prescriber shall do all of the following:~~

1 ~~(1) Consult with the patient regarding the quantity of the~~
2 ~~prescription and the option for a partial fill pursuant to Section~~
3 ~~4052.10 of the Business and Professions Code.~~

4 ~~(2) Inform the patient of the risks of opioid addiction and~~
5 ~~overdose.~~

6 ~~(3) Inform the patient of the treatment options for opioid~~
7 ~~addiction, including medication-assisted therapy.~~

8 ~~(4) Offer the patient a referral to psychological counseling and~~
9 ~~behavioral therapy.~~

10 ~~(d) This section does not apply to prescriptions for either of the~~
11 ~~following:~~

12 ~~(1) Management of pain associated with cancer.~~

13 ~~(2) Use in palliative, end-of-life, or hospice care.~~

14 ~~SEC. 2. Section 11190 of the Health and Safety Code is~~
15 ~~amended to read:~~

16 ~~11190. (a) Every practitioner, other than a pharmacist, who~~
17 ~~prescribes or administers a controlled substance classified in~~
18 ~~Schedule II shall make a record that, as to the transaction, shows~~
19 ~~all of the following:~~

20 ~~(1) The name and address of the patient.~~

21 ~~(2) The date.~~

22 ~~(3) The character, including the name, strength, and quantity of~~
23 ~~controlled substances involved.~~

24 ~~(b) The prescriber's record shall show the pathology and purpose~~
25 ~~for which the controlled substance was administered or prescribed.~~

26 ~~(c) (1) For each prescription for a Schedule II, Schedule III,~~
27 ~~or Schedule IV controlled substance that is dispensed by a~~
28 ~~prescriber pursuant to Section 4170 of the Business and Professions~~
29 ~~Code, the prescriber shall record and maintain the following~~
30 ~~information:~~

31 ~~(A) Full name, address, and telephone number of the ultimate~~
32 ~~user or research subject, or contact information as determined by~~
33 ~~the Secretary of the United States Department of Health and Human~~
34 ~~Services, and the gender and date of birth of the patient.~~

35 ~~(B) The prescriber's category of licensure and license number;~~
36 ~~federal controlled substance registration number; and the state~~
37 ~~medical license number of any prescriber using the federal~~
38 ~~controlled substance registration number of a government-exempt~~
39 ~~facility.~~

- 1 ~~(C) NDC (National Drug Code) number of the controlled~~
- 2 ~~substance dispensed.~~
- 3 ~~(D) Quantity of the controlled substance dispensed.~~
- 4 ~~(E) ICD-9 (diagnosis code), if available.~~
- 5 ~~(F) Number of refills ordered.~~
- 6 ~~(G) Whether the drug was dispensed as a refill of a prescription~~
- 7 ~~or as a first-time request.~~
- 8 ~~(H) Date of origin of the prescription.~~
- 9 ~~(2) (A) Each prescriber that dispenses controlled substances~~
- 10 ~~shall provide the Department of Justice the information required~~
- 11 ~~by this subdivision on a weekly basis in a format set by the~~
- 12 ~~Department of Justice pursuant to regulation.~~
- 13 ~~(B) The reporting requirement in this section shall not apply to~~
- 14 ~~the direct administration of a controlled substance to the body of~~
- 15 ~~an ultimate user.~~
- 16 ~~(d) (1) For an opioid listed in subdivision (b) or (c) of Section~~
- 17 ~~11055, when a prescription is for an amount larger than that needed~~
- 18 ~~for three days or when the prescription is the fourth prescription~~
- 19 ~~without the dosage decreasing, the practitioner shall report, in~~
- 20 ~~detail, why the longer or additional prescription was needed, what~~
- 21 ~~other medications were considered, the patient's injury or illness,~~
- 22 ~~and the milligram dosage of the prescription.~~
- 23 ~~(2) In addition to the penalties authorized by Section 11191, a~~
- 24 ~~practitioner who fails to submit the report required pursuant to this~~
- 25 ~~subdivision shall be referred to the appropriate licensing board for~~
- 26 ~~administrative action, as deemed appropriate by that board.~~
- 27 ~~(e) The reporting requirement in this section for Schedule IV~~
- 28 ~~controlled substances shall not apply to any of the following:~~
- 29 ~~(1) The dispensing of a controlled substance in a quantity limited~~
- 30 ~~to an amount adequate to treat the ultimate user involved for 48~~
- 31 ~~hours or less.~~
- 32 ~~(2) The administration or dispensing of a controlled substance~~
- 33 ~~in accordance with any other exclusion identified by the United~~
- 34 ~~States Health and Human Service Secretary for the National All~~
- 35 ~~Schedules Prescription Electronic Reporting Act of 2005.~~
- 36 ~~(f) Notwithstanding paragraph (2) of subdivision (e), the~~
- 37 ~~reporting requirement of the information required by this section~~
- 38 ~~for a Schedule II or Schedule III controlled substance, in a format~~
- 39 ~~set by the Department of Justice pursuant to regulation, shall be~~
- 40 ~~on a monthly basis for all of the following:~~

1 ~~(1) The dispensing of a controlled substance in a quantity limited~~
2 ~~to an amount adequate to treat the ultimate user involved for 48~~
3 ~~hours or less.~~

4 ~~(2) The administration or dispensing of a controlled substance~~
5 ~~in accordance with any other exclusion identified by the United~~
6 ~~States Health and Human Service Secretary for the National All~~
7 ~~Schedules Prescription Electronic Reporting Act of 2005.~~

8 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
9 ~~Section 6 of Article XIII B of the California Constitution because~~
10 ~~the only costs that may be incurred by a local agency or school~~
11 ~~district will be incurred because this act creates a new crime or~~
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~
14 ~~the Government Code, or changes the definition of a crime within~~
15 ~~the meaning of Section 6 of Article XIII B of the California~~
16 ~~Constitution.~~

**AB 2138 (*Chiu*) Licensing Boards: Denial of
Application; Revocation or Suspension of
Licensure; Criminal Conviction**

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend ~~Sections 480 and~~ *Sections 7.5, 480, 481, 482, 488, 490, 492, 493, 1005, and 11345.2* ~~of of,~~ *to add Section 481.5 to,* and *to repeal Section 490.5 of,* the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chiu. Licensing boards: denial of application: *revocation or suspension of licensure: criminal conviction.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs and Affairs. Existing law authorizes a board to ~~deny deny,~~ *suspend, or revoke a license or take disciplinary action against a licensee* on the grounds that the applicant *or licensee* has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. *Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the*

business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

~~This bill would instead prohibit a person from being denied a license solely on the basis that he or she has been convicted of a nonviolent crime and would make conforming changes.~~ *revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding 5 years, except for violent felonies, and would require the crime to be directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has made a showing of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.*

The bill would require the board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board to suspend a license if a licensee is not in compliance with a child support order or judgment.

This bill would repeal that authorization.

Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.

This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.

Existing law authorizes a board after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license.

This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board’s decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days.

This bill would also make necessary conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7.5 of the Business and Professions Code
- 2 is amended to read:
- 3 7.5. (a) A conviction within the meaning of this code means
- 4 a judgment following a plea or verdict of guilty or a conviction
- 5 following a plea of nolo contendere, contendere or finding of guilt.
- 6 Any action which a board is permitted to take following the

1 establishment of a conviction may be taken when the time for
 2 appeal has elapsed, or the judgment of conviction has been affirmed
 3 on appeal or when an order granting probation is made suspending
 4 the imposition of sentence, irrespective of a subsequent order under
 5 the provisions of Section 1203.4 of the Penal Code: *sentence*.
 6 However, a board may not deny a license to an applicant who is
 7 otherwise qualified pursuant to subdivision (b) *or* (c) of Section
 8 480.

9 **Nothing**

10 (b) *Nothing* in this section shall apply to the licensure of persons
 11 pursuant to Chapter 4 (commencing with Section 6000) of Division
 12 3.

13 (c) *Except as provided in subdivision (b), this section controls*
 14 *over and supersedes the definition of conviction contained within*
 15 *individual practice acts under this code.*

16 **SECTION 1.**

17 **SEC. 2.** Section 480 of the Business and Professions Code is
 18 amended to read:

19 480. (a) ~~A(1)~~ *Notwithstanding any other provision of this*
 20 *code, a board may deny a license regulated by this code on the*
 21 *grounds that the applicant has one of the following: been convicted*
 22 *of a crime or has been subject to formal discipline only if either*
 23 *of the following conditions are met:*

24 ~~(1) Been convicted of a crime. A conviction within the meaning~~
 25 ~~of this section means a plea or verdict of guilty or a conviction~~
 26 ~~following a plea of nolo contendere. Any action that a board is~~
 27 ~~permitted to take following the establishment of a conviction may~~
 28 ~~be taken when the time for appeal has elapsed, or the judgment of~~
 29 ~~conviction has been affirmed on appeal, or when an order granting~~
 30 ~~probation is made suspending the imposition of sentence,~~
 31 ~~irrespective of a subsequent order under the provisions of Section~~
 32 ~~1203.4, 1203.4a, or 1203.41 of the Penal Code.~~

33 ~~(2) Done any act involving dishonesty, fraud, or deceit with the~~
 34 ~~intent to substantially benefit himself or herself or another, or~~
 35 ~~substantially injure another.~~

36 ~~(3) (A) Done any act that if done by a licentiate of the business~~
 37 ~~or profession in question, would be grounds for suspension or~~
 38 ~~revocation of license.~~

39 ~~(B) The board may deny a license pursuant to this subdivision~~
 40 ~~only if the crime or act is substantially related to the qualifications;~~

1 ~~functions, or duties of the business or profession for which~~
2 ~~application is made.~~

3 (A) *The applicant has been convicted of a crime for which the*
4 *applicant is presently incarcerated or for which the conviction*
5 *occurred within the preceding five years. However, the preceding*
6 *five year limitation shall not apply to a conviction for a violent*
7 *felony, as defined in Section 667.5 of the Penal Code.*

8 *The board may deny a license pursuant to this subparagraph*
9 *only if the crime is directly and adversely related to the*
10 *qualifications, functions, or duties of the business or profession*
11 *for which application is made.*

12 (B) *The applicant has been subjected to formal discipline by a*
13 *licensing board within the preceding five years based on*
14 *professional misconduct that would have been cause for discipline*
15 *before the board for which the present application is made and*
16 *that is directly and adversely related to the qualifications,*
17 *functions, or duties of the business or profession for which the*
18 *present application is made. However, prior disciplinary action*
19 *by a licensing board within the preceding five years shall not be*
20 *the basis for denial of a license if the basis for that disciplinary*
21 *action was a conviction that has been dismissed pursuant to Section*
22 *1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable*
23 *dismissal or expungement.*

24 (2) *Denial of a license includes denial of an unrestricted license*
25 *by issuance of a restricted or probationary license.*

26 (b) *Notwithstanding any other provision of this code, a person*
27 *shall not be denied a license solely on the basis that he or she has*
28 *been convicted of a ~~nonviolent crime.~~ crime, or on the basis of*
29 *acts underlying a conviction for a crime, if he or she has obtained*
30 *a certificate of rehabilitation under Chapter 3.5 (commencing with*
31 *Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been*
32 *granted clemency or a pardon by a state or federal executive, or*
33 *has made a showing of rehabilitation pursuant to Section 482.*

34 (c) *Notwithstanding any other provision of this code, a person*
35 *shall not be denied a license on the basis of any conviction, or on*
36 *the basis of the acts underlying the conviction, that has been*
37 *dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the*
38 *Penal Code, or a comparable dismissal or expungement. An*
39 *applicant who has a conviction that has been dismissed pursuant*
40 *to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code*

1 shall provide proof of the dismissal if it is not reflected on the
 2 report furnished by the Department of Justice.

3 (d) Notwithstanding any other provision of this code, a board
 4 shall not deny a license on the basis of an arrest that resulted in
 5 a disposition other than a conviction, including an arrest that
 6 resulted in an infraction, citation, or a juvenile adjudication.

7 ~~(e)~~

8 (e) A board may deny a license regulated by this code on the
 9 ground that the applicant knowingly made a false statement of fact
 10 that is required to be revealed in the application for the license. A
 11 board shall not deny a license based solely on an applicant's
 12 failure to disclose a fact that would not have been cause for denial
 13 of the license had it been disclosed.

14 (f) A board shall follow the following procedures in requesting
 15 or acting on an applicant's criminal history information:

16 (1) A board shall not require an applicant for licensure to
 17 disclose any information or documentation regarding the
 18 applicant's criminal history.

19 (2) If a board decides to deny an application based solely or in
 20 part on the applicant's conviction history, the board shall notify
 21 the applicant in writing of all of the following:

22 (A) The denial or disqualification of licensure.

23 (B) Any existing procedure the board has for the applicant to
 24 challenge the decision or to request reconsideration.

25 (C) That the applicant has the right to appeal the board's
 26 decision.

27 (D) The processes for the applicant to request a copy of his or
 28 her complete conviction history and question the accuracy or
 29 completeness of the record pursuant to Sections 11122 to 11127
 30 of the Penal Code.

31 (g) (1) For a minimum of three years, each board under this
 32 code shall retain application forms and other documents submitted
 33 by an applicant, any notice provided to an applicant, all other
 34 communications received from and provided to an applicant, and
 35 criminal history reports of an applicant.

36 (2) Each board under this code shall retain the number of
 37 applications received for each license and the number of
 38 applications requiring inquiries regarding criminal history. In
 39 addition, each licensing authority shall retain all of the following
 40 information:

1 (A) The number of applicants with a criminal record who
2 received notice of denial or disqualification of licensure.

3 (B) The number of applicants with a criminal record who
4 provided evidence of mitigation or rehabilitation.

5 (C) The number of applicants with a criminal record who
6 appealed any denial or disqualification of licensure.

7 (D) The final disposition and demographic information,
8 including, but not limited to, voluntarily provided information on
9 race or gender, of any applicant described in subparagraph (A),
10 (B), or (C).

11 (3) (A) Each board under this code shall annually make
12 available to the public through the board's Internet Web site and
13 through a report submitted to the appropriate policy committees
14 of the Legislature deidentified information collected pursuant to
15 this subdivision. Each board shall ensure confidentiality of the
16 individual applicants.

17 (B) A report pursuant to subparagraph (A) shall be submitted
18 in compliance with Section 9795 of the Government Code.

19 (h) "Conviction" as used in this section shall have the same
20 meaning as defined in Section 7.5.

21 (i) This section supersedes any contradictory provision in a
22 licensing act under this code or initiative act referred to in Division
23 2 (commencing with Section 500) that authorizes license denial
24 based on a criminal conviction, arrest, or the acts underlying an
25 arrest or conviction.

26 SEC. 3. Section 481 of the Business and Professions Code is
27 amended to read:

28 481. (a) Each board under ~~the provisions of~~ this code shall
29 develop criteria to aid it, when considering the denial, ~~suspension~~
30 *suspension*, or revocation of a license, to determine whether a
31 ~~crime or act is substantially~~ *is directly and adversely* related to the
32 qualifications, functions, or duties of the business or profession it
33 regulates.

34 (b) *Criteria for determining whether a crime is directly and*
35 *adversely related to the qualifications, functions, or duties of the*
36 *business or profession a board regulates shall include all of the*
37 *following:*

38 (1) *The nature and gravity of the offense.*

39 (2) *The number of years elapsed since the date of the offense.*

1 (3) *The nature and duties of the profession in which the*
2 *applicant seeks licensure or in which the licensee is licensed.*

3 (c) *A board shall not deny a license based in whole or in part*
4 *on a conviction without considering evidence of rehabilitation.*

5 (d) *Each board shall post on its Internet Web site a summary*
6 *of the criteria used to consider whether a crime is considered to*
7 *be directly and adversely related to the qualifications, functions,*
8 *or duties of the business or profession it regulates consistent with*
9 *this section.*

10 SEC. 4. *Section 481.5 is added to the Business and Professions*
11 *Code, to read:*

12 481.5. (a) *Probationary terms or restrictions placed on a*
13 *license by a board shall be limited to two years or less. Any*
14 *additional conditions may be imposed only if the board determines*
15 *that there is clear and convincing evidence that additional*
16 *conditions are necessary to address a risk shown by clear and*
17 *convincing evidence.*

18 (b) *Each board under this code shall develop criteria to aid it*
19 *when considering the imposition of probationary conditions or*
20 *restrictions to determine what conditions may be imposed to*
21 *address a risk shown by clear and convincing evidence.*

22 (c) (1) *A licensee or registrant whose license or registration*
23 *has been placed on probation may petition the board for a change*
24 *to the probation, including modification or termination of*
25 *probation, one year from the effective date of the decision. The*
26 *board shall issue its decision on the petition within 90 days of*
27 *submission of the petition. The petition shall be deemed granted*
28 *by operation of law if the board does not file a decision denying*
29 *the petition within 90 days of submission of the petition.*

30 (2) *The one-year time period to petition for modification or*
31 *termination of penalty shall control over longer time periods under*
32 *a licensing act under this code or initiative act referred to in*
33 *Division 2 (commencing with Section 500).*

34 SEC. 5. *Section 482 of the Business and Professions Code is*
35 *amended to read:*

36 482. (a) *Each board under ~~the provisions of~~ this code shall*
37 *develop criteria to evaluate the rehabilitation of a person ~~when:~~*
38 *when doing either of the following:*

39 (a)

1 (1) Considering the denial of a license by the board under
2 Section ~~480~~, or 480.

3 ~~(b)~~

4 (2) Considering suspension or revocation of a license under
5 Section 490.

6 ~~Each~~

7 (b) ~~Each board shall take into account all competent evidence~~
8 ~~of rehabilitation furnished by the applicant or licensee. find that~~
9 ~~an applicant or licensee has made a showing of rehabilitation if~~
10 ~~any of the following are met:~~

11 (1) ~~The applicant or licensee has completed the criminal~~
12 ~~sentence at issue without a violation of parole or probation.~~

13 (2) (A) ~~The applicant or licensee documents that he or she has~~
14 ~~worked in a related field continuously for at least one year prior~~
15 ~~to licensure or successfully completed a course of training in a~~
16 ~~related field, unless the board finds a public record of an official~~
17 ~~finding that the applicant committed professional misconduct in~~
18 ~~the course of that work.~~

19 (B) ~~Work in a related field may include, but is not limited to,~~
20 ~~work performed without compensation and work performed while~~
21 ~~incarcerated.~~

22 (C) ~~“Related field,” for purposes of this paragraph, means a~~
23 ~~field of employment whose duties are substantially similar to the~~
24 ~~field regulated by the board.~~

25 (3) ~~The applicant or licensee has satisfied criteria for~~
26 ~~rehabilitation developed by the board.~~

27 *SEC. 6. Section 488 of the Business and Professions Code is*
28 *amended to read:*

29 488. Except as otherwise provided by law, following a hearing
30 requested by an applicant pursuant to subdivision (b) of Section
31 485, the board may take any of the following actions:

32 (a) Grant the license effective upon completion of all licensing
33 requirements by the applicant.

34 (b) Grant the license effective upon completion of all licensing
35 requirements by the applicant, *grant the license and immediately*
36 *issue a public reproof pursuant to Section 495,* immediately
37 revoke the license, stay the revocation, and impose probationary
38 conditions on the license, which may include suspension.

39 (c) Deny the license.

1 (d) Take other action in relation to denying or granting the
2 license as the board in its discretion may deem proper.

3 *SEC. 7. Section 490 of the Business and Professions Code is*
4 *amended to read:*

5 490. (a) (1) In addition to any other action that a board is
6 permitted to take against a licensee, a board may suspend or revoke
7 a license on the ground that the licensee has been convicted of a
8 crime, ~~if the crime is substantially related to the qualifications,~~
9 ~~functions, or duties of the business or profession for which the~~
10 ~~license was issued.~~ *crime for which the applicant is presently*
11 *incarcerated or for which the conviction occurred within the*
12 *preceding five years. However, the preceding five year limitation*
13 *shall not apply to a conviction for a violent felony, as defined in*
14 *Section 667.5 of the Penal Code.*

15 (2) *The board may suspend or revoke a license pursuant to this*
16 *subdivision only if the crime is directly and adversely related to*
17 *the qualifications, functions, or duties of the business or profession*
18 *for which application is made.*

19 (b) Notwithstanding any other provision of law, a board may
20 exercise any authority to discipline a licensee for conviction of a
21 crime that is independent of the authority granted under subdivision
22 (a) only if ~~the both of the following are met:~~

23 (1) ~~The crime is substantially directly and adversely related to~~
24 ~~the qualifications, functions, or duties of the business or profession~~
25 ~~for which the licensee's license was issued.~~

26 (2) ~~The licensee was convicted of the crime within the preceding~~
27 ~~five years or is presently incarcerated for the crime. However, the~~
28 ~~preceding five year limitation shall not apply to a conviction for~~
29 ~~a violent felony, as defined in Section 667.5 of the Penal Code.~~

30 (c) ~~A conviction within the meaning of this section means a~~
31 ~~plea or verdict of guilty or a conviction following a plea of nolo~~
32 ~~contendere. An action that a board is permitted to take following~~
33 ~~the establishment of a conviction may be taken when the time for~~
34 ~~appeal has elapsed, or the judgment of conviction has been affirmed~~
35 ~~on appeal, or when an order granting probation is made suspending~~
36 ~~the imposition of sentence, irrespective of a subsequent order under~~
37 ~~Section 1203.4 of the Penal Code.~~

38 (d) ~~The Legislature hereby finds and declares that the application~~
39 ~~of this section has been made unclear by the holding in Petropoulos~~
40 ~~v. Department of Real Estate (2006) 142 Cal.App.4th 554, and~~

1 ~~that the holding in that case has placed a significant number of~~
2 ~~statutes and regulations in question, resulting in potential harm to~~
3 ~~the consumers of California from licensees who have been~~
4 ~~convicted of crimes. Therefore, the Legislature finds and declares~~
5 ~~that this section establishes an independent basis for a board to~~
6 ~~impose discipline upon a licensee, and that the amendments to this~~
7 ~~section made by Chapter 33 of the Statutes of 2008 do not~~
8 ~~constitute a change to, but rather are declaratory of, existing law.~~

9 *(c) Notwithstanding any other provision of this code, a board*
10 *shall not suspend or revoke a license on the basis of a conviction,*
11 *or of the acts underlying a conviction, where that conviction has*
12 *been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or*
13 *1203.42 of the Penal Code or a comparable dismissal or*
14 *expungement.*

15 *(d) Notwithstanding any other provision of this code, a board*
16 *shall not suspend or revoke a license on the basis of an arrest that*
17 *resulted in a disposition other than a conviction, including an*
18 *arrest that resulted in an infraction, citation, or juvenile*
19 *adjudication.*

20 *(e) The board shall use the following procedures in requesting*
21 *or acting on a licensee's criminal history information:*

22 *(1) A board shall not require a licensee to disclose any*
23 *information or documentation regarding the licensee's criminal*
24 *history.*

25 *(2) If a board chooses to file an accusation against a licensee*
26 *based solely or in part on the licensee's conviction history, the*
27 *board shall notify the licensee in writing of the processes for the*
28 *licensee to request a copy of the licensee's complete conviction*
29 *history and question the accuracy or completeness of his or her*
30 *criminal record pursuant to Sections 11122 to 11127, inclusive,*
31 *of the Penal Code.*

32 *(f) (1) For a minimum of three years, each board under this*
33 *code shall retain all documents submitted by a licensee, notices*
34 *provided to a licensee, all other communications received from or*
35 *provided to a licensee, and criminal history reports of a licensee.*

36 *(2) Each board under this code shall retain all of the following*
37 *information:*

38 *(A) The number of licensees with a criminal record who received*
39 *notice of potential revocation or suspension of their license or who*
40 *had their license suspended or revoked.*

1 (B) *The number of licensees with a criminal record who*
 2 *provided evidence of mitigation or rehabilitation.*

3 (C) *The number of licensees with a criminal record who*
 4 *appealed any suspension or revocation of a license.*

5 (D) *The final disposition and demographic information,*
 6 *including, but not limited to, voluntarily provided information on*
 7 *race or gender, of any applicant described in subparagraph (A),*
 8 *(B), or (C).*

9 (3) (A) *Each board under this code shall annually make*
 10 *available to the public through the board’s Internet Web site and*
 11 *through a report submitted to the appropriate policy committees*
 12 *of the Legislature deidentified information collected pursuant to*
 13 *this subdivision. Each board shall ensure the confidentiality of the*
 14 *individual licensees.*

15 (B) *A report pursuant to subparagraph (A) shall be submitted*
 16 *in compliance with Section 9795 of the Government Code.*

17 (g) (1) *This section supersedes any contradictory provision in*
 18 *a licensing act under this code or initiative act referred to in*
 19 *Division 2 (commencing with Section 500) that authorizes action*
 20 *based on a criminal conviction, arrest, or the acts underlying an*
 21 *arrest or conviction.*

22 (2) *This section shall not prohibit any agency from taking*
 23 *disciplinary action against a licensee for professional misconduct*
 24 *in the course and scope of the licensee’s profession that is based*
 25 *on evidence that is independent of an arrest.*

26 *SEC. 8. Section 490.5 of the Business and Professions Code*
 27 *is repealed.*

28 ~~490.5. A board may suspend a license pursuant to Section~~
 29 ~~17520 of the Family Code if a licensee is not in compliance with~~
 30 ~~a child support order or judgment.~~

31 *SEC. 9. Section 492 of the Business and Professions Code is*
 32 *amended to read:*

33 492. (a) *Notwithstanding any other provision of law, successful*
 34 *completion of any diversion program under the Penal Code,*
 35 *successful completion by a licensee or applicant of any*
 36 *nonstatutory diversion program, deferred entry of judgment, or*
 37 *successful completion of an alcohol and drug problem assessment*
 38 *program under Article 5 (commencing with Section 23249.50) of*
 39 *Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit*
 40 *any agency established under Division 2 (commencing with Section*

1 500) of this code, or any initiative act referred to in that division,
2 board from taking disciplinary action against a licensee or from
3 denying a license for professional misconduct, notwithstanding
4 that evidence of that misconduct may be recorded in a record
5 pertaining to an arrest. *misconduct.*

6 This section shall not be construed to apply to any drug diversion
7 program operated by any agency established under Division 2
8 (commencing with Section 500) of this code, or any initiative act
9 referred to in that division.

10 (b) This section shall not prohibit any agency established under
11 Division 2 (commencing with Section 500) of this code, or any
12 initiative act referred to in that division, from taking disciplinary
13 action against a licensee for professional misconduct in the course
14 and scope of the profession, which is based on evidence that is
15 independent of an arrest.

16 SEC. 10. Section 493 of the Business and Professions Code is
17 amended to read:

18 493. (a) Notwithstanding any other provision of law, in a
19 proceeding conducted by a board within the department pursuant
20 to law to deny an application for a license or to suspend or revoke
21 a license or otherwise take disciplinary action against a person
22 who holds a license, upon the ground that the applicant or the
23 licensee has been convicted of a crime ~~substantially~~ *directly and*
24 *adversely* related to the qualifications, functions, and duties of the
25 licensee in question, the record of conviction of the crime shall be
26 conclusive evidence of the fact that the conviction occurred, but
27 only of that fact, and the board may inquire into the circumstances
28 surrounding the commission of the crime in order to fix the degree
29 of discipline or to determine if the conviction is substantially
30 related to the qualifications, functions, and duties of the licensee
31 in question. *fact.*

32 (b) (1) Criteria for determining whether a crime is directly and
33 adversely related to the qualifications, functions, or duties of the
34 business or profession the board regulates shall include all of the
35 following:

36 (A) The nature and gravity of the offense.

37 (B) The number of years elapsed since the date of the offense.

38 (C) The nature and duties of the profession.

1 (2) A board shall not categorically bar an applicant based solely
2 on the type of conviction without considering evidence of
3 rehabilitation.

4 ~~As~~

5 (c) As used in this section, “license” includes “certificate,”
6 “permit,” “authority,” and “registration.”

7 *SEC. 11. Section 1005 of the Business and Professions Code*
8 *is amended to read:*

9 1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,
10 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141,
11 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, ~~490.5~~,
12 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704,
13 710, 716, 730.5, 731, and 851 are applicable to persons licensed
14 by the State Board of Chiropractic Examiners under the
15 Chiropractic Act.

16 ~~SEC. 2.~~

17 *SEC. 12. Section 11345.2 of the Business and Professions Code*
18 *is amended to read:*

19 11345.2. (a) An individual shall not act as a controlling person
20 for a registrant if any of the following apply:

21 (1) The individual has entered a plea of guilty or no contest to,
22 or been convicted of, a felony. If the individual’s felony conviction
23 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41
24 of the Penal Code, the bureau may allow the individual to act as
25 a controlling person.

26 (2) The individual has had a license or certificate to act as an
27 appraiser or to engage in activities related to the transfer of real
28 property refused, denied, canceled, or revoked in this state or any
29 other state.

30 (b) Any individual who acts as a controlling person of an
31 appraisal management company and who enters a plea of guilty
32 or no contest to, or is convicted of, a felony, or who has a license
33 or certificate as an appraiser refused, denied, canceled, or revoked
34 in any other state shall report that fact or cause that fact to be
35 reported to the office, in writing, within 10 days of the date he or
36 she has knowledge of that fact.

O

**AB 2487 (*McCarty*) Physicians and Surgeons:
Education : Opiate-Dependent Patient
Treatment and Management**

AMENDED IN ASSEMBLY APRIL 26, 2018

AMENDED IN ASSEMBLY APRIL 16, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2487

**Introduced by Assembly Member McCarty
(Coauthor: Assembly Member Waldron)**

February 14, 2018

An act to add Section 2190.6 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, McCarty. Physicians and surgeons: continuing education: opiate-dependent patient treatment and management.

Existing state law, the Medical Practice Act, establishes the Medical Board of California within the Department of Consumer Affairs. The board is responsible for the licensure and regulation of physicians and surgeons, and is required by the act to adopt and administer standards for the continuing education of those physicians and surgeons.

Existing federal law, the Comprehensive Addiction Recovery Act of 2016, requires physicians and surgeons who dispense narcotic drugs for patient treatment to obtain a separate registration from the United States Attorney General. The United States Drug Enforcement Administration, within the federal Office of the Attorney General, administers the registration and requires physicians and surgeons to renew that registration at specified intervals. A physician and surgeon qualifies for a waiver of the registration if he or she is licensed under state law and completes at least one specified training, such as 8 hours

of training in the treatment and management of opiate-dependent patients.

This bill would require a physician and surgeon to complete a continuing education course on opiate-dependent patient treatment and management, as specified, within 6 months of first receiving, or next renewing, a federal Drug Enforcement Administration registration to dispense narcotic drugs for patient treatment, unless the physician and surgeon meets the requirements of a qualifying physician within the federal Comprehensive Addiction Recovery Act of 2016.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2190.6 is added to the Business and
2 Professions Code, to read:

3 2190.6. (a) Within six months of first receiving a federal Drug
4 Enforcement Administration registration under Part 1301
5 (commencing with Section 1301.01) of Title 21 of the Code of
6 Federal Regulations, a physician and surgeon shall complete a
7 mandatory continuing education course on the treatment and
8 management of opiate-dependent patients and this course shall
9 include ~~eight hours of training in buprenorphine treatment of~~ *one*
10 *hour of training in medication-assisted treatment for* opioid use
11 disorders. However, the board may also require a physician and
12 surgeon to complete additional hours of education when necessary
13 to carry out the board's duties in Section 2001.1.

14 (b) A physician and surgeon currently or previously in
15 possession, on January 1, 2019, of a federal Drug Enforcement
16 Administration registration under Part 1301 (commencing with
17 Section 1301.01) of Title 21 of the Code of Federal Regulations,
18 as that section read on January 1, 2018, shall meet the requirements
19 of subdivision (a) within six months of next renewing his or her
20 registration.

21 (c) This section shall not apply to a physician and surgeon who
22 meets the requirements, as determined by the board, of a
23 "qualifying physician" under clause (ii) of subparagraph (G) of
24 paragraph (2) of subsection (g) of Section 823 of Title 21 of the
25 United States Code, the Comprehensive Addiction Recovery Act

1 of 2016 (Public Law 114-198), as that clause read on January 1,
2 2018.
3 (d) The board shall determine whether a physician and surgeon
4 has met the requirements of this section.

O

**AB 2741 (*Burke*) Prescriptions Drugs: Opioid
Medications: Minors**

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2741

Introduced by Assembly Member Burke
(Coauthors: Assembly Members Dahle and Cunningham)

February 16, 2018

An act to add Article 10.8 (commencing with Section 745) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2741, as amended, Burke. Prescription drugs: opioid medications: minors.

Existing law provides for the licensure and regulation of health care practitioners by various boards and requires prescription drugs to be ordered and dispensed in accordance with the Pharmacy Law. Existing law makes repeated acts of clearly excessive prescribing or administering of drugs or treatment unprofessional conduct for certain health care practitioners.

~~This bill would require a prescriber, as defined, to comply with specified conditions when prescribing opioid medication to a minor, including not prescribing more than a 5-day supply of an opioid medication to that minor except in specified instances. This bill would prohibit a prescriber, as defined, from prescribing more than a 5-day supply of opioid medication to a minor unless the prescription is for specified uses. The bill would also require a prescriber to take certain steps before prescribing a minor a course of treatment with opioid medication, including discussing opioid risks and obtaining specified written consent, except in specified instances.~~ The bill would make a

violation of the bill’s provisions unprofessional conduct and would subject the prescriber to discipline by the board charged with regulating his or her license. The provisions of the bill requiring the prescriber to assess ~~the minor’s substance abuse history, whether the minor has or is taking prescription drugs for treatment of a substance use disorder;~~ discuss opioid risks, and obtain written consent would not ~~be implemented~~ *apply* until the development of a consent form by the Medical Board of California.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.8 (commencing with Section 745) is
2 added to Chapter 1 of Division 2 of the Business and Professions
3 Code, to read:

4
5 Article 10.8. Opioid Medication For Minors
6

7 745. (a) For purposes of this ~~article;~~ *section*, the following
8 definitions apply:

9 (1) “Opioid medication” means an opioid analgesic drug
10 product, including, but not limited to, an abuse-deterrent opioid
11 analgesic drug product.

12 (2) “Prescriber” means a person licensed, certified, registered,
13 or otherwise subject to regulation pursuant to this division, or an
14 initiative act referred to in this division, who is authorized to
15 prescribe opioid medication.

16 (b) A prescriber authorized to prescribe a Schedule II controlled
17 substance shall comply with this section when prescribing opioid
18 medication to a minor.

19 (c) A prescriber shall not prescribe more than a five-day supply
20 of opioid medication to a minor unless the prescription is for any
21 of the following:

- 22 (1) Management of pain associated with cancer.
- 23 (2) Use in palliative or hospice care.
- 24 (3) Management of chronic pain not associated with cancer.
- 25 (4) *Treatment of a substance use disorder.*

26 (d) ~~Except as provided in the case of a prescription for a use~~
27 *listed in subdivision (b), (c), before prescribing a minor a course*

1 of treatment with opioid medication, regardless of whether the
2 dosage is modified during that course of treatment, a prescriber
3 shall do all of the following:

4 (1) Assess whether the minor has taken or is currently taking
5 prescription drugs for treatment of a substance use disorder.

6 (2) Discuss with the minor and the minor's parent or guardian,
7 or other authorized adult, all of the following:

8 (A) The risks of addiction and overdose associated with opioid
9 medication.

10 (B) The increased risk of addiction to opioid medication to
11 individuals suffering from mental or substance abuse disorders.

12 (C) The dangers of taking opioid medication with
13 benzodiazepines, alcohol, or other central nervous system
14 depressants.

15 (D) Any other information deemed necessary by the prescriber.

16 (3) Obtain written ~~consent~~ *consent, on the form created pursuant*
17 *to subdivision (e)*, for the prescription from the minor's parent or
18 guardian, or authorized adult. *The prescriber shall maintain the*
19 *consent form in the minor's record.*

20 (e) ~~(1)~~—The Medical Board of California, by January 1, 2020,
21 shall create a standardized consent form to be used for purposes
22 of this section. The board shall notify its licensees of the
23 availability of the consent form and make it accessible on its
24 member Internet Web site. The consent form shall contain all of
25 the following:

26 ~~(A)~~

27 (1) The brand name or generic name and quantity of the opioid
28 medication being prescribed and the amount of the initial dose.

29 ~~(B)~~

30 (2) A statement indicating that opioid medication is a drug or
31 other substance that the United States Drug Enforcement
32 Administration has identified as having a potential for abuse.

33 ~~(C)~~

34 (3) A statement certifying that the prescriber engaged in the
35 discussion described in subdivision (d).

36 ~~(D)~~

37 (4) The signature of the minor's parent or guardian, or
38 authorized adult, and the date of signing.

39 ~~(2) The prescriber shall maintain a consent form completed~~
40 ~~under this section in the minor's record.~~

1 (f) Subdivision ~~(b)~~ does (c) and paragraph (3) of subdivision
2 (d) shall not apply if the minor’s treatment with opioid medication
3 meets either of the following criteria:

4 (1) The treatment is associated with, or incident to, a medical
5 emergency as documented in the minor’s medical record.

6 (2) In the prescriber’s professional judgment, complying with
7 subdivision ~~(b)~~ (c) or with paragraph (3) of subdivision (d),
8 respectively, with respect to the minor’s treatment would be
9 detrimental to the minor’s health or safety. The prescriber shall
10 document in the minor’s medical record the factor or factors which
11 the prescriber believed constituted cause for not fulfilling the
12 requirements of subdivision ~~(b)~~ (c) or paragraph (3) of subdivision
13 (d).

14 (g) A violation of this ~~article~~ section constitutes unprofessional
15 conduct and grounds for disciplinary action by the prescriber’s
16 licensing board. Each licensing board established under this
17 division, or under an initiative act referred to in this division, shall
18 be charged with enforcing this ~~article~~ section as it pertains to that
19 board’s prescribers.

20 (h) Subdivision (d) shall not be implemented apply until the
21 Medical Board of California has created the standardized consent
22 form described in subdivision (e).

23

24

25 REVISIONS:

26 Heading—Line 2.

27

**SB 1426 (*Stone*) Pharmacists: Authority to
Prescribe and Dispense Dangerous Drugs
and Devices**

AMENDED IN SENATE MARCH 22, 2018

SENATE BILL

No. 1426

Introduced by Senator Stone

February 16, 2018

An act to add Sections 4069 and 4069.1 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1426, as amended, Stone. Pharmacists: authority to prescribe and dispense dangerous drugs and devices.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy, and generally prohibits a pharmacist from dispensing a dangerous drug or dangerous device except upon the prescription of an authorized prescriber. Existing law, notwithstanding that prohibition, authorizes a pharmacist to furnish certain dangerous drugs and devices, including nicotine replacement products, certain vaccines, and self-administered hormonal contraceptives, without a prescription in accordance with specified protocols and conditions. *Existing law authorizes a pharmacist recognized by the board as an advanced practice pharmacist to perform specified tasks, including initiating, adjusting, or discontinuing drug therapy in a specified manner.*

~~This bill would express the intent of the Legislature to enact legislation that would require the California State Board of Pharmacy board to convene a Public Health and Pharmacy Formulary Advisory Committee to advise the board in promulgating regulations to establish a formulary of drugs and devices that a an advanced practice pharmacist may prescribe and dispense furnish to a patient, and to promulgate regulations establishing patient. The bill would require the board to establish a~~

formulary of dangerous drugs and devices that a pharmacy an advanced practice pharmacist may prescribe and dispense furnish to a patient. patient, and would authorize an advanced practice pharmacist to furnish a dangerous drug or dangerous device included on the formulary to a patient pursuant to a diagnosis by a health care practitioner.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4069 is added to the Business and
2 Professions Code, to read:

3 4069. (a) Notwithstanding any other law, an advanced practice
4 pharmacist may, in addition to the tasks authorized by Section
5 4052.6, furnish a dangerous drug or dangerous device included
6 on the formulary established under subdivision (b) pursuant to a
7 diagnosis by a health care practitioner who has prescribing
8 authority and is qualified to make the diagnosis.

9 (b) The board shall establish by regulation a formulary of
10 dangerous drugs and dangerous devices, as recommended by the
11 Public Health and Pharmacy Formulary Advisory Committee
12 established pursuant to Section 4069.1, that an advanced practice
13 pharmacist may furnish to a patient pursuant to a diagnosis by a
14 health care practitioner who has prescribing authority and who
15 is qualified to make the diagnosis.

16 SEC. 2. Section 4069.1 is added to the Business and Professions
17 Code, to read:

18 4069.1. (a) The board shall convene a Public Health and
19 Pharmacy Formulary Advisory Committee consisting of seven
20 members appointed by the Governor for the purpose of advising
21 the board in promulgating regulations to establish a formulary of
22 drugs and devices that an advanced practice pharmacist may
23 furnish to a patient pursuant to Section 4069.

24 (b) The committee shall consist of the following members:

25 (1) Two physicians and surgeons licensed to practice medicine.

26 (2) Two advanced practice registered nurses, as defined in
27 Section 2725.5, who have prescriptive authority and who are
28 licensed by the Board of Registered Nursing.

1 (3) Three pharmacists licensed by the board, at least one of
2 whom is employed as a community pharmacist and one of whom
3 is employed as a health system pharmacist.

4 (4) The Medical Board of California, the Board of Registered
5 Nursing, and the board may each submit to the Governor a list of
6 up to three names of individuals to be considered for membership
7 for each of the vacancies required to be filled by licensees of each
8 board.

9 (c) The term of each member of the committee shall be two
10 years. A member whose term has expired shall continue to serve
11 until a successor is appointed. If a vacancy occurs, a person who
12 is a representative of the same state agency as the departing
13 member shall serve for the remainder of the term.

14 (d) The committee shall elect one of its members to serve as
15 chairperson.

16 (e) The committee shall recommend to the board for adoption
17 by regulation of the board a formulary of drugs and devices that
18 an advanced practice pharmacist may furnish to a patient pursuant
19 to a diagnosis by a health care practitioner qualified to make the
20 diagnosis. The committee shall periodically review the formulary
21 and recommend the revisions to the board for adoption by
22 regulation.

23 (f) A pharmacist may request that the committee recommend
24 adding a drug or device to the formulary by submitting to the
25 committee a request form prescribed by the board. The addition
26 to the formulary of a drug or device under this subdivision shall
27 be considered a revision to the formulary that the committee may
28 recommend to the board for adoption by regulation.

29 ~~SECTION 1. It is the intent of the Legislature to enact~~
30 ~~legislation that would do both of the following:~~

31 ~~(a) Require the California State Board of Pharmacy to convene~~
32 ~~a Public Health and Pharmacy Formulary Advisory Committee,~~
33 ~~that includes representatives from the Medical Board of California,~~
34 ~~the Board of Registered Nursing, and the California State Board~~
35 ~~of Pharmacy, for the purpose of advising the California State Board~~
36 ~~of Pharmacy in promulgating regulations to establish a formulary~~
37 ~~of dangerous drugs and devices that a pharmacist may prescribe~~
38 ~~and dispense to a patient.~~

39 ~~(b) Require the California State Board of Pharmacy to establish~~
40 ~~by regulation a formulary of dangerous drugs and devices~~

1 recommended by the Public Health and Pharmacy Formulary
2 Advisory Committee that a pharmacist may prescribe and dispense
3 to a patient that may include postdiagnostic drugs and devices such
4 as diabetic testing supplies, emergency refills of insulin, albuterol
5 inhalers, epinephrine autoinjectors, discharge medications for
6 transitions of care, rapid strep tests, and spacers.

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TAB 6

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TAB 7

Board Meeting – May 17, 2018

This report is to provide the Board Members with an update on licensing statistics, staffing issues, budgets, CURES and enforcement functions at the Osteopathic Medical Board of California. No action is needed at this time.

License Statistics

As of May 1, 2018, number of Osteopathic Physicians and Surgeons holding a California license:

Active - 8,740
Inactive - 589
TOTAL: 9,329

Additionally, there are 1,025 licenses in a delinquent status.

In-State licensees - Active status 7,539; Inactive status 53

Number of license applications received:

From January 1, 2018 through April 30, 2018 – 273 applications

Number of licenses issued:

From January 1, 2018 through April 30, 2018 – 291 licenses.

Number of days to approve a license application during January 1, 2018 and April 30, 2018 was 55 days. Applications with missing documents took an average of 152 days to complete and approve.

Our two license renewal unit staff renewed 1,273 licenses between January 1 and April 30, 2018. Renewal process includes reviewing all CME documentations submitted for compliance before approving renewals.

Staffing

The search for a medical consultant continues. The deadline for applications has passed. We are currently in the process of reviewing the applications received and hope to be making a decision in the very near future.

One of our enforcement analyst has informed us that she will be retiring at the end of this month. We will be beginning a search to fill the position she will be vacating.

Budget

Current FY 2017-2018 Expenditure Projection and the Osteopathic Medical Board of California Contingent Fund Analysis is included for your review.

Board Office – The space planning has been completed and the floor plan approved. We will be funding the majority of the re-design and remodeling cost of our current office space out of this year's budget. We anticipate \$75,000 from this fiscal year budget and \$25,000 from next fiscal year will be spent on the renovation. We have been approved to purchase an electronic filing system, which will be a tremendous space saver. As staff has submitted a major equipment purchase request for next fiscal year, the funding for this filing system will be added in to next year's budget. The plan is to start the remodeling sometime after July this year.

Staff will be submitting two Budget Change Proposals this year. One for additional staffing and funding to implement the Post-graduate training license which will become effective January 1, 2020. The other to increase our investigative budget and our expert reviewer budget. If these BCP's are approved, the effective date will be July 1, 2019.

CURES (Controlled Substance Utilization Review and Evaluation System)

DOJ certification of CURES occurred April 2, 2018. The six- month grace period is now triggered and mandatory use becomes effective **October 2, 2018**. Included in your packet is the flyer we will be sending out to our licensees via e-mail and also posting on our website. The Medical Board staff took the lead and created this brochure and has authorized all licensing boards with prescribers to utilize the brochure.

OSTEOPATHIC MEDICAL BOARD - 0264
BUDGET REPORT
FY 2017-18 EXPENDITURE PROJECTION
Apr-2018

FISCAL MONTH 10

OBJECT DESCRIPTION	2016-17		2017-18				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET ALLOTMENT	CURRENT YEAR EXPENDITURES	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	(MONTH 13)	4/30/2017	2017-18	4/30/2018			
PERSONNEL SERVICES							
Salary & Wages (Staff)	635,329	509,355	678,000	483,760	71%	631,027	46,973
Statutory Exempt (EO)	89,949	74,851	76,000	69,427	91%	92,569	(16,569)
Temp Help Reg (Seasonals)	17,643	17,143	0	500	0%	600	(600)
Board Member Per Diem	1,200	900	3,000	800	27%	1,200	1,800
Committee Members (DEC)	0	0	0	0		0	0
Overtime	1,214	314	0	19,334		19,334	(19,334)
Staff Benefits	367,521	302,897	423,000	266,139	63%	354,852	68,148
TOTALS, PERSONNEL SVC	1,112,856	905,460	1,180,000	839,960	71%	1,099,582	80,418
OPERATING EXPENSE AND EQUIPMENT							
General Expense	9,027	7,836	112,000	5,889	5%	7,067	104,933
Fingerprint Reports	41,695	35,521	25,000	28,375	114%	34,050	(9,050)
Minor Equipment	1,352	0	4,000	8,316		9,979	(5,979)
Printing	8,881	8,112	5,000	17,538	351%	21,046	(16,046)
Communication	5,923	4,702	16,000	5,086	32%	6,103	9,897
Postage	7,506	7,504	6,000	10,506	175%	10,506	(4,506)
Insurance	11	11	0	3,361		3,361	(3,361)
Travel In State	10,942	4,921	14,000	3,481	25%	4,177	9,823
Travel, Out-of-State	0	0	0	0		0	0
Training	457	457	5,000	0	0%	457	4,543
Facilities Operations	62,144	61,628	110,000	53,201	48%	63,841	46,159
Utilities	0	0	0	0		0	0
C & P Services - Interdept.	0	0	101,000	45	0%	54	100,946
C & P Services - External	74,826	77,906	79,000	78,454	99%	78,454	546
DEPARTMENTAL SERVICES:							
Office of Information Services	139,754	120,000	191,000	127,333	67%	191,000	0
Administration Pro Rata	141,450	113,330	161,000	107,333	67%	161,000	0
Interagency Services	0	0	0	0		0	0
IA w/ DOI Direct	90,570	109,271	0	111,435		133,721	(133,721)
DOI-Special Operations Unit	3,680	3,330	4,000	2,667	67%	4,000	0
Communications Pro Rata	17,335	15,000	9,000	6,000	67%	9,000	0
Program Policy Review Division Pro Rata	654	830	9,000	6,000	67%	9,000	0
INTERAGENCY SERVICES:							
Consolidated Data Center	18,852	14,139	1,000	3,479	348%	4,175	(3,175)
DP Maintenance & Supply	1,218	1,218	4,000	286	7%	343	3,657
Central Admin Svc-ProRata	0	0	0	0		0	0
EXAM EXPENSES:							
C/P Svcs-External Expert Administrative	880	880	0	0		0	0
C/P Svcs-External Subject Matter	578	578	0	0		0	0
ENFORCEMENT:							
Attorney General	291,561	289,031	324,000	138,893	43%	208,340	115,661
Office Admin. Hearings	95,131	30,569	52,000	18,940	36%	95,131	(43,131)
Court Reporters	3,096	2,742	0	0		3,096	(3,096)
Evidence/Witness Fees	59,245	44,087	8,000	21,601	270%	59,245	(51,245)
Invest SVS - MBC ONL	25,630	21,041	0	8,279		12,419	(12,419)
Major Equipment	0	0	0	0		0	0
Special Items of Expense	0	0	0	12,112		12,112	(12,112)
TOTALS, OE&E	1,112,398	974,644	1,240,000	778,610	63%	1,141,677	98,323
TOTAL EXPENSE	2,225,254	1,880,104	2,420,000	1,618,570	134%	2,241,259	178,741
Sched. Reimb. - External/Private							0
Sched. Reimb. - Fingerprints	(42,434)	(23,520)	(25,000)		0%	(25,000)	0
Sched. Reimb. - Other	(3,055)	(1,880)	(28,000)			(28,000)	0
Distributed - From Naturopathic			(14,000)			(14,000)	0
Unsched. Reimb. - Other	(82,666)	(62,103)	0				0
NET APPROPRIATION	2,097,099	1,792,601	2,353,000	1,618,570	69%	2,174,259	178,741
SURPLUS/(DEFICIT):							7.6%

0264 - Osteopathic Medical Board of California Contingent Fund

Analysis of Fund Condition

Prepared 2/7/2018

(Dollars in Thousands)

2018-19 Governor's Budget	ACTUAL 2016-17	CY 2017-18	Governors Budget	
			BY 2018-19	BY +1 2019-20
BEGINNING BALANCE	\$ 3,057	\$ 3,136	\$ 2,837	\$ 2,347
Prior Year Adjustment	\$ 1	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 3,058	\$ 3,136	\$ 2,837	\$ 2,347
REVENUES AND TRANSFERS				
Revenues:				
4121200 Delinquent fees	\$ 17	\$ 17	\$ 17	\$ 17
4127400 Renewal fees	\$ 1,787	\$ 1,696	\$ 1,696	\$ 1,696
4129200 Other regulatory fees	\$ 37	\$ 26	\$ 27	\$ 27
4129400 Other regulatory licenses and permits	\$ 406	\$ 429	\$ 454	\$ 454
4163000 Income from surplus money investments	\$ 23	\$ 9	\$ 9	\$ 5
4171400 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -	\$ -
Totals, Revenues	\$ 2,271	\$ 2,177	\$ 2,203	\$ 2,199
Transfers from Other Funds				
F00001 GF loan repayment per Item 1485-011-0264, BA of 2002	\$ -	\$ -	\$ -	\$ 1,500
Totals, Revenues and Transfers	\$ 2,271	\$ 2,177	\$ 2,203	\$ 3,699
Totals, Resources	\$ 5,329	\$ 5,313	\$ 5,040	\$ 6,046
EXPENDITURES				
Disbursements:				
1111 Department of Consumer Affairs Program Expenditures (State Operations)	\$ 2,097	\$ 2,353	\$ 2,507	\$ 2,557
8880 Financial Information System for California (State Operations)	\$ 3	\$ 4	\$ -	\$ -
9892 Supplemental Pension Payments (State Operations)	\$ -	\$ -	\$ 25	\$ 25
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 93	\$ 119	\$ 161	\$ 161
Total Disbursements	\$ 2,193	\$ 2,476	\$ 2,693	\$ 2,743
FUND BALANCE				
Reserve for economic uncertainties	\$ 3,136	\$ 2,837	\$ 2,347	\$ 3,303
Months in Reserve	15.2	12.6	10.3	12.6

CURES 2.0

MANDATORY USE

BEGINS OCTOBER 2, 2018



The Controlled Substance Utilization Review and Evaluation System (CURES) was certified for statewide use by the Department of Justice (DOJ) on April 2, 2018. Therefore, the mandate to consult CURES prior to prescribing, ordering, administering, or furnishing a Schedule II–IV controlled substance becomes effective on October 2, 2018. Visit www.ombc.ca.gov/licensees/ for detailed information regarding CURES 2.0.

Note: The phrase “controlled substance” as used in this guide refers to a Schedule II, Schedule III, or Schedule IV controlled substance.

WHEN MUST I CONSULT CURES?

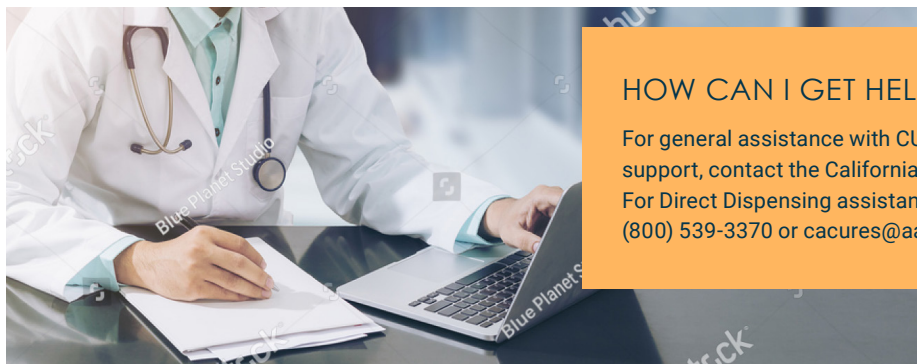
- The first time a patient is prescribed, ordered, administered, or furnished a controlled substance, unless one of the exemptions on back apply.
- Within the twenty-four hour period, or the previous business day, before prescribing, ordering, administering, or furnishing a controlled substance, unless one of the exemptions on back apply.
- Before subsequently prescribing a controlled substance, if previously exempt.
- At least once every four months if the controlled substance remains a part of the patient’s treatment plan.

ARE THERE ANY PROTECTIONS FOR PRESCRIBERS?

- There is no private cause of action for a prescriber’s failure to consult CURES.
- For complete information on the mandatory requirement to consult CURES, please read HSC § 11165.4.
- If you have any further questions, please seek legal counsel.

“First time” is defined as the initial occurrence in which a health care practitioner intends to prescribe, order, administer, or furnish a controlled substance to a patient and has not previously prescribed a controlled substance to the patient.

— Health and Safety Code (HSC), § 11165.4(a)(1)(B)



HOW CAN I GET HELP WITH CURES?

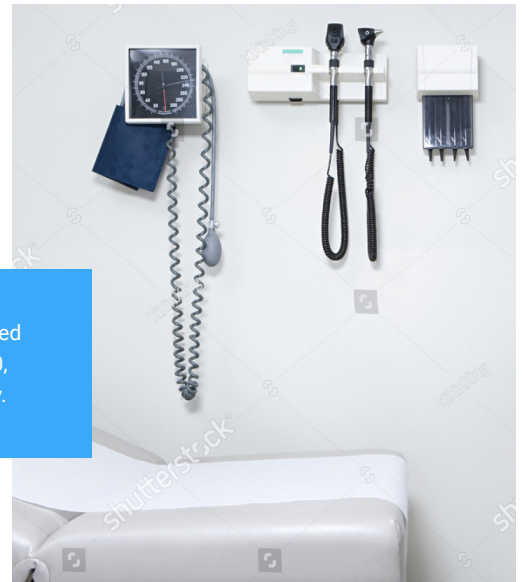
For general assistance with CURES, including training and CURES usage support, contact the California DOJ at (916) 210-3187 or CURES@doj.ca.gov. For Direct Dispensing assistance, contact Atlantic Associates, Inc. at (800) 539-3370 or cacures@aainh.com.

WHAT EXEMPTIONS ARE THERE TO CONSULTING CURES?

- A health care practitioner is exempt from consulting the CURES database before prescribing, ordering, administering, or furnishing a controlled substance in any of the following circumstances:
 - While the patient is admitted to, or during an emergency transfer between a
 - Licensed Clinic, or
 - Outpatient Setting, or
 - Health Facility, or
 - County Medical Facility
 - In the emergency department of a general acute care hospital, and the controlled substance does not exceed a non-refillable seven-day supply.
- As part of a patient's treatment for a surgical procedure, and the controlled substance does not exceed a non-refillable five-day supply when a surgical procedure is performed at a
 - Licensed Clinic, or
 - Outpatient Setting, or
 - Health Facility, or
 - County Medical Facility, or
 - Place of Practice
- The patient is receiving hospice care.
- What if it is not reasonably possible for a prescriber to access the information in CURES in a timely manner?
 - If another individual with access to CURES is not reasonably available, a five-day supply of the controlled substance can be prescribed, ordered, administered, or furnished as long as there is no refill allowed. In addition, the prescriber must document in the medical records the reason for not consulting CURES.
- What if I determine that consulting CURES would result in a patient's inability to obtain a prescription in a timely manner and thereby adversely impact the patient's medical condition?
 - A prescriber may provide a non-refillable five-day supply if they make this determination. The prescriber must document in the medical records the reason for not consulting CURES.

The facilities listed are specifically defined in statute commencing with HSC § 1200, § 1248, § 1250, and § 1440, respectively.

"Place of Practice" is defined as a Dental Office pursuant to Business and Professions Code § 1658.



WHAT IF I EXPERIENCE TECHNICAL DIFFICULTIES WITH CURES?

There are exemptions to consulting CURES if there are technical difficulties accessing CURES, such as CURES is temporarily unavailable for system maintenance, or you experience temporary technological or electrical failure and CURES cannot be accessed (e.g., power outage due to inclement weather).

A prescriber should contact the CURES Help Desk at (916) 210-3187 or cures@doj.ca.gov for assistance accessing their CURES account.

Note: A prescriber must, without undue delay, seek to correct any cause of the temporary technological or electrical failure that is reasonably within their control.



CURES 2.0



**OSTEOPATHIC
MEDICAL BOARD
OF CALIFORNIA**

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CONTACT

(916) 928-8390

www.ombc.ca.gov

osteopathic@dca.ca.gov

OMBC Enforcement Report

May 17, 2018

The following OMBC Enforcement Report covers a 12-month period starting from the 2nd Quarter 2017 through 1st Quarter 2018. The OMBC Enforcement Report is divided into five sections; Intake, Investigations, Enforcement, Performance Measures, and Probation. The data is reproduced from the Breeze Enforcement Reports.

COMPLAINT INTAKE

	2Q 2017			3Q 2017			4Q 2017			1Q 2018			
COMPLAINTS	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	YTD
Received	58	47	40	49	55	43	35	36	49	42	23	31	508
Assigned	29	71	33	42	43	42	54	41	42	31	37	52	517
Aging	16	27	24	28	25	28	34	25	26	34	30	31	27
	2Q 2017			3Q 2017			4Q 2017			1Q 2018			
CONV/ARRESTS	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	YTD
Received	7	1	4	1	0	2	1	3	1	2	0	1	23
Assigned	7	2	4	1	0	1	2	2	2	1	1	1	24
Aging	3	23	4	3	0	7	3	9	13	2	30	1	8
	2Q 2017			3Q 2017			4Q 2017			1Q 2018			
TOTAL INTAKE	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	YTD
Received	65	48	44	50	55	45	36	39	50	44	23	32	531
Assigned	36	73	37	43	43	43	56	43	44	32	38	53	541
Aging	13	27	22	27	25	28	32	25	26	33	30	30	27
Pending	56	31	38	45	57	59	39	35	40	52	37	16	16

Data Table 1: Complaint Intake with Convictions/Arrests

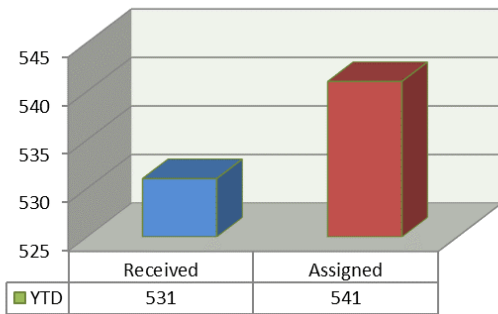


Figure 1.1: Intake Totals

In Data Table 1 above, under TOTAL INTAKE, OMBC received 531 complaints. 23 of these cases were convictions/arrests. During this period, 541 cases were assigned for investigations and the average number of days to assign a case was 27. In Figure 1.2 below we see the intake totals for each month. In April 2017, there was a substantial increase in received complaints while assigned complaints peaked at 73 in May; 56 in October and 53 in March. There is a significant decrease in received and pending cases starting in February 2018.

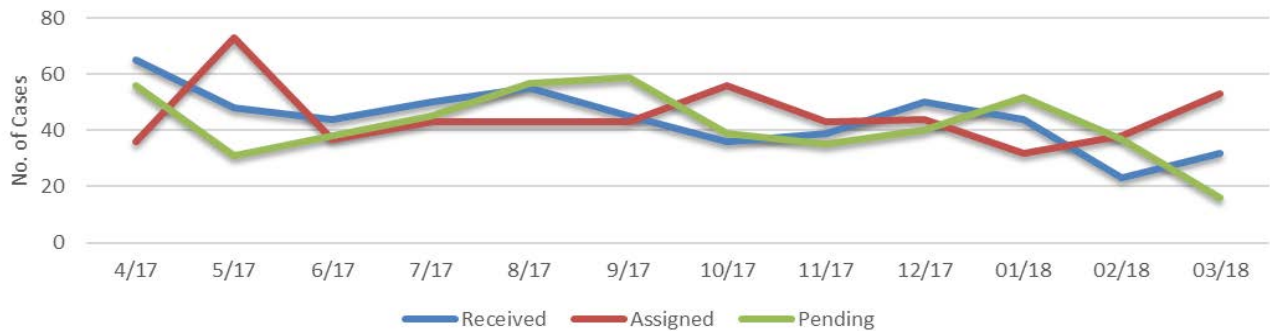


Figure 1.2: Intake Totals Per Month

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In Figure 1.3 below, the bar graph illustrates the monthly average number of days to assign or close a complaint. The aging measures the period from the time the complaint is received in the office (the date stamp) to the time the complaint is assigned to investigations. The performance target for intake is 30 days. The Board met the performance target for the last 11 months with two exceptions, the month of October averaged 32 days and January 33 days. The overall average for the last 12 months was 27 days.



Figure 1.3: Average Number of Days to Assign

INVESTIGATIONS

Desk (internal) Investigations

	2Q 2017			3Q 2017			4Q 2017			1Q 2018			YTD
Desk Inv.	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	YTD
Assigned	36	73	37	43	43	43	56	43	45	32	38	53	542
Completed	38	29	43	57	30	59	37	48	43	28	39	57	508
Aging	99	67	60	104	116	69	73	113	76	63	108	79	86
Pending	109	154	148	134	147	130	149	144	147	153	154	152	152

Data Table 2: Desk Investigations

For all desk investigations during this period, Data Table 2 above breaks down the monthly totals for how many complaints were assigned and completed; the monthly aging and cases pending. During this period, a total of 542 desk investigations were Assigned, 508 were Completed, and 152 cases were Pending. The average number of days to complete a desk investigation was 86 days. The previous Enforcement report the Aging was 90 days. Figure 2.2, the Assigned and Completed caseload averaged 45 cases per month except for May in which Assigned cases peaked at 73 and Completed cases peaked at 59 in September. Pending cases averaged around 150.

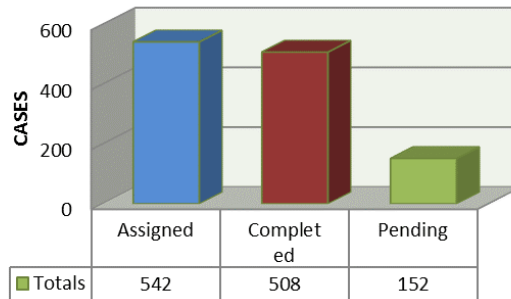


Figure 2.1: Desk Inv. Totals

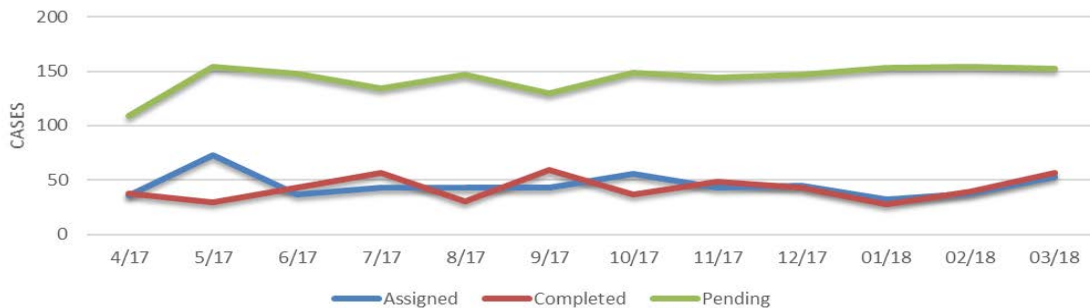


Figure 2.2: Desk Investigations Monthly Totals

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Field (Sworn) Investigations

Field Inv.	2Q 2017			3Q 2017			4Q 2017			1Q 2018			YTD
	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	
Assigned	0	1	2	1	1	5	0	4	3	1	3	2	23
Completed	3	1	3	4	1	1	4	4	6	4	3	3	37
Aging	336	573	310	562	401	985	540	420	472	849	358	596	534
Pending	35	35	34	31	31	35	31	31	28	25	25	24	24

Data Table 3: Field Investigations

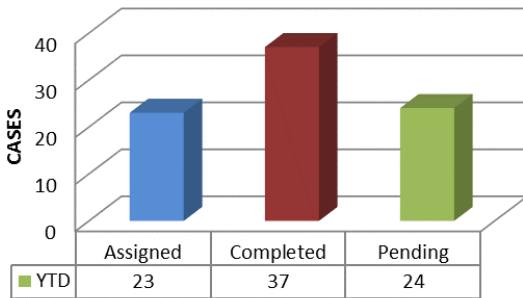


Figure 3.1: Field Inv. Totals

Data Table 3 above breaks down the monthly totals for cases assigned to the Division of Investigations. Completed cases are either closed with insufficient evidence or referred to the Attorney General’s office for disciplinary action. During this 12-month period, 23 cases were assigned to field investigations; 37 were completed; and 24 cases were pending at the end of March 2018. In Figure 3.2 below, we see a substantial increase in Completed cases during in 4Q 2017 and 1Q 2018.

The case complexity is the breakdown of the specific allegations that are under investigation. In Figure 3.2, for all current open field investigations, there are 17 (52%) excessive prescribing cases; 1 Impairment case (3%); 3 sexual misconduct cases (9%); 1 Hospital Discipline case (3%); 6 Fraud cases (18%); 2 Negligent/injury cases (6%); 1 Unlicensed case (3%); and 2 Substance Abuse cases (6%).

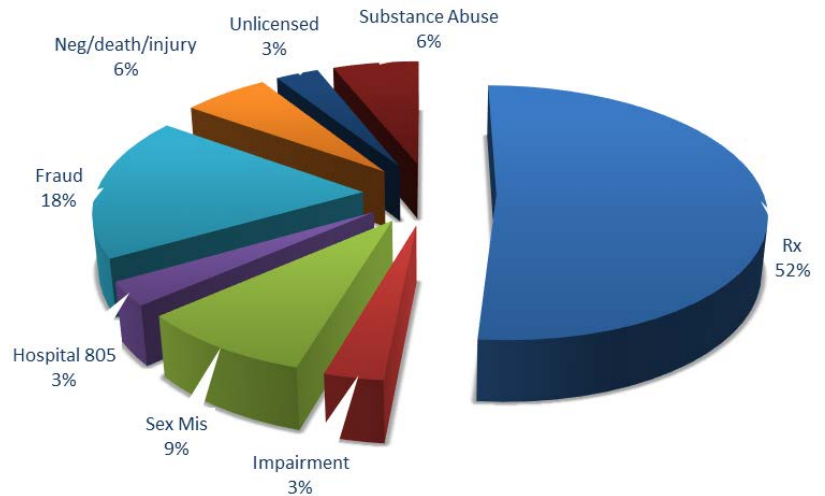


Figure 3.2 Field Inv. Complexity

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Figure 3.3 below compares the aging of completed Desk and Field Investigations per month. The aging is the average number of days to complete an investigation starting from the complaint received date to the date that the investigation is completed. The YTD average to complete a desk (internal) investigation is a respectable 86 days. The YTD average for Field Investigations was 534 (an increase from 478 from the last report). In September 2017, there was a single case that was closed with an aging of 985.

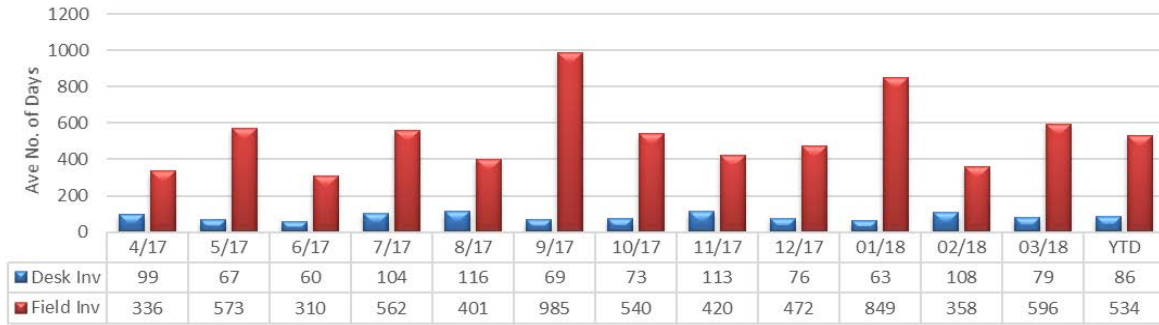


Figure 3.3: Completed Investigations Monthly Aging

Aging for Desk and Field Investigations

	2Q 2017			3Q 2017			4Q 2017			1Q 2018			YTD
All Inv Aging	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	YTD
90 days	24	21	32	28	11	33	18	24	28	20	20	29	288
91-180 days	9	4	9	9	13	21	18	13	10	6	10	22	144
181-1 yr	2	3	3	17	5	1	0	6	3	2	8	4	54
1 yr-2 yrs	3	1	1	1	2	1	1	4	4	1	1	0	20
2 yrs-3 yrs	1	0	0	1	0	1	1	1	1	2	0	1	9
over 3 yrs	0	0	1	0	0	0	0	0	0	0	0	0	1
Totals	39	29	46	56	31	57	38	48	46	31	39	56	516

Data Table 4: All Investigations Aging

In Data Table 4 and Figure 4.1 we see the aging matrix for the number of investigations that were closed per month within a specific time-period. 288 cases (56%) were completed within 90 days; 144 cases (28%) were completed between 91-180 days; 54 cases (10%) were completed between 181-365 days; 20 cases (4%) were completed between 1 – 2 years; 9 cases (1%) were completed between 2-3 years; and 1 case (less than 1%) was completed after 3 years. The majority of the investigations (84%) were completed within 6 months; and 94% were completed within a year.

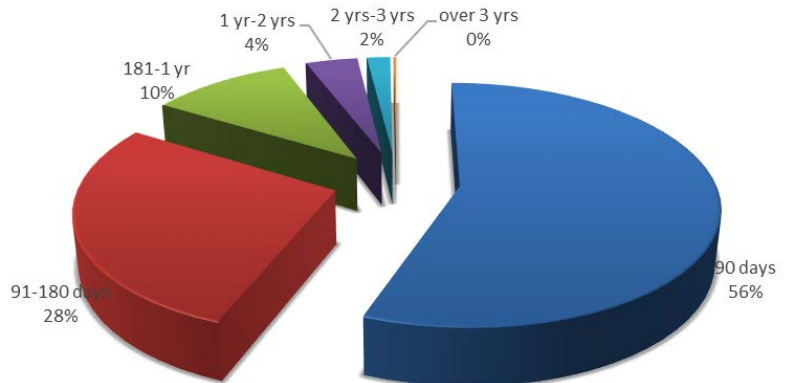


Figure 4.1 All Investigations Aging

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ENFORCEMENT ACTIONS

	2Q 2017			3Q 2017			4Q 2017			1Q 2018			YTD
	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	
AG Cases Initiated	0	0	0	1	3	5	2	1	3	5	4	3	27
Acc/SOI Filed	1	1	0	0	1	0	3	2	2	0	2	2	14
Final Disciplinary Order	3	3	0	0	2	2	2	2	1	2	2	2	21
Acc Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed w/out Disc Acti	1	0	0	0	0	0	0	0	2	0	1	0	4
Citations	0	0	1	1	0	1	1	0	0	0	0	0	4
Suspension Orders	0	0	0	0	2	0	1	0	0	0	1	1	5
AG Cases Pending	20	17	17	18	20	23	23	22	22	26	26	27	27

Data Table 5: Enforcement Actions

For all enforcement actions, Data Table 5 above breaks down the monthly totals for each disciplinary action. During this 12-month period, 27 cases were transmitted to the Attorney General’s Office for disciplinary actions; 14 Accusations and Statement of Issues were filed; 21 Final Disciplinary Orders were filed; 4 cases were closed without disciplinary action; 4 citations issued; and 5 Suspension Orders were filed. At the end of 4Q 2017 there were 27 AG cases pending.

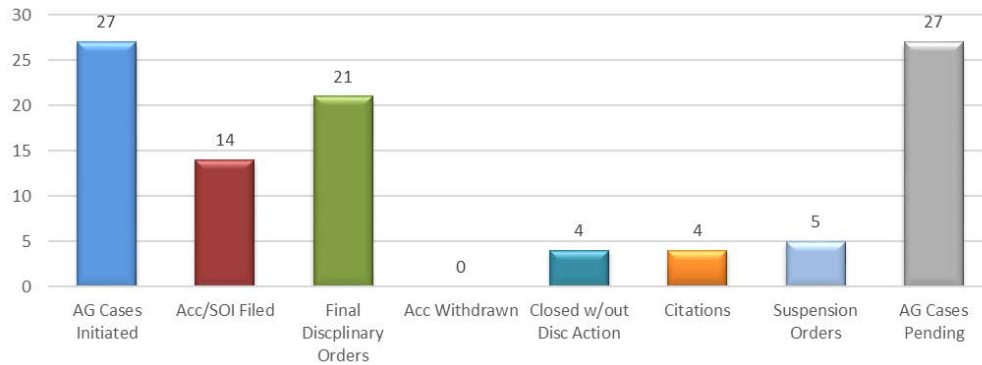


Figure 5.1: Enforcement Actions Totals

Final Disciplinary Orders Aging

Total Orders Aging	2Q 2017			3Q 2017			4Q 2017			1Q 2018			YTD
	4/17	5/17	6/17	7/17	8/17	9/17	10/17	11/17	12/17	01/18	02/18	03/18	
90 Days	0	0	0	0	0	0	1	0	0	0	1	0	2
91-180 Days	0	1	0	0	0	0	0	0	0	0	0	0	1
181 - 1 Yr	1	0	0	0	0	0	0	0	0	0	1	1	3
1 - 2 Yrs	1	1	0	0	1	0	1	0	0	0	0	0	4
2 - 3 Yrs	0	0	0	0	0	1	0	1	1	1	0	0	4
3-4 Yrs	0	1	0	0	0	0	0	0	0	1	0	1	3
4 yrs	1	0	0	0	1	1	0	1	0	0	0	0	4
Totals	3	3	0	0	2	2	2	2	1	2	2	2	21

Data Table 6: Final Orders Aging Matrix

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In Data Table 6 (previous page) and Figure 6.1 we see the aging matrix of the 21 Final Disciplinary Orders that were completed during this 12-month period. The chart shows the percentage of cases distributed within each aging period. Of the 21 final disciplinary orders, 2 cases (10%) was completed in 90 days; 1 case (5%) was completed within 180 days; 3 cases (14%) within 181-365 days; 4 cases (19%) within 1-2 years; 4 cases (19%) within 2-3 years; 3 cases (14%) within 3-4 years, and 4 cases (19%) over 4 years. Of the 21 Disciplinary Orders imposed (Figure 6.2 below), there were 5 probationary orders; 5 revocations; 3 surrenders; 7 reprimands; and 1 statement of issues denied.

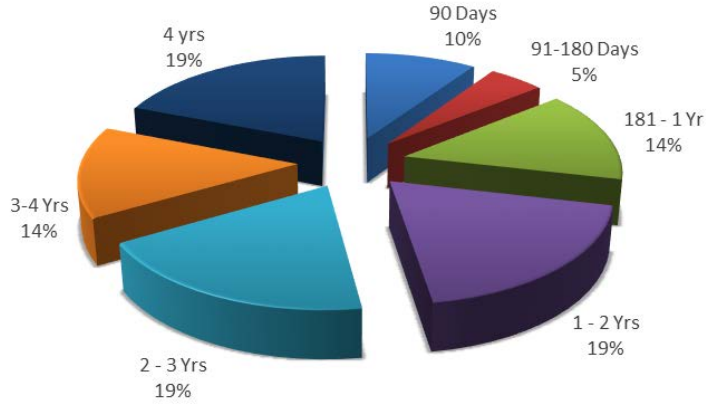


Figure 6.1: Final Orders Aging

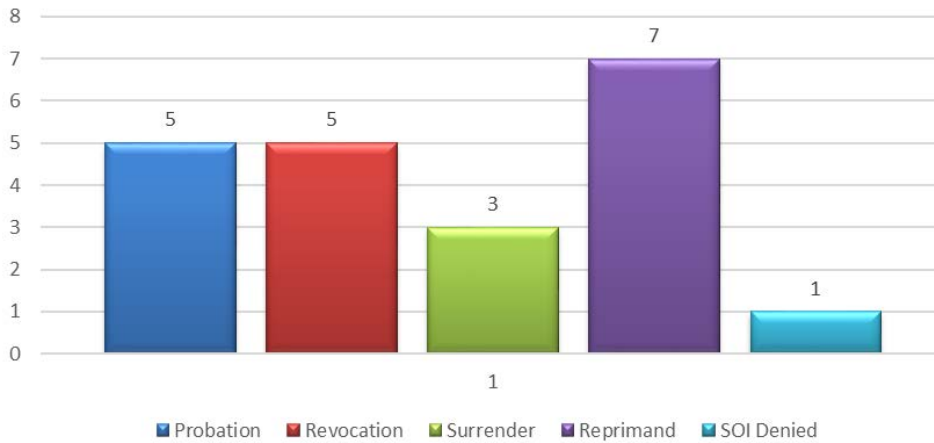


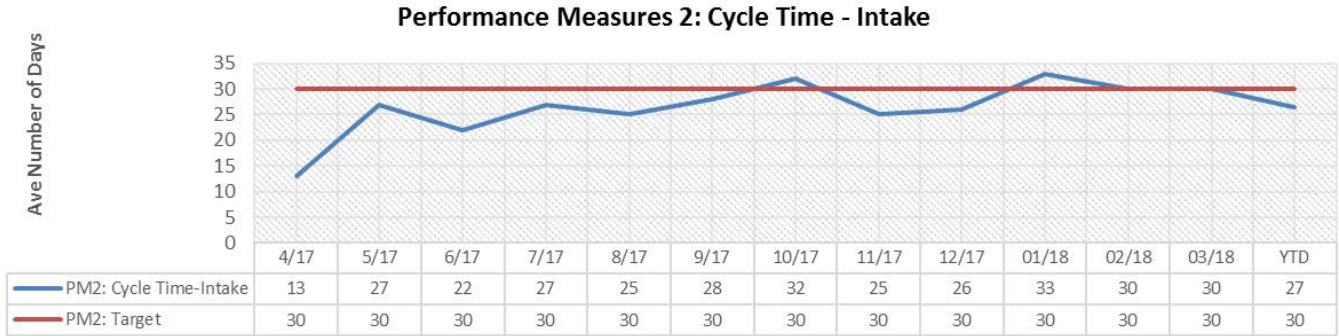
Figure 6.2: Final Disciplinary Actions Imposed

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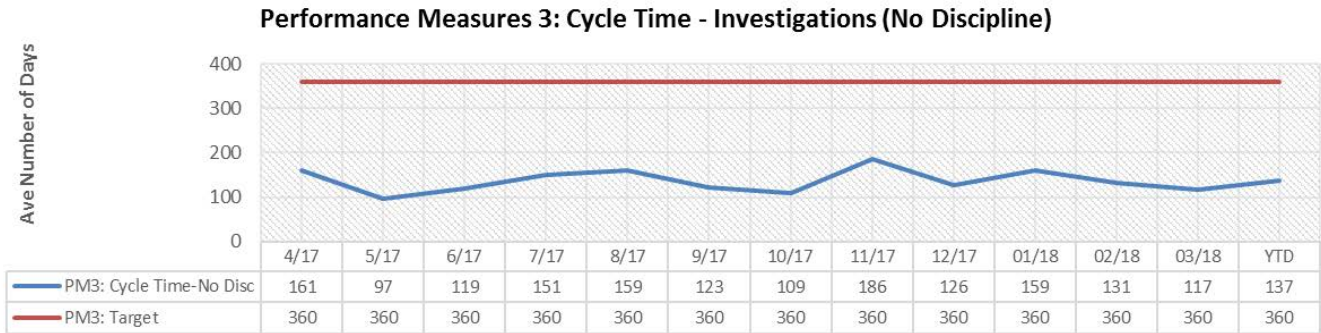
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PERFORMANCE MEASURES

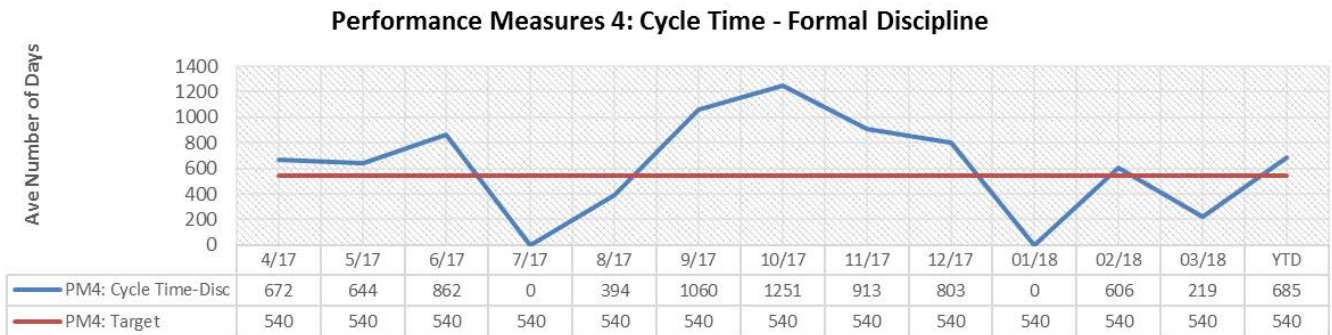
PM2: CYCLE TIME-INTAKE: Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



PM3: CYCLE TIME – INTAKE & INVESTIGATION: Average number of days to complete the entire enforcement process for cases not transmitted to the Attorney General. (Includes intake and Investigation)



PM4: CYCLE TIME – FORMAL DISCIPLINE: Average number of days to complete the entire enforcement process for cases transmitted to the Attorney General for formal discipline. (Includes intake, investigation, and transmittal outcome)



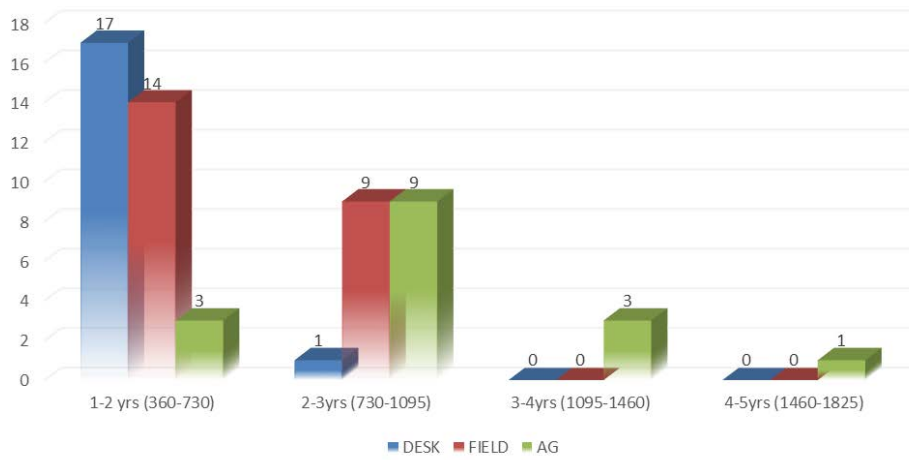
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PENDING CASES EXCEEDING PERFORMANCE TARGETS

For all current pending cases exceeding the Performance Targets, there are 18 desk investigations cases, 23 field investigations cases and 16 Attorney General cases.

	Case Disposition	Target	1-2 yrs (360-730)	2-3yrs (730-1095)	3-4yrs (1095-1460)	4-5yrs (1460-1825)	Totals	Highest aging value
PM3	DESK	360 days	17	1	0	0	18	998 days
PM3	FIELD	360 days	14	9	0	0	23	1053 days
PM4	AG	540 days	3	9	3	1	16	1537 days



PROBATION

There are currently 41 probation cases, of which 33 cases have a cost recovery order totaling \$339,120.84. As of May 11, 2018, \$197,399.46 has been paid leaving a balance of \$141,721.38.

TAB 8

Osteopathic Medical Board

Future Agenda Items

Agenda Item	Requestor

TAB 9

Osteopathic Medical Board

Future Meeting Dates

Date	Place	Time
Thursday September 27, 2018	San Diego, CA	10:00 am
Thursday January 17, 2019	Sacramento, CA	10:00 am
Thursday May 16, 2019	Chino, CA	10:00 am
Thursday April 2019 (4 th , 11 th , 18 th , or 25 th)	<div style="border: 1px solid black; padding: 2px; display: inline-block;"><i>Proposed</i></div> Chino, CA	10:00 am
Thursday September 2019 (5 th , 12 th , 19 th , or 26 th)	TBD	10:00 am

**Please note that all meetings should be held in the best interest of the Board. Meetings in resorts or vacation areas should not be made. Using Conference areas that do not require contracts and or payment is the best option for the Board. No overnight travel. If an employee chooses a mode of transportation which is more costly than another mode, a Cost Comparison form must be completed. Reimbursement by the State will be made at the lesser of the two costs. Taxi Service should be used for trips within but not over a 10-mile radius. Receipts are required for taxi expenses of \$10.00 and over. Tips are not reimbursable.*