

# OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

## Proposed Language

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

1. Amend Section 1661.2 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

### **§ 1661.2 Diversion Evaluation Committee Duties and Responsibilities.**

A diversion evaluation committee shall have the following duties and responsibilities in addition to those set forth in Section 2366 of the Code:

- (a) To consider recommendations of the program manager and any consultants to the committee;
- (b) To set forth in writing for each physician in a program a treatment and rehabilitation plan established for that physician with the requirement for supervision and surveillance.
- (c) To use the uniform standards for substance-abusing licensees contained in "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (04/2011), which is hereby incorporated by reference.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.xciii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 2366, Business and Professions Code.

2. Amend Section 1663 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

### **§ 1663. Disciplinary Guidelines.**

(a) 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 the disciplinary guidelines entitled "Osteopathic Medical Board of California Disciplinary Guidelines of ~~1996~~ 2014" (Rev 08/14) ("Guidelines"), which are hereby incorporated by reference. Deviation from ~~these~~ gGuidelines 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 factors; the age of the case; evidentiary problems.

(b) (1) Notwithstanding the Guidelines, any proposed decision 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 the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex

offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

(2) As used in this section, the term “sex offense” shall mean any of the following:

- (a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an offense.
- (b) Any offense defined in Section 261.5, 313.1, 647b, or 647 subdivision (a) or (d) of the Penal Code or a finding that a person committed such an offense.
- (c) Any attempt to commit any of the offenses specified in this section.
- (d) Any offense committed or attempted in any other state or against the laws of the United State which, if committed or attempted in this state, would be punishable as one or more of the offenses specified in this section.

(c) If the conduct found to be a violation involves drugs, alcohol, or both, and the individual is permitted to practice under conditions of probation, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation. The clinical diagnostic evaluator’s report shall be submitted in its entirety to the board.

- (1) Each of the “Terms and Conditions of the Uniform Standards for Substance-Abusing Licensees,” as set forth in the Guidelines, shall be included in any order subject to this subsection, but may be imposed contingent upon the outcome of the clinical diagnostic evaluation.
- (2) The Substance Abuse Coordination Committee’s *Uniform Standards Regarding Substance Abusing Healing Arts Licensees (04/2011)*, which are hereby incorporated by reference, shall be used in applying the probationary conditions imposed pursuant to this subsection.

(d) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of prohibition in any order that the Board determines would provide greater public protection.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.xciii), Sections 1, 2018, 2451, and 3600-1, Business and Professions Code; ~~and Section 11400.21, Government Code.~~ Reference: Sections 315, 726 and 729, Business and Professions Code; Sections 11400.21 and 11425.50(e), Government Code; Sections 261.5, 290, 313.1, 647b, and 647 subdivision (a) or (d), Penal Code.