

**OSTEOPATHIC MEDICAL BOARD OF
CALIFORNIA**

THIRD ADDENDUM TO INITIAL STATEMENT OF REASONS

Hearing Date: October 13, 2017

Subject Matter of Proposed Regulations: Uniform Standards for Substance Abusing Licensees (Uniform Standards) and The Osteopathic Medical Board Disciplinary Guidelines (Guidelines) as required by SB 1441, pursuant to Sections 315 of the Business and Professions Code. Conforming amendments to Guidelines related to sexual exploitation discipline pursuant to BPC Sections 729 and 2246, as well as other updates to the Guidelines.

Sections affected: Division 16 of Title 16 of California Code of Regulations (CCR) Sections 1661.2 and 1663.

Addendum to Policy Statement

The original proposed regulatory packet was disapproved by the Office of Administrative Law December 9, 2016. The Board was granted an initial grace period and two subsequent extensions (OAL letter dated March 17, 2017) and (OAL letter dated August 2, 2107) to resubmit the revised regulatory packet.

This rule making action revises and corrects the original Guidelines, the Quarterly Declaration Form OMBC 10 (1/18) and the Initial Statement of Reasons. The Board approved the revised language at its June 28, 2017 Board meeting. The Uniform Standards are amended into the Guidelines and the Guidelines and Quarterly Declaration form OMBC 10 (1/18) are hereby incorporated by reference as the “Osteopathic Medical Board of California Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees of 2018” (1/18).

Goals and Objectives of Proposed Regulations

The goal and objectives of this proposed regulation is to increase consumer protection through compliance with laws that relate to the Board’s enforcement, and improvement of the Board’s enforcement oversight of the osteopathic profession. The Board proposes to implement SB 1441, BPC Section 315 et seq.; update the Disciplinary Guidelines of 1996 to reflect subsequent statutory changes including adding conforming language related to sexual contact and sexual exploitation; and to improve the overall Guidelines with more detail, model language and disciplinary recommendations.

Introduction to Problem Being Addressed

Senate Bill 1441: in September 2008, Senate Bill (SB) 1441 (Ridley-Thomas, Chapter 548, Statutes

of 2008) was signed into law and enacted Business and Professions Code Section 315. SB 1441 was drafted in response to the Legislature's concern that substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient. The Legislature was concerned with substance abusing licensees being prevalent and being a risk to public safety and that there was no uniform treatment programs and discipline among health care regulatory boards. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency; patient protection is paramount. The Legislature believed that various health care boards had inconsistent or nonexistent standards that addressed how they handled substance abusing licensees. It was believed that patients would be better protected from substance abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance abusing licensees. Consequently, the intent of SB 1441 was to extend the application of best practices and standards uniformly across all healing arts boards.

The legislation, in part, mandated that the Department of Consumer Affairs (Department or DCA) establish a Substance Abuse Coordination Committee (Committee) subject to the Bagley-Keene Act. The Committee was established and included officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and was chaired by the Director of the Department. The Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. The Committee developed sixteen uniform standards as required by SB 1441. In April 2011, the Committee published the document entitled "Uniform Standard Regarding Substance Abusing Healing Arts Licensees" (hereafter referred to as "Uniform Standards")

Summary of Existing Law and Proposed Changes

Existing law, Senate Bill (SB) 1441 (Ridley-Thomas) BPC 15. Existing law requires healing arts Boards to adopt Uniform Standards regarding substance abusing licensees. The Department formed a workgroup to create uniform standards regarding substance abusing licensees which was completed in 2011. Under existing law, pursuant to BPC Section 315, the Board is required to adopt these standards as part of their disciplinary guidelines and adhere to them in cases involving self-use of substance abuse or alcohol.

Existing law, BPC Section 315.2 specifies that a healing arts board within DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, BPC Section 315.4 authorizes healing arts boards within DCA to order a licensee on probation or in a diversion program to cease practice for major violations and when the Board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the Uniform Standards and specific standards adopted and authorized under Section 315. The cease practice order

pursuant to this Section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, BPC Section 2246, added Statutes of 2002, Ch. 1085, Sec. 22, effective January 1, 2003, requires revocation without stay for any case involving a licensee, in which there was a finding of any act of sexual exploitation as defined in BPC Section 729. In 2011, the Legislature further amended BPC Section 729 to define specific violations by licensees involving sexual contact with and sexual exploitation of their patients and criminal penalties.

Existing law, BPC Section 2018 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Osteopathic Act and Medical Practice Act.

This rulemaking action clarifies and makes specific changes to the Board's Disciplinary Guidelines of 1996 Title 16 CCR Section 1663. The amendments include adding the Uniform Standards for Substance Abusing Licensees to the Disciplinary Guidelines pursuant to BPC Sections 315 and 2366; and amending Title 16 CCR Section 1661.2 to require the Board's Diversion Program to comply with the Uniform Standards. The Board amends the Guidelines pursuant to BPC Sections 726, 729, 2246 related to sexual contact discipline.

The Board is proposing to adopt Uniform Standards 1-16 by adding them to the Guidelines through this rulemaking action. The regulations proposed would add the Uniform Standards for Substance Abusing Licensees to the Board's Guidelines, which would make them operative in disciplinary actions involving self-use of substance abuse and/or alcohol. Additionally, the Board amends its Diversion Program regulation Title 16 CCR Section 1661.2 to require the program and vendors to institute the Uniform Standards for Substance Abusing Licensees as part of their operational protocols and contractual requirements in operation of the Board's Diversion Program. The proposed regulations would amend the Board's current Disciplinary Guidelines of 1996 to comply with BPC Sections 729 and 2246. The regulations include other updated changes to Disciplinary Guidelines to reflect changes in statutes since 1996.

Other Amendments/Deletions: This rulemaking action clarifies and makes changes to the Board's Guidelines revising and updating the existing 1996 standards to comply with statutory changes since 1996: repeal of statutory provisions that have since been deleted, and adding new statutory provisions along with new model disciplinary language and proposed discipline. The Board proposes to update its Quarterly Declaration Form OMBC 10 (1/18) that is being incorporated by reference within the Guidelines.

In reviewing the 1996 Guidelines, the Board focused on addressing gaps in specific penalty recommendations and providing more specific model language for use in disciplinary orders and stipulations. The proposed changes eliminate ambiguity and provides the Board with more complete authority to hold licensees and probationers accountable for their violations. The

proposed changes also address subsequent changes to the disciplinary and probationary environments since 1996. Many of the changes are based on best practices exemplified by the Department of Consumer Affairs' various boards and bureaus that have proven to be effective and in the best interest for consumers and the licensees subjected to discipline.

Summary of Updated Changes

The proposed language and Initial Statement of Reasons have been revised as follows:

- Update and incorporate by reference the “Board’s Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees of 2018” (1/18).
- Incorporate and integrate the “Uniform Standards for Substance Abusing Licensees” (April 2011) into the Disciplinary Guidelines.
- Amend Title 16 CCR 1661.2 to require the Diversion Program to use the adopted Uniform Standards.
- Amend the Guidelines to add new model language and a violation to Guidelines related to sexual contact and sexual exploitation.
- Update and incorporate by reference the “Quarterly Declaration” Form OMBC 10 (1/18).
- In updating the Board’s Disciplinary Guidelines of 1996, the Board added the Uniform Standards and language explaining the Uniform Standards; in addition to conforming language related to a licensee’s sexual contact or sexual offenses.

In this revised language, the Board fully incorporated the entire Uniform Standards into the Guidelines and then integrated them into the model language and penalties sections of the Guidelines. This was accomplished by creating a Part II in the Guidelines that incorporates all 16 Uniform Standards. Then, relevant portions of the Uniform Standards language were added to the relevant sections in Part III Model Language and Part IV Discipline by Violation rather than simply being incorporated by reference to ensure they are fully integrated into Parts III and IV of the Guidelines.

To improve clarity as to when the Uniform Standards apply, the relevant Uniform Standards language was incorporated in each violation that involves substance abusing licensees. A note was added to the sections, in which the Uniform Standards were mandated. A separate category of “Optional Terms and Conditions” was added to Part III Model Language that contained the terms and conditions for substance abusing licensees. By definition, this new category is under the “Optional Terms and Conditions” because it not a “Standard Term and Condition, “which is defined as a term and condition that must be included in all disciplinary orders.

Finally, the Board also added the definition of what a substance abusing licensee is and how that status is determined. The Board removed prior references to incorporating the Uniform Standards separate from the Guidelines. The revised Guidelines now include the Uniform

Standards and the Guidelines are incorporated by reference.

The Board revised the Disciplinary Guidelines so they are divided into four parts to improve the usability of the Disciplinary Guidelines:

- Part I: Overview-- adding clarifying language
- Part II: Uniform Standards for Substance Abusing Licensees—all 16 standards.
- Part III: Model Language for Probationary Orders—terms and conditions including the Uniform Standards for Substance Abusing Licensees.
- Part IV: Recommended Discipline By Violation—modified existing discipline and added new discipline for existing terms and added new violations and discipline.

In Part II, the Board added the Uniform Standards for Substance Abusing Licensees in its entirety and added language explaining when and how the Uniform Standards are to be used.

In Part III, the Board added the following new Standards Terms and Conditions:

- Notification to Board of Employers; Notification to Employers of Discipline
- Supervision of Physician Assistants and Advanced Practice Nurses

In Part III, the Board added the following new Optional Terms and Conditions:

- Record keeping Course
- Professional Boundaries Course
- Clinical Assessment and Training Program
- Physical Health Evaluation
- Monitoring: Billing/Practice

In Part III, the Board modified the following Optional Terms and Conditions:

- Controlled Drugs: Total Restriction of DEA Permit
- Controlled Drugs: Surrender of DEA Permit
- Controlled Drugs: Partial Restriction of DEA Permit
- Controlled Drugs: Maintain Record
- Pharmacology/ Prescribing Course
- Written Examination

In Part III, the Board added the following Uniform Standards terms and conditions, which embody all 16 Uniform Standards:

- Clinical Diagnostic Evaluation: this condition of probation requires probationer to undergo a clinical diagnostic evaluation.
- Diversion Program—Alcohol and Drugs: all substance abusers on probation are required to enroll in and complete the Board's Diversion Program that utilizes Uniform Standards.
- Drugs—Abstain from Use: This is an existing term that has been expanded within the Uniform Standards and thus modified.
- Alcohol—Abstain from Use: This is an existing term that has been expanded within the

Uniform Standards and thus modified.

- Notification to Employer: The Board has adopted the Uniform Standards requirements with respect to notification of employer, what notice requirements must be met by licensee.
- Biological Fluid Testing: The Board has adopted the Uniform Standards testing frequency, protocols and requirements.
- Group Support Meetings: The Board has adopted the Uniform Standards requirement and protocols with respect to group support meetings.
- Worksite Monitor: The Board has adopted the Uniform Standards requirement and protocols with respect to requiring a worksite monitor.
- Results of Biological Fluid Tests: The Board has adopted the Uniform Standards requirement and protocols with respect to the process for positive test results and requiring immediate cease practice order.
- Major and Minor Violations: The Board has adopted the Uniform Standards requirement and protocols with respect to the criteria and discipline for major and minor violations of Diversion Program treatment and overall probation.
- Request by a Substance Abusing Licensee to Return to Practice: The Board has adopted the Uniform Standards process with respect to how a licensee can return to practice.
- Request by a Substance Abusing Licensee for Reinstatement of a Full and Unrestricted License—Petition for Reinstatement: The Board has adopted the Uniform Standards criteria for determine whether a licensee is safe to return to practice.

In Part IV, the Board updated the following existing violations to add new recommended discipline:

- BPC 810 Insurance Fraud
- BPC 2234 (b) Gross Negligence
- BPC 2234 (c) Repeated Negligence Acts
- BPC 2234 (e) Dishonesty
- BPC 2237 Drug Related Conviction
- BPC 2238 Violation of Drug Statute
- BPC 2239 Self Abuse of Drugs or Alcohol
- BPC 2241 Furnishing Drugs to and Addict
- BPC 2250 Failure to Comply with Sterilization Consent Provisions
- BPC 2251 Use of Silicone
- BPC 2261 Making or Signing False Document
- BPC 2262 Alteration of Medical Records/ False Medical Records
- BPC 2271, 651 Deceptive Advertising
- BPC 2272 Anonymous Advertising
- BPC 2273 Employment of Runners, Cappers and Steerers
- BPC 2274 Misuse of Title
- BPC 2275 Use of "M.D."
- BPC 2276 Use of "D.O."

In Part IV, the Board modified the following violations and recommended discipline:

- BPC 725 Excessive Prescribing or Treatments
- BPC 729 Sexual Misconduct
- BPC 2236 Criminal Conviction: Felonies/Multiple Misdemeanors
- BPC 2236 Criminal Conviction: Single Misdemeanor

In Part IV, the Board added the following new violations and recommended discipline:

- BPC 729 Sexual Exploitation
- BPC 2235 Obtaining License by Fraud
- BPC 2288 Impersonation of Applicant in Exam
- BPC Practice During Suspension

In Part IV, The Board deleted the following violation due to its repeal:

- BPC 2265 Use of Qualified Physician Assistant Without Approval

Anticipated Benefits of the Proposed Regulation:

The Board's primary mission is to protect public safety. The proposed regulatory change updating the Board's Disciplinary Guidelines will result in increased protection of the public as a result of improved oversight and higher standards for treatment of substance abusing licensees. These regulatory changes will benefit California consumers by enhancing the Board's ability to discipline osteopathic physicians and surgeons who violate the Osteopathic Act or Medical Practice Act or other laws and regulations regarding the practice of medicine by an osteopathic physician and surgeon.

The Osteopathic Medical Board of California has a Diversion Program that pre-dated this legislation. This regulation implements the 16 proposed Uniform Standards and requires the Diversion Program to use these Uniform Standards. The broad objective of the regulation is to ensure that substance abusing licensees are subject to uniform standards for discipline.

Adding the Uniform Standards to the Board's Disciplinary Guidelines protects the public from harm by substance abusing licensees by ensuring they are properly evaluated and ordered to cease practice until it is determined that they can practice medicine safely. In implementing these standards, the Board is committed to ensuring that licensees who are confirmed to be abusing drugs and/or alcohol, receive appropriate discipline and treatment. The Board is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

The specific anticipated benefit from amending the regulation to require revocation for licensees that sexually exploit their patients is to protect public safety. This amendment related to sexual

exploitation is protecting patients from being sexually exploited and further harmed by predatory licensees.

It is anticipated that Administrative Law Judges and Deputy Attorney Generals will also benefit from the updated Guidelines when drafting decisions, which will have ensured consistency in interpretation and application of discipline in disciplinary matters.

Specific Purpose of each adoption, amendment, or repeal:

The board proposes to amend Title 16 California Code of Regulations (CCR) Section 1661.2 Diversion Evaluation Committee Duties and Responsibilities to require that the Diversion Program use the Uniform Standards; and references that the Uniform Standards are contained in the also amended Guidelines in Title 16 CCR Section 1663.

Rationale

Adding the requirement that the Diversion Committee must use the Uniform Standards, changes the standards that the Diversion Committee must use and specifies that the standards used by the Diversion Program must in fact be the Uniform Standards. This section makes the Uniform Standards operational for all substance abusing licensees participating in the Diversion Program as a condition of probation or voluntarily. Adding these standards will better protect the public from harm from substance abusing licensees and ensure that monitoring and treatment is effective. It will also comply with the intention of SB 1441 to have all substance abusing licensees be subject to uniform standards for discipline and diversion program participation.

Factual Basis/Purpose

The Board proposes to amend Title 16 CCR Section 1663, the Board's Guidelines of 1996, to comply with changes in the law that have occurred since then and to add new disciplinary guidance and model language; in addition to adding the Uniform Standards.

Specifically, the Board adds a new disciplinary standard for violations involving "sexual contact" or "sex exploitation" that defines what constitutes sexual exploitation and mandates revocation and no stay of revocation in cases with findings that the licensee engaged in any act of "sexual contact" or "sexual exploitation" as defined in Penal Code Section 729. The purpose of this amendment is to comply with BPC Sections 2246 and 729 and remove any discretion by the Board or Administrative Law Judge (ALJ) in determining the final disciplinary action in such cases.

Specifically, the Board added the Uniform Standards as disciplinary standards specific to those determined to be substance abusing licensees. These Uniform Standards shall be used in cases involving substance abusing licensees. Additionally, the Board defines a substance abusing licensee as one who undergoes a clinical diagnostic evaluation and the findings of such evaluator determine that the licensee is in fact a substance abusing licensee.

Rationale

The addition of the Uniform Standards and the sexual contact and sexual offense discipline was

done pursuant a statutory mandate. These amendments to the Guidelines were also promulgated to further protect consumer safety. Requiring revocation recognizes the harm to patients and is intended to protect patients from any future harm at the hands of those who have been found to have engaged in such harmful behavior with their patient(s).

Part I Overview

Factual Basis/ Purpose

Part I was created as part of the reorganization and updating of the Board's 1996 Guidelines. The Board divided the Guidelines into four parts: Part I Overview, Part II Uniform Standards for Substance Abusing Licensees, Part III Model Language for Probationary Orders, and Part IV Discipline by Violation. The entire Guidelines have been reformatted so everything is underlined as new, but some wording is existing language.

In the introduction, the first paragraph is existing language. The remaining paragraphs within the overview are newly proposed amendments that provide an explanation of the purpose and use of the Guidelines. Specifically, they provide guidance to the Board, ALJs, attorneys including the Deputy Attorney Generals in hearings and settlement of cases. The concept and specifics of terms and conditions of probation are defined and explained in the introduction.

The organization of the Guidelines is new language. The purpose of this section is to provide an overview and explain what is contained Parts I-IV. Reorganizing the Guidelines into four parts is new and the Board's intention is to explain the content of each part in order to provide a better understanding of how to use the document. The prior version of the Guidelines had three sections that included some explanation of the purpose and use of the document, model language for terms and conditions and discipline by violation. The Board expanded the content of what became Part I to better explain the disciplinary guidance and requirements contained in the Guidelines. The General Considerations section is existing language, just reformatted. The Definitions: Type of Discipline section is existing language reformatted with the exception of the addition of the definition of the Uniform Standards.

Rationale

Part I was created in order to provide an explanation of how the contents of the Guidelines are organized including definitions of terminology, considerations in determining disciplinary actions and explanation of details the Board requires to be included in disciplinary decisions prepared by ALJs. The prior version of the 1996 Guidelines was fragmented and lacked sufficient explanation for newcomers using the document to understand its different sections. Decision makers, such as the Board and ALJs, in their process of determining discipline, can benefit from guidelines, criteria, and considerations to frame the deliberation process. The reorganization of Part I is intended to assist decision makers in their disciplinary deliberation.

Part II Uniform Standards for Substance Abusing Licensees

Factual Basis/ Purpose

Part II in its entirety is a new addition to the Guidelines. The purpose of the first three paragraphs is to provide an overview of the statutory authority and the Committee that created the Uniform Standards and explains when the Uniform Standards are to be used. Simply, the Uniform Standards are required to be used when the violation involves the licensee's use of drugs, alcohol or both. Additionally, it is reiterated that when the licensee's conduct involves the use of drugs and/or alcohol a clinical diagnostic evaluation shall be ordered to determine whether the licensee is a substance abusing licensee.

SB 1441 requires that the Board implement the Uniform Standards. The Board proposes to add specified (1-16) Uniform Standards. These standards are intended to apply to licensees whose violation involves self- use of drugs or alcohol. These standards are mandated standards, not guidelines, which shall apply to all cases involving substance abusing licensees. This proposed language also updates the Board's existing standards and optional terms of probation.

The Board has an existing Diversion Program that predates these Uniform Standards. The Board's Diversion Program must comply with all of the Uniform Standards. All licensees who abuse drugs and/or alcohol are ordered to enroll in the Board's Diversion Program as a condition of probation. It is explained that there are two pathways for licensees to enter the Diversion Program: voluntary enrollment and as a condition of probation. Generally, self-referrals, not otherwise, involving disciplinary action, must still comply with the terms and conditions of the Diversion Program; however, if, during the program it is determined that they pose a risk to public safety, the Board may refer the case for investigation and disciplinary action by the Board. All participants of the Diversion Program must comply with all of the requirement of the Diversion Program; however, licensees in the Diversion Program as a condition of probation must comply with all the requirements of the Diversion Program and probation or risk losing their license.

Rationale

The rationale for these standards is that the Legislature felt that substance abuse was a significant problem that posed risks to public safety and that it was not being effectively addressed by all regulatory boards. These standards set high standards and specify uniform requirements that are intended to maximize protection to public safety. The Board specifically added the introductory explanation to clarify when the standards apply and that they were mandatory when applicable.

The Board also added a clarifying explanation about the Diversion Program to better understand the linkage between the Uniform Standards and the Diversion Program. The Board's Diversion Program is the Board's treatment program designed to provide a recovery program for licensees to recover from their addiction and if successful, to return to practice. The Board's Diversion Program helps licensees recover from their addiction and protects the public from harm by identifying licensees who can practice safely from those who cannot and must cease practice. The Diversion Program is operated through a series of vendor contracts that are required to comply with the Uniform Standards.

Uniform Standard #1 Clinical Diagnostic Evaluation (#33 under Part III)

Factual Basis/Purpose

The purpose of this standard is to increase public safety by ensuring that clinical diagnostic evaluations are accurate, objective and unbiased and that the evaluator is qualified and follows professional standards in making such determinations. Additionally, this standard is intended to be uniform for all enforcement and uniformly applied in cases involving substance abusing licensees.

This standard sets specific standards for the clinical diagnostic evaluation. The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license, which includes scope of practice to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. It requires the clinical diagnostic evaluation be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. It also requires that the evaluator have no financial, personal or business relationship with the licensee to ensure the findings are objective and unbiased. This standard also identifies the information that must be addressed or contained in the evaluation report and timeframes for submitting the report to the Board. Finally, there is a requirement that if the evaluator determines that the licensee is a threat to self or others, the evaluator must notify the Board within 24 hours. This will allow the Board to take appropriate action in response to the information of a potential threat to public safety.

Rationale

Adopting high quality, uniform requirements for evaluations will accurately identify licensees who may be a threat to themselves or others and may be at risk for harming their patients. Those determined to be substance abusing licensees will also have a determination about whether they should continue or cease practice. This specific requirement in the evaluation finding further protects the public by identifying those not fit for practice. The provision to evaluate whether a threat to self or others exists further protects patients from physicians who may be at risk for harming patients or not have the ability to practice medicine safely. The 24 hour notification to the Board provides the Board with exigent information upon which they can act to protect public safety.

The proposed regulatory language requires the Uniform Standards be used for cases involving self-use of alcohol or drugs the licensee as a condition of probation; and, also provides that it is the clinical diagnostic evaluation that determines whether the licensee is a substance abusing licensee. The clinical diagnostic evaluation also determines the treatment within the Diversion Program, whether the licensee is allowed to continue to practice or not, or under what conditions a licensee allowed to practice. The Board is not an expert in substance abuse,

thus, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee's ability to practice safely. By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

Uniform Standard #2 Cease Practice Pending Results of Evaluation (#33 under Part III)

Factual Basis/Purpose

The purpose of this standard is to protect public safety by ordering substance abusing licensee to cease practice until the Board can determine appropriate treatment and assessment of the risk the licensee poses to public safety. This standard requires that the Board order the licensee to cease practice during the clinical diagnostic evaluation pending the results and review by the Board's Diversion Evaluation Committee (DEC). While awaiting results, the licensee shall be randomly drug tested at least two (2) times per week. After the results of the evaluation, the standard provides criteria for evaluating whether the licensee is safe to return to practice either part time or full time. The standard requires that licensees shall not return to work until the licensee has at least 30 days of negative drug tests.

The Board requires that the licensee shall enroll and participate in the Board's Diversion Program within thirty (30) days of the effective date of decision, and remain in the program until the Board determines that further treatment and rehabilitation are no longer necessary. The standard makes note that quitting the Diversion Program without permission or being expelled for cause shall constitute a violation of probation by the licensee.

Rationale

This standard provides public safety protections by requiring the licensee to cease practice until the results of the evaluation are completed and they have negative drug tests for at least 30 days. This standard is intended to protect the public from harm until it is known what risk the licensee actually may pose to the public.

Uniform Standard #3 Employer Notification (#37 under Part III)

Factual Basis/Purpose

The purpose of this standard is to require the licensee to provide consent for the Board and employers to communicate regarding employment. This standard requires that a licensee enrolled in the Board's Diversion Program voluntarily or is on probation for self-use of alcohol or drugs shall provide the Board 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.

Rationale

This communication is mutually beneficial to the Board and employer because it allows the Board to better monitor the licensee's work under probation; and it allows the employers to be aware that the licensee is on probation and to be aware of the licensee's performance on the job. This communication ensure that the public is protected because both the Board and employers are monitoring the on the job performance and safety of the licensee.

Uniform Standard #4 Biological Fluid Testing (#38 under Part III)

Factual Basis/Purpose

The purpose of this standard is to set uniform standards for biological fluids testing. This standard defines the requirements for licensees within the Board's Diversion Program either voluntarily or as a condition of probation. The requirements include a minimum testing frequency range that is reduced over time during the probation. It also defines the circumstances that would allow for exceptions to the otherwise required testing frequency. It requires a system of random testing and daily check-in by the licensee and other requirements with which the licensee must comply. The standard also provides for tolling when the licensee is out of state. It also provides for circumstances when the Board can order a lesser testing frequency including for those licensees who are not determined to be substance abusing licensees.

Also included in this standard are some administrative provisions that the Board is required follow but are not appropriate for disciplinary orders and thus do not appear in Part III or Part IV. This standard also sets vendor standards for specimen collection and reporting to the Board. This standard provides for a petition for reinstatement process. The standard also requires the Board to collect specific data regarding probation and Diversion Program participation and outcomes.

Rationale

Drug testing is part of the Diversion Program monitoring that ensures that participants are in fact abstaining from alcohol and/or controlled substances and to establish credible basis for determining that participants have complied with terms of treatment. Additionally, the intention for setting uniform minimum testing requirements is to provide maximum public safety protections for violations involving licensee self-use of alcohol or substance abuse. Prior to the passage of the statutory provision that mandated the creation of Uniform Standards, there was a public and legislative concern that alcohol and substance abuse were problems within the healing arts professions that posed risk to the public and that disciplinary actions were

inconsistent and ineffective in protecting public safety.

Since treatment decisions rely on accurate assessment of licensees' abstention from drugs and alcohol, it is important that all testing be credible. These standards ensure vendors follow industry standards. The petition provision clarifies that the Board can reduce or eliminate standards through a petition process that assures due process for the licensee. The data requirements lay the foundation for evaluating the effectiveness of Diversion Programs and disciplinary actions involving licensee self-use of alcohol and drugs. The requirement does not require a specific study be conducted, just that specific data be collected.

Uniform Standard #5 Group Support Meetings (#39 under Part III)

Factual Basis/Purpose

The purpose of this standard is to set standards for group support meetings. The standard provides the criteria for determining the frequency of required group meeting attendance for the licensee. The criteria include licensee's history, length of sobriety, recommendations from the clinical diagnostic evaluator, scope and pattern of substance abuse, licensee treatment history, nature, duration, and severity of substance abuse.

The standard sets the group meeting facilitator qualifications and requirements. The standard requires that meeting facilitators have a minimum of three years' experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by state or nationally certified organizations. There can be no relationship, personally, financially or for business, between the facilitator and licensees within the past year. The standard also requires reporting to the Board of the licensee participation in the form of location, dates, level of participation, and any unexcused absences must be reported to the Board within 24 hours.

Rationale

This standard sets requirements for group support meetings. Group support meetings are a form of treatment and are more effective if overseen by qualified, objective facilitators. Having criteria for determining the frequency of participation ensures that the treatment is appropriate for the licensee. The clinical diagnostic evaluation recommendation provides a clinical basis in determining the frequency of participation of the licensee and whether group support meetings would be appropriate treatment.

Uniform Standard #6 Inpatient, Outpatient Treatment Determination (#33 under Part III)

Factual Basis/Purpose

The purpose of this standard is to provide criteria for determining whether inpatient or

outpatient or other type of treatment is appropriate for the licensee. The criteria are similar to the criteria required for determining the appropriateness and frequency of group support meetings. However, what is included in this standard is the consideration of whether the licensee is a threat to himself/herself or the public.

Rationale

Having specific criteria ensures that treatment determinations are appropriate and based on clinical and historic experience of the licensee. These criteria are helpful for the Board and Diversion Program in determining whether a licensee requires inpatient treatment or outpatient treatment or other type of treatment options. This determination is fundamental to ensure treatment is appropriate and tailored to each licensee. The risk assessment is critical to determining the appropriateness of inpatient or outpatient treatment. It also protects the public from licensees who are determined to pose a potential risk to public and personal safety.

Uniform Standard # 7 Worksite Monitor Requirements (#40 under Part III)

Factual Basis/Purpose

The purpose of this standard is to set requirements for a worksite monitor's qualifications, specific monitoring requirements, and reporting requirements. This standard prohibits worksite monitors to have any financial, personal, familial or any other relationship with the licensee that could compromise the ability of the worksite monitor to render impartial and unbiased reports to the Board. If it is impractical for any but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee worksite monitor be an employee of the licensee.

The worksite monitor's license shall have the same scope of practice as the licensee they are monitoring. If no monitor with like practice is available, another health care professional, or, as approved by the Board, a person in a position of authority who is capable of monitoring the licensee at work can be substituted. If the worksite monitor is a licensed health professional, he or she shall have an active unrestricted license with no disciplinary action within the last five years. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.

The standard also provides specific required methods for monitoring licensees. The worksite monitor must have face to face contact with the licensee in the workplace environment on a frequent basis as determined by the Board, at least once a week. The worksite monitor must interview other staff in the office regarding the licensee's behavior and review the licensee's

work attendance.

The standard sets specific reporting requirements by the worksite monitor. The worksite monitor must report any suspected substance abuse verbally to the Board and the licensee's employer within one business day of occurrence. If the occurrence is not during the Board's normal business hours, the verbal report must be within one hour of the next business day. The worksite monitor is also required to submit a written report to the Board within 48 hours of the occurrence. The standard specifies what the report shall include: licensee name, number, worksite monitor name and signature, worksite monitor's license number, worksite location, dates of face to face contact with licensee by monitor, staff interviews, attendance report, any changes in behavior or personal habits, and any indications that can lead to suspected substance abuse.

The standard requires that the licensee complete consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

Rationale

Setting specific standards for qualifications and prohibited relationships to licensees guarantee the quality and thus effectiveness of the worksite monitor. Requiring minimum contact with licensees and other office staff ensures the quality of the monitoring and thus treatment. Specifying reporting requirements also ensures the Board receives the detailed documentation the Board needs to assess the progress and success of the treatment and probation. The specific reporting requirements also protect public safety by requiring immediate reporting when the licensee may pose a risk to public safety.

Uniform Standard #8 Positive Test Procedure (#41 under Part III)

Factual Basis/Purpose

The purpose of this standard is to create a uniform procedure that effectively and rapidly responds to non-adherence or non-compliance that may pose a risk to public safety. This standard specifies the required procedure when a licensee tests positive for a banned substance. The Board and Diversion Program have a list of all banned substances that licensees shall not use or ingest, including alcohol. The standard requires that in the event of a positive test for a banned substance, the Board/ Diversion Program shall order the licensee to cease practice. The procedure specifies that the Board contact the licensee's employer, if any, and worksite monitor, if any, informing both that the licensee may not work. Thereafter, the Board should determine whether the positive test is in fact evidence of prohibited use. If so, the Board shall follow uniform standard #9 and #10. If not, the Board shall immediately lift the cease practice order.

The standard specifies the process for determining whether the positive test is evidence of prohibited use. The specimen collector and laboratory should be consulted to determine whether there is an error in the specimen and reported test result. The Board should consult with the licensee and/or physician who is treating the licensee to determine if there is a clinical explanation for the test result. The Board shall communicate with the treatment provider, including group facilitators.

Rationale

This standard protects public safety by requiring the licensee to cease practice whenever they test positive for a banned substance even before it is determined whether it is an error or evidence of non-compliance. This procedure errs on the side of public safety. It also provides notice to licensee of the consequences of non-compliance.

Uniform Standard #9 Positive Test Consequences (#41 under Part III)

Factual Basis/Purpose

The purpose of this standard is to define that confirmed evidence of a licensee ingesting a banned substance constitutes a major violation and the Board should impose consequences set forth in Uniform Standard #10.

Rationale

Setting a uniform standard for consequences for confirmed evidence of non-compliance protects public safety. Setting predetermined consequences for the defined action, provides guidance to the Board in appropriately responding to the non-compliance.

Uniform Standard # 10 Major and Minor Violations (#42 under Part III)

Factual Basis/Purpose

The purpose of this standard is to define what constitutes major and minor violations and sets the consequences for each type of violation. Major violations include failure to complete a Board-ordered program; failure to undergo a required clinical diagnostic evaluation; committing multiple minor violations; treating patients while under the influence of drugs/alcohol; any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws; failure to obtain biological testing for substance abuse; testing positive and confirmation of substance abuse; knowingly using, making, altering or possessing any object or product that attempts to defraud a drug test.

The consequences for major violations include a cease practice order and a new clinical

diagnostic evaluation. The cease practice order remains in effect until the licensee has negative tests for at least one month. Other consequences include termination of the contract/agreement and/or referral for disciplinary actions, such as suspension, revocation, or other action as determined by the Board.

Minor violations include failure to submit required documentation; unexcused non-attendance at group support meetings; failure to contact a worksite monitor when required; any violations that do not present an immediate threat to the violator or the public. The consequences for minor violations include removal from practice; practice limitations; required supervision; increased documentation; issuance of citation and or fine or a warning note; required re-evaluation/testing; other action as determined by the Board.

Rationale

In order for the Board to respond appropriately and immediately to a licensee's non-compliance, the Board needs authority to impose immediate consequences to correct the behavior of the licensee and protect public safety. The definitions of what constitutes major and minor violations with a predetermined set of consequences for each provides transparency and incentive to the licensee to comply.

Uniform Standard #11 License Return to Practice Request (#43 under Part III)

Factual Basis/Purpose

The purpose of this standard is to set criteria required for petitioners to return to practice. The standard specifies that a petition to return to work is an informal petition to the Board, not a formal petition to modify terms of probation. The standard further requires specific predefined criteria be met by the licensee before they are eligible to submit a petition to return to full time practice.

The criteria require the licensee to demonstrate sustained compliance with the current recovery program; demonstrate the ability to practice safely as evidenced by current worksite reports, evaluations, and any other information relating to the licensee's substance abuse; and the licensee must have negative drug screening test for at least six months, two positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

Rationale

The criteria provide a minimum standard that the licensee must meet in order to be determined ready to return to work full time. This prevents the Board from being inundated with frivolous petitions to return to work from licensees who do not meet these minimum requirements. These minimum standards protect public safety and ensure licensees do not return to work until they

are determined to be ready to practice.

**Uniform Standard #12 Request for Reinstatement of a Full and Unrestricted License –
Petition for Reinstatement (#44 under Part III)**

Factual Basis/Purpose

This standard defines the criteria that licensees must meet in order to request reinstatement of a full and unrestricted license and clarifies the meaning of “Petition for Reinstatement.” In addition to compliance with the terms of the disciplinary order, petitioner must demonstrate completion of Diversion Program if required, consistent and sustained participation in activities that promote recovery, petitioner is able to practice safely, and has been continuously sober for three to five years.

Rationale

This standard would ensure consumer protection as it requires the licensee to meet certain criteria and maintain a level of compliance with terms of their disciplinary order prior to submitting a request for “Petition for Reinstatement” of licensure.

Uniform Standard #13 Vendor Requirement: Specimen Collection, Worksite Monitors, Group Meeting Facilitators, Treatment Providers, General Vendor Requirements (#34 under Part III)

Factual Basis/Purpose

This standard sets requirements and standards for vendors. There are specific standards for specimen collectors that promote accuracy in testing, access for testing and test results. There are specific standards for Group Meeting Facilitators that are a repeat of requirements set forth in Uniform Standard #5. There are specific standards for Work Site Monitors that are a repeat of requirements set forth in Uniform Standard #7. There are specific requirements for Treatment Providers. The requirements include staff must be licensed and/or accredited by appropriate agencies, there must be sufficient resources to adequately evaluate the physical and mental needs of the licensee, provide safe detoxification and be able to manage medical emergencies. The treatment plans must include a multidisciplinary approach and specific after care plans and a means to provide treatment/ progress documentation to the provider. The standard also includes general vendor requirements related to effective and timely services, which are intended for use in administrative contracting with contractors and subcontractors. The standard requires that the vendor is fully responsible for acts and omissions of its subcontractors and provides for termination in the event that subcontractors fail to perform their duties under the contract and notification to the Board. This is an administrative standard.

Rationale

These standards are intended to assure high level of services by vendors, which in turn will

protect public safety. Insufficient quality of testing, specimen collection, various treatment staff could undermine the overall quality of the Diversion Program and public safety.

Uniform Standard #14 Disclosure (#34 under Part III)

Factual Basis/Purpose

The purpose of this standard is to reconcile confidentiality of licensees and public safety needs of consumers. This standard specifies what information shall be disclosed about a licensee's participation. It specifically limits disclosure to the licensee's name, whether the licensee's practice is restricted or on inactive status and any detail of any restriction imposed. The intention is to not release information of the licensee's participation in a Diversion Program, while allowing disclosure of license status or practice restrictions. This is an administrative standard.

Rationale

This standard protects the licensee's confidentiality related to the Diversion Program and treatment while disclosing the license status and restrictions in practice. This balances confidentiality with the consumer's right to know in the interest of public safety.

Uniform Standard #15 Independent Audit of Vendor (#34 under Part III)

Factual Basis/Purpose

The purpose of this standard is to require private vendors to be subject to an independent audit once every three years to ensure sound fiscal management and that services are sufficiently funded. The audit would also evaluate compliance with the Uniform Standards. This is an administrative standard.

Rationale

This requirement for an independent audit ensures that funding is spent on adequate staffing, treatment, and services in compliance with the Uniform Standards. The audit is intended to assure both quality and compliance and identify problems that the Board needs to be aware of and address.

Uniform Standard #16 Data Collection and Reporting Requirements (#34 under Part III)

Factual Basis/Purpose

This is an administrative standard that requires the Board to collect specific data on licensees on probation and in the Board's Diversion Program.

Rationale

Collecting and reporting this specified data is intended to function as an evaluation of the effectiveness of the Board's Diversion Program. The data could inform future policy related to the Board's discipline of substance abusing licensees.

Part III Model Language for Probationary Orders

Factual Basis/ Purpose

The purpose of Part III is to provide model language for terms and conditions of probationary orders. Some of the model language is new and some is existing language. The changes to this section include reformatting including renumbering the entire section as a result of adding new terms and conditions or removing terms and conditions. The addition of the two additional standard terms and conditions caused the numbering to change so that optional terms and conditions began with (11) rather than (9).

Additional formatting and amendments include highlighting the definition of terms and conditions and revising the titles to include the wording "Terms and Conditions for Probationary Orders (Model Language)." The revised titles better explain the content of the section. One formatting change is to remove the penalties by violation from this section and relocate it in a newly created Part IV and to move the model language to follow the definitions of terms and conditions. This order puts all of the model language into one section and has the model language immediately follow the definitions of "terms and conditions." The definitions of "terms and conditions" are existing language with the exception of subsection (c) Uniform Standards, which is new. This new section adds Uniform Standards terms and conditions and defines when it applies. This new section was needed to clarify that the Uniform Standards are distinct terms and conditions because they are technically not a standard term nor purely an optional term. Technically, optional terms are up to the Board's discretion to use when deemed appropriate. In contrast, Uniform Standards are mandated to be used in cases involving licensee self-use of drugs and/or alcohol.

The standard terms and conditions summary list of 1-8 is existing language that is reformatted and includes one amendment to the Tolling for Out of State or In-State Non Practice (inactive) term and condition. The Board added two additional standard terms and conditions: (9) Notification to Employer and (10) Supervision of Physician Assistants and Advanced Practice Nurses. These additions were made in the interest of public safety and to provide the Board and ALJ's with the option to utilize these terms in probationary orders. These new terms became standard terms that will appear in every probationary order.

The summary list of optional terms and conditions is new language and added to provide a summary of all terms and conditions added for quick reference and improved readability. The optional terms and conditions are a mix of existing, modified, or new language.

Rationale

The new format and expansion of this section into its own section was done to improve

readability. In the prior version, model language was merged with penalties which did not highlight the function of each respective section. Being able to see a reference list of all terms and conditions is easier to use. The model language was separated from the penalty section to improve the readability of the document. The numbering is added for reference as an identifier for each term and condition that is later referenced in Part IV Recommended Discipline by Violation.

Standard Terms and Conditions

1. Obey all Laws

This is an existing term and condition that remains unchanged.

2. Quarterly Reports

This is an existing term and condition; however, the Board revised the quarterly declaration form OMBC (5/97) and approved an updated form OMBC 10 (1/18). This new form adds new and more helpful information for enforcement staff to monitor probationers.

3. Probation Surveillance Program

This is an existing term and condition that makes non-substantive changes in wording to make it more professional.

4. Interviews with Medical Consultants

This is an existing term and condition that remains unchanged.

5. Cost Recovery

This is an existing term and condition that remains unchanged.

6. License Surrender

This is an existing term and condition that remains unchanged.

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

This is an existing term and condition that makes non-substantive and substantive revisions to the last two sentences. The wording related to the consequence of tolling has been revised to state that tolling will extend the probationary period by the period of out-of-state residence or non-practice. Additionally, the sentence that states that the respondent's period of non-practice while on probation shall not exceed two years is added to this term and condition.

Rationale

The non-substantive change describing the consequence of tolling was done to clarify that it is an extension that does not reduce the duration of probation. The substantive change limiting non-practice to two years was done to eliminate indefinite tolling in the interest of public safety. For licensees whose probation tolls for more than 2 years, their probation status may continue indefinitely or for longer than their original probation. The period of tolling is considered by the

Board as non-practice in California. Even if they practice outside the state, the Board views time out of state as time they are not practicing.

8. Probation Violation/ Completion of Probation

This is an existing term and condition that adds an additional requirement. The added term is the requirement that the respondent comply with financial obligations (e.g. cost recovery) no later than 60 calendar days prior to the completion of probation.

Rationale

This additional requirement was added in order to provide an end date for when cost recovery was due that was prior to the end of probation when the jurisdiction ends. This term allows the Board time to file an accusation alleging non-compliance with probation. Otherwise, the Board found that probations ended with non-compliance and the loss of jurisdiction to allege non-compliance. This builds time into the probationary order that allows the Board to seek redress for non-compliance.

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

Factual Basis/ Purpose

This is a new term and condition that requires the respondent to provide the Board with contact information for all employers and supervisors and provide the Board with consent that authorizes the Board to communicate with the respondent's employers and supervisors regarding work status, performance, and monitoring. It also requires the respondent to notify all employers and supervisors that the respondent is on probation within thirty days of the effective date of the disciplinary order. The respondent must provide employers and supervisors with copies of the disciplinary order and request they acknowledge receipt of notice and copies in writing that are submitted to the Board.

Rationale

Adding the notification of employer further protects public safety by ensuring the employer is aware of the probation. The notification of employers of discipline the Board felt was a term that should be included in all probationary orders. The notification facilitates communication with the employer, improves probation monitoring and protects public safety. The written confirmation of receipt of notice by the employers and supervisors ensures notice is actually given and received as ordered.

10. Supervision of Physician Assistants and Advanced Practice Nurses

Factual Basis/ Purpose

This is a new term and condition. The purpose of this term and condition is to prohibit supervision of Physician Assistants and Advanced Practice Nurses during probation. This term provides clarification that this otherwise allowable supervision authority is not allowed during probation. This clarification is needed because licensees continuing to practice while on probation may assume that they are allowed to engage in full practice unless otherwise specified in the probationary order. This specifies this restriction.

Rationale

In the interest of public safety, the Board decided that a licensee who is on probation should not be supervising other professional staff.

Optional Terms and Conditions

Factual Basis/ Purpose

The model language for Optional Terms and Conditions has been amended, modified, or deleted as follows. The numbering has changed so they are now numbered 11-15. A new section has been created for the Uniform Standards and existing terms and conditions related to substance abuse.

11. Suspension

This is an existing term and condition that remains unchanged.

12. Controlled Drugs: Total DEA Restriction

This is an existing term and condition with a minor modification in wording to emphasize controlled drugs.

13. Controlled Drugs: Surrender of DEA Permit

This is an existing term and condition with a minor modification in wording to emphasize controlled drugs.

14. Controlled Drugs: Partial DEA Restriction

This is an existing term and condition with a minor modification in wording to emphasize controlled drugs.

15. Controlled Drugs: Maintain Record

This is an existing term and condition with a minor modification in wording to emphasize controlled drugs.

16. Pharmacology/Prescribing Course

Factual Basis/ Purpose

The pharmacology/prescribing term and condition has been modified to add more specifics about the course or course equivalent to existing language. The language added sets the following course as the standard for pharmacy course work or its equivalency: Physician Assessment and Clinical Education Program taught at the University of California, San Diego (UCSD). The term also requires the respondent to seek approval from the Board of course work and to provide this program with any information or documents it deems pertinent. Additional language further requires respondent to complete the course within six months of initial enrollment and any other course work within one year of enrollment. Additional language requires the expense of the course work to be paid by the respondent and shall not count towards the continuing medical education requirements for licensure. Additional requirements give the Board discretion about

approving courses completed prior to the probationary order and require written evidence of successful completion of course work within 15 calendar days of completion. Prescribing course work is added to this term and condition.

Rationale

The additional requirements set course standards and allow for equivalency course work approved by the Board. The Board wanted course standards and chose the program at UCSD as the standard. In order to regulate compliance with probation, the Board set deadlines for completion of course work otherwise it would be unclear until the end of probation whether the respondent violated this term and condition of probation. The Board wanted to clarify that the course work is at the respondent's expense and that proof of completion must be in writing and to the Board within 15 days. The prescribing course work is added as course work because prescribing violations would also likely require course work in either pharmacology and/or prescribing. The additional language better defines the remedial action required for this term and condition and better protect public safety.

17. Record Keeping Course

Factual Basis/ Purpose

This is a new term and condition that was previously encompassed in the "education course" term and condition; but for clarity the Board wanted to list it as a specific course that would be required for probation depending on the violation. The term sets time requirements and prior approval from the Board of course, and submission of written evidence of completion within 15 days. This remedial course work is designed to train the respondent how to accurately document medical history, diagnosis, treatment and treatment plan.

Rationale

This remedial course work addresses the concern the Board has that the respondent does not know how to adequately document medical history, diagnosis, treatment plan that is legally required. Record keeping protects consumers by ensuring a record of care is accurate, available for care coordination, and disciplinary review.

18. Education Course

Factual Basis/ Purpose

The education course term and condition has been modified to add more specifics about the course and course equivalent to existing language. The language added sets the following course as the standard for education course work or its equivalency: Physician Assessment and Clinical Education Program taught at the University of California, San Diego (UCSD). Education course work is a broad category of remedial course work that depends on the violation(s) and can include, but not limited to, course work in medical competency, billing, professional boundaries, and professionalism. The term also requires the respondent seek approval from the Board of course work and to provide this program with any information or documents it deems pertinent. Language added further requires respondent to complete the course within six months of initial enrollment and any other course work within one year of enrollment. Language added requires

the expense of the course work to be paid by the respondent and shall not count towards the continuing medical education requirements for licensure. Additional requirements give the Board discretion for approving courses completed prior to the probationary order and require written evidence of successful completion of course work within 15 calendar days of completion.

Rationale

The additional requirements set course standards and allow for equivalency course work approved by the Board. The Board wanted course standards and chose the program at UCSD as the course standard. In order to regulate compliance with probation, the Board set deadlines for completion of course work otherwise it would be unclear until the end of probation whether the respondent violated this term and condition of probation. The Board wanted to clarify the course work is at the respondent's expense and that written completion must be in writing and to the Board within 15 days. All of the additional language better define the remedial action required for this term and condition and better protect public safety.

19. Professional Boundaries Course

Factual Basis/ Purpose

This is a new term and condition that was previously encompassed in the "education course" term and condition, but for clarity the Board wanted to list it as a specific course that would be required for probation depending on the violation.

Rationale

This course work is designed to address inappropriate sexual contact and interaction with patients. There is specific course work and rehabilitation training programs designed to make respondents aware of what constitutes professional boundaries and what behavior is inappropriate. This training is designed to rehabilitate licensees and if they pass the training, they are deemed safe to practice medicine. This training protects consumer safety by training respondents to refrain from any sexual contact or interaction because it is inappropriate behavior and harmful to patients.

20. Medical Ethics Course term and condition remains unchanged.

21. Clinical Assessment and Training Program

Factual Basis/ Purpose

The clinical assessment and training program term and condition has been modified to add more specifics about the course or course equivalent to existing language. The modified language sets the following course as the standard for education course work or its equivalency: Physician Assessment and Clinical Education Program taught at the University of California, San Diego (UCSD). The exact number of hours and specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the accusations. The respondent shall successfully complete the program within six 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 content.

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 related to the violation, and that takes into account the assessment, decision(s), accusation(s), and any other information that the Board or its designee deems relevant. Based upon the 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 depth of any additional education or training, treatment needed for any medical or psychological condition, or anything else affecting respondent's ability to practice of medicine. Respondent is required to comply with the recommendations of the program.

Additionally, 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 practice of medicine until enrollment or participation in the program is complete.

The term also requires the respondent to seek approval from the Board of course work and to provide this program with any information or documents it deems pertinent. Language added further requires respondent to complete the course within six months of initial enrollment and any other course work within one year of enrollment. Language added requires the expense of the course work to be paid by the respondent and shall not count towards the continuing medical education requirements for licensure. Additional requirements give the Board discretion for approving courses completed prior to the probationary order and require written evidence of successful completion of course work within 15 calendar days of completion.

Additional modifications in this term and condition offer two options based on the facts and violation. Option one is a condition precedent that respondent shall not practice medicine until the respondent has successfully enrolled, participated in, completed the program, submitted written evidence of completion to the Board, and the Board has confirmed receipt. There is a note providing guidance on when this option should be used. It specifies that it should be used for cases involving gross negligence, incompetence or repeated acts of negligence, incompetence, where the physician's fitness to practice should be evaluated before he or she may practice to ensure the public is protected.

Option two provides for additional professional enhancement training through UCSD or its equivalent approved by the Board, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. The respondent shall participate in such professional enhancement programs at the respondent's expense during the term of the probation, or until the Board or its designee, determines that further participation is no longer necessary.

Rationale

The additional requirements set course standards and allow for equivalency course work approved by the Board. The Board wanted course standards and chose the program at UCSD as the course standard. The options regarding ceasing practice or required professional enhancement are both meant to protect public safety and ensure the training is rigorous and with well-defined training and outcomes.

In order to regulate compliance with probation, the Board set deadlines for completion of course work otherwise it would be unclear until the end of probation whether the respondent violated this particular term and condition of probation. The Board wanted to clarify the course work is at the respondent's expense and that written completion must be in writing and to the Board within 15 days. All of the additional language better define the remedial action required for this term and condition and better protect public safety.

22. Written Examination

Factual Basis/ Purpose

This is an existing term and condition that has been revised and updated. The title is changed to reflect that only a written exam is required, oral exams have been eliminated. The other revision relates to the exam itself—the special purpose exam is replaced with a national level competency exam: COMVEX. Since 1996, a series of national competency exams were developed that replaced many state examinations or Board created examinations. The rest of the term and condition is existing language that remains unchanged.

Rationale

The revisions in this term and condition were made to update the examination requirements to reflect the new national competency examination that has been developed since 1996.

23. Third Party Presence

Factual Basis/ Purpose

This is an existing term and condition that has been revised. The title is revised to delete “sexual violations.” The first paragraph remains unchanged. The second paragraph is new and added to require more specific actions by the respondent and third-party monitor. Specifically, the respondent shall provide written notice to patients that respondent is on probation and having a third-party monitor is a condition of probation, that the monitor will be present during consultations and examinations or treatment with specified type of patients. The patient is required to sign a written receipt acknowledging the notice. The notice shall be maintained in the patient file and shall be available for inspection and copying at all times during business hours by the Board or its designee. The monitor shall inspect the files and include in the report to the Board confirmation of such receipt of notice.

The note has been revised to add the exact statutory code sections that define specific sexual contact or sexual exploitation that would require revocation instead of probation. Business and Professions Code Sections 729 and 2246 and Title 16 California Code of Regulations Section 1663

(c) require revocation without stay. This term would be used for sexual violations for which probation is allowed.

Rationale

The revisions update the Guidelines to comply with subsequent changes in law that toughen the penalty for sexual contact. These changes reflect the Board's and Legislative intent to have zero tolerance for sexual contact with or sexual exploitation of patients in the interest of preventing such future inappropriate contact and protecting public safety. The Third Party Presence prevents any harmful or otherwise inappropriate contact with the patient during the patient visit with the respondent. The Third Party Presence protects patients from harm from a respondent who has had inappropriate contact in the past with patients.

24. Prohibited Practice

This is an existing term and condition that remains unchanged.

25. Psychiatric Evaluation

This term and condition is an existing term that has minor non-substantive word changes, the requirements remain unchanged.

Rationale

The non-substantive revisions in wording were made to improve readability.

26. Psychotherapy

This is an existing term and condition that remains unchanged.

27. Physical Health Evaluation

Factual Basis/ Purpose

The title of this term and condition has been changed from "Medical Evaluation" to "Physical Health Evaluation" in order to clarify that it is a physical health not mental health evaluation. The term "medical" was too broad. Notwithstanding the title change, this is an existing term and condition that has non-substantive and substantive changes. The first paragraph remains unchanged. The second paragraph begins with non-substantive wording changes to improve readability. The substantive changes include replacing the content of the note with an existing requirement. The note used to refer to using this term and condition for cases involving drug and alcohol impairment and mental illness. The newly added note uses existing language related to prohibiting the respondent from practicing medicine until notified by the Board that the respondent is medically fit to practice safely.

Rationale

The non-substantive changes are made to improve readability. The substantive changes related to eliminating the reference to drug and alcohol impairment, updates the term and condition to reflect that there are more specific terms and conditions that address drug and alcohol

impairment and that dictate orders to cease practice. Such impairment cases are now addressed by the Uniform Standards for Substance Abusing Licensees terms and conditions. Moving an existing term to the note reflects the fact that requiring the respondent to cease practice of medicine is left to the discretion of the Board based on the circumstances of the case. This term would likely be used for cases involving impairment, in which the Board would determine whether the respondent was impaired and unable to practice medicine safely. The Board would prohibit practice to protect patient safety.

28. Medical Treatment

Factual Basis/ Purpose

This is an existing term and condition that has been modified. The Board added the requirement that the respondent must comply with treatment recommendations that the approved physician determines are required to ensure the respondent may continue to practice safely.

Rationale

This change clarifies that compliance with treatment recommendations is a requirement of probation. This change provides the Board with disciplinary authority to address treatment noncompliance that may pose a risk to public safety. Typically, in cases in which treatment is ordered, there is a concern that the respondent may not be capable of practicing safely without treatment, so if the respondent refuses to comply with treatment, it may pose a risk to public safety and warrant further disciplinary action by the Board.

29. Community Service

This is an existing term and condition that is unchanged.

30. Restitution

This is an existing term and condition that is unchanged.

31. Monitoring: Practice/ Billing

Factual Basis/ Purpose

This is a new term and condition that provides for a practice monitor for either billing or practice related issues depending on the violation. This term sets a thirty day deadline for the respondent to submit a proposed monitor to the Board for approval. It further requires that the monitor be licensed and in good standing. Additional requirements include the monitor cannot have any relationship that could compromise the monitor's ability to be objective in assessing the respondent. The respondent is required to pay all expenses of the monitor. The monitor shall be provided copies of the accusation(s) and decision(s) and any other information deemed relevant by the Board. Finally, the respondent is required to comply with this term and condition of having a monitor; failure to comply may result in an automatic order from the Board to cease practice of medicine until such a monitor has been approved by the Board.

Rationale

This term and condition was created by the Board to protect public safety. The Board created this

term to ensure compliance of respondent who is allowed to continue to practice. Without a practice monitor, the Board is unable to monitor compliance with probation. Requiring a monitor provides the Board with assurance of the respondent's compliance and improves the Board's ability to monitor licensees on probation. Adding the non-compliance consequence of being ordered to cease practice also ensures immediate compliance with this term and condition of probation.

32. Solo Practice Prohibition/ Supervised Structure

Factual Basis/ Purpose

This is a new term and condition that specifically prohibits a respondent to work alone in solo practice and requires a structured environment. The structured environment requires the respondent to be employed and directly report to a Board approved licensed physician (D.O. or M.D.) This can be used as an alternative to a practice monitor or together with a practice monitor. The respondent is required to report changes of employment within five days of the change. The respondent must cease practice when the respondent is no longer supervised until the Board approves another supervising physician.

Rationale

This term and condition was created by the Board to protect public safety. This term and condition is used when the Board feels that the licensee needs direct supervision and should not be allowed to work alone. This direct supervision protects public safety and ensures direct oversight in the licensee's provision of care to patients.

Terms and Conditions Applying the Uniform Standards for Substance Abusing Licensees

33. Clinical Diagnostic Evaluation (Uniform Standards 1, 2, 6)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standards 1, 2, and 6. This term and condition sets the qualification requirements for the evaluator, set standards for the evaluation and requirements for the content of the evaluation. There is a requirement for the evaluator to notify the Board within 24 hours if it is determined that the licensee poses a threat to himself/herself or the public followed by a written report. There is a requirement that the licensee cease practice and undergo drug testing two times per week. The Board will determine whether it's safe for the licensee to return to work based on the evaluation and other specified criteria. The licensee's license shall remain suspended until the Board determines whether the licensee can return to practice safely and has 30 days of negative drug tests. Based on the results of the clinical diagnostic evaluation, the Board shall determine the appropriate treatment including whether the licensee needs inpatient or outpatient treatment.

Rationale

The requirements set forth in this term and condition protect public safety. It sets high standards for the evaluation and requires the licensee to cease practice during the initial clinical diagnostic evaluation and drug testing phase. The evaluator qualifications ensure accuracy and quality of the evaluation, which the Board relies upon in making their determination regarding the return to work by the licensee. Drug testing further protects public safety and ensures compliance with abstaining from use of drugs or alcohol.

34. Diversion Program: Alcohol and Drugs (Uniform Standards 13,14,15,16)

Factual Basis/ Purpose

This is a new term and condition that integrates the Uniform Standards with the Board's existing Diversion Program by incorporating the Uniform Standards 13,14,15 and 16 into this term. This term and condition requires the respondent to enroll in the Board's Diversion Program within 30 calendar days and that probation shall automatically be extended until the respondent completes the program. It also sets the requirements of participation in the Board's Diversion Program including that failure to comply, quitting or being terminated from the program constitutes a violation of probation. It also provides that probation shall be automatically extended until respondent completes the program.

The term also includes standards for vendors: specimen collectors, group meeting facilitators, worksite monitors, treatment providers, subcontractors, and external independent audits. It also has some disclosure requirements that specify what information can be disclosed and what information cannot be disclosed. Disclosure of participation in the Diversion Program is not to be disclosed.

The Board's Diversion Program vendor must comply with these standards.

Rationale

This is the term and condition that requires all substance abusing licensees on probation to enroll in the Diversion Program. The Board's Diversion Program provides professional treatment and monitoring while enrolled.

The Board incorporated the Uniform Standards into their Diversion Program so that their current vendors meet the testing frequency, vendor requirements, disclosure requirements and various administrative requirements related to audits and data collection. The added uniform standards requirements improve the Board's Diversion Program by setting very specific standards that vendors must meet.

The disclosure limitation balances the consumer's right to know with the privacy of treatment related services.

35. Drugs: Abstain From Use

This is an existing term and condition that is unchanged except that it has been renumbered and formatted.

Rationale

This is an existing term and condition that is unchanged except that it has been renumbered and a note added referencing the Uniform Standards.

36. Alcohol: Abstain from Use

This is an existing term and condition that is unchanged except that it has been renumbered and reformatted.

Rationale

This is an existing term and condition that is unchanged except that it has been renumbered and a note added referencing the Uniform Standards.

37. Notification to Employer (Uniform Standard 3)

This is a new term and condition that applies specifically to substance abusing licensees on probation who are required to provide consent for the Board to communicate with all employers and supervisors related to work status and monitoring.

Rationale

The purpose of this term is to enhance the Board's ability to monitor the respondent's work and compliance with probation. This facilitated communication with the employer strengthens the Board's disciplinary oversight of licensees on probation. Better supervision of probationers provides the Board the ability to identify problems or issues that occur during probation that may require to Board to consider further disciplinary action to protect against any harm to the public.

38. Biological Fluid Testing (Uniform Standard 4)

Factual Basis/ Purpose

This is an existing term and condition that has been modified to fully incorporate Uniform Standard 4 requirements into both probationary orders and requirements with which the Board's Diversion Program vendor must comply. This term and condition sets forth the testing frequency and other requirements and exceptions. It requires the respondent to comply with testing as a condition of probation and pay for all testing. Very specific procedure is required to verify and determine whether positive or out of range test results constitute a violation of probation. It also provides some vendor standards that must be met to ensure accuracy and reliability of test results.

The following exceptions to testing are included: previous testing sobriety, violation(s) outside of employment, respondent not being employed in health care field, tolling status, and no substance abuse disorder diagnosed. Other vendor testing protocols require timely submission

of sample and Board notification requirements.

This term and condition specifies that nothing herein shall limit the Board's authority to reduce or eliminate the penalties pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes otherwise applicable to the Board.

This Uniform Standard also has administrative requirements for the Board to collect specified outcomes data that can be used for program evaluation.

Rationale

This term and condition was modified to incorporate the testing requirements of the Uniform Standards to the Board's testing requirements that were not present in the 1996 Guidelines. The standards increase the minimum testing frequency, set vendor standards for testing and determining what constitutes a violation of probation. This added term improves the Board's Diversion Program and ensures probationers and voluntary participants are truly complying with the terms of their probation and the Diversion Program. These requirements enhance the Board's ability to protect public safety.

39. Group Support Meetings (Uniform Standard 5, 13)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standards 5 and 13, which provide criteria for determining frequency of group meetings and sets standards for group meeting facilitators. Group meetings are a type of treatment that may be recommended as part of the Diversion Program treatment.

Rationale

The standards for group facilitators ensure quality in the treatment services provided within the Board's Diversion Program. The criteria provide a transparent set of considerations for appropriately determining the frequency of attendance and whether respondent will benefit from group meetings.

40. Worksite Monitor (Uniform Standard 7, 13)

Factual Basis/ Purpose

This is a new term and condition the incorporates Uniform Standards 7 and 13 if a worksite monitor is ordered or recommended for treatment. The respondent is required to submit the name of a proposed worksite monitor within 20 calendar days of the effective date of the decision. The respondent is required to sign consent forms and an agreement with the worksite monitor. If the worksite monitor terminates the agreement, the respondent must cease work

until a Board approved monitor is in place.

This term and condition incorporates Uniform Standards 7 and 13 that sets standards for worksite monitors and reporting requirements for worksite monitors reporting to the Board. The monitor shall not have any financial, personal or familial relationship with the respondent and cannot be an employee of the respondent. The worksite monitor must be licensed in the scope of practice being monitored or be a health care professional; if licensed, the license must be active, unrestricted with no disciplinary action within the last 5 years.

There are requirements of how the worksite monitor must conduct monitoring such as requiring face to face contact determined by the Board of no less than once a week. The monitor must interview staff regarding the respondent's behavior, if applicable, and review work attendance. This term also requires specific reporting requirements of the worksite monitor to the Board. The worksite monitor must report any substance abuse within 1 business day to contractor, Board and employer followed by a written report within 48 hours. There are specific details the worksite monitor must include in the monthly reporting to the Board.

Rationale

The standards for worksite monitors ensure quality in the treatment services provided within the Board's Diversion Program. The specific qualifications, reporting requirements, and report requirements enhance the Board's effectiveness in monitoring the respondent and ensuring the respondent complies with the terms and conditions of probation. These requirements also protect consumers.

41. Results of Biological Fluid Tests (Uniform Standard 8, 9)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standards 8 and 9, which sets the process for what happens if there is a positive test result. If the results of a biological fluid test indicate that the respondent has consumed, ingested or administered to himself or herself a prohibited substance, then the Board shall order the respondent to cease practice immediately. The Board must then determine whether the positive test result is in fact evidence of prohibited substances being used.

Rationale

This term is designed to protect consumers by requiring the respondent to cease work immediately and not work during the time the Board is determining whether the test result constitutes a major or minor violation of probation.

42. Major and Minor Violations (Uniform Standard 10)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standard 10, which defines and sets the consequences for major and minor violations of the probation and Diversion Program requirements. If the respondent commits a major violation as defined, the respondent shall cease practice and not practice unless notified by the Board, undergo a new clinical diagnostic evaluation, test negative for at least a month of continuous drug testing before being allowed to go back to work. The Board shall also terminate the monitoring contract/ agreement and refer the matter to the Board for further disciplinary action.

If the respondent commits a minor violation as defined, the consequences range from removal of practice, imposition of practice limitations, required supervision, re-evaluation or other action the Board deems appropriate.

Rationale

This term is designed to protect consumers in the event the respondent violates probation and terms of the Diversion Program. Defining what constitutes a major and minor violation and setting the consequences provides guidance to the Board and notice to the respondent of the consequences of his or her actions.

43. Request to Return to Practice (Uniform Standard 11)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standard 11. The term and conditions clarifies that the request to practice is an informal request rather than a formal request. It sets the criteria for determining the eligibility of the licensee to submit the request, which includes specific levels of compliance with the Diversion Program and drug testing.

Rationale

The criteria adopted by the Board for requesting to return to practice protects public safety by ensuring that licensee have demonstrated compliance with the Diversion Program and drug testing as evidence that the licensee can safely return to practice. It also provides the Board with objective criteria to use to assess licensees' readiness to return to practice.

44. Request for Reinstatement Full, Unrestricted License (Uniform Standard 12)

Factual Basis/ Purpose

This is a new term and condition that incorporates Uniform Standard 12. The term and condition sets the criteria that the licensee must meet in order to be eligible to request reinstatement of a full, unrestricted license.

Rationale

The criteria the Board adopted to determine whether a licensee should be approved to practice without restriction protects public safety by ensuring that licensees are truly ready to return to practice safely. It also provides the Board with objective criteria to use to assess licensee's readiness to return to practice.

Part IV Recommended Discipline by Violation

Factual Basis/ Purpose

The purpose of Part IV is to provide an easy reference guide for terms and conditions by statutory violation. This new section of the Guidelines was created to improve readability. This section was moved to be after Part III. The two introductory paragraphs are existing language from the 1996 Guidelines just reformatted to be the introduction for the newly created Part IV of the updated Guidelines. Overall, there are modifications that the Board has made that include adding new terms and conditions for violations that had no terms and condition in the 1996 version, revising existing violations, and adding the Uniform Standards terms and condition for the violations involving self-use by the licensee of drugs and/or alcohol and adding new violations. Another change from the 1996 version is to include the maximum discipline in each violation rather than just stating in the introduction that the maximum discipline for all violations is revocation. The Board changed the wording "penalty" to "discipline" to reflect the mission of protecting public safety through appropriate measures that both protect consumers and provide an opportunity for rehabilitation of licensees if appropriate.

Rationale

Moving this section to follow after the model language was a more logical order for the two sections in light of the fact that Part IV references Part III. The changes made reflect updates to the 1996 Guidelines to better protect public safety, provide more guidance for determining discipline for specific violations and comply with changes in law.

B & P 725 Excessive Prescribing or Treatment

Factual Basis/ Purpose

This is an existing violation that was modified to be combined into one term. Previously, it was two separate violations "excessive prescribing" and "excessive treatment." The maximum discipline of revocation was added and the word "penalty" was changed to "discipline." The minimum discipline remained unchanged except that the words "standard terms and conditions and" were added. The words "if warranted" were removed since these are all optional terms and conditions. The word "controlled drugs" was added to the first three discipline options related to DEA permits to clarify that it is controlled drugs that triggers this violation and discipline. The "maintain records" existing discipline is modified to add "controlled drugs" to it to clarify that the records are for controlled drugs. The suspension time was reduced from 90 calendar days or more to 30 calendar days or more. Supervised structured environment was changed to requiring a monitor for practice. A clinical assessment and training program and along with education,

pharmacology/prescribing course work were added. The requirement for an oral/practical examination was changed to written examination.

Rationale

Since both excessive prescribing and excessive treatment were violations of the same statutory section, the Board decided to combine them into one term. The change in the suspension time provides the Board with increased discretion to determine on a case by case basis what the appropriate suspension time should be in each case. The Board wanted the option, if appropriate, to order less than 90 calendar days suspension. The Board felt that requiring a supervised structured environment was overly burdensome and restrictive and provided little benefit as compared to simply requiring a monitor for practice. The Board felt that clinical assessment and training program and education course work would be beneficial to licensees to retrain them on appropriate standards of care. The wording for oral/ practical examination was updated to reflect that there is no longer an oral/practical examination by the Board and that the current requirement is a written examination.

B & P Sexual Misconduct

Factual Basis/ Purpose

This is an existing violation that was modified and updated by the Board. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline remains the same except the addition of “standard terms and conditions and.” In addition to the existing discipline, the Board added a 90 business days or more suspension, clinical assessment and training program, professional boundaries training, education, and medical ethics course work. The option of a supervised structured environment was deleted. A note was added, with statutory and regulatory citations, clarifying that if the violation constitutes “sexual contact” or “sexual exploitation” revocation must be ordered and not stayed.

Rationale

The 90 business days suspension was added for the purpose of discipline and to protect the public. Since 1996, clinical assessment and training programs have been designed to address professional boundaries and other competencies so this was added as an appropriate retraining option along with education and medical ethics course work. The supervised structured environment was eliminated because the requirement of a third-party presence would better prevent sexual misconduct and supervision than the supervised structured environment.

B & P 729 Sexual Exploitation

Factual Basis/ Purpose

This is a new violation added to conform with statutory and regulatory changes subsequent to 1996, which requires automatic revocation without stay. The maximum discipline of revocation was added to conform with the other sections even though both minimum and maximum discipline is revocation. This provides disciplinary guidance for the Board’s new regulation Title

16 California Code of Regulations Section 1663 (c) related to sexual contact or convictions of sexual offense(s).

Rationale

This violation was added to update the Guidelines to conform with statutory and regulatory changes since 1996. Consistent with statutory requirements and affirmed by the Board's new regulation related to sexual contact with patients or sexual offenses, the Board removes the discretion for discipline actions and sets the automatic discipline as revocation without stay. Both the Legislature and the Board feel strongly that the seriousness of the violation warrants strong consumer protection and disciplinary action that prevents the licensees from harming other patients by revoking the respondent's license.

B & P 810 Insurance Fraud

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of 5 years probation and "standard terms and conditions and" was added. The following discipline was added: 30 calendar days suspension, education course, clinical assessment and training, monitor for practice/ billing, solo practice prohibition/ supervised structure, medical ethics course, restitution.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The goal of the course work would be to retrain respondent to prevent similar violations in the future. The monitor would both actively prevent future violations and monitor compliance with probation and depending how serious the violation, the Board added the option of prohibiting solo practice/supervised structured environment. Restitution was added to give the Board the option of negotiating restitution for victims harmed by the violation. The Board wanted suspension as an option due to the seriousness of the violation and patient harm.

B & P 820 Mental or Physical Illness

Factual Basis/ Purpose

This is an existing violation that was modified. The maximum discipline of revocation was added and the word "penalty" was changed to "discipline." The minimum discipline of stayed revocation of 5 years remains the same except the words "standard terms and conditions and" is added. The wording "if warranted" are removed. The existing terms restricted practice and monitoring have been modified. The restricted practice has been changed to solo practice

prohibition/supervised environment. The monitoring has been changed to monitor: practice/billing. The new discipline includes psychiatric evaluation/psychotherapy, physical health evaluation; written examination, prohibited practice, and clinical assessment and training program.

Rationale

The wording “if warranted” are removed due to redundancy, since all of these terms are optional terms. The modification of restricted practice gives much broader options for the Board to determine appropriate discipline that would protect consumers. The Board added options ranging from complete prohibition of practice to no solo practice (only supervised practice), all which can be better applied on a case by case basis to protect the public. A psychiatric or psychotherapy evaluation and physical health evaluation were added to provide the Board the options to further evaluate whether the respondent is in fact capable to practice medicine safely. The written exam provides the Board with further options to evaluate the competency of the respondent and determine whether the respondent can practice medicine safely. The clinical assessment and training program was added to provide a comprehensive evaluation and training customized for respondent’s mental or physical illness or condition.

B & P 2234 (b) Gross Negligence

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 30 calendar days suspension or more; education course; pharmacology/prescribing course; written exam; clinical assessment and training; monitor: practice/billing; solo practice prohibition/ supervised structure; prohibited practice; medical ethics course. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The goal of the course work and clinical assessment and training would be to retrain respondent to prevent similar violations in the future. The Board added options ranging from complete prohibition of practice to no solo practice only supervised practice, all which can be better applied on a case by case basis to protect the public. The monitor would both actively prevent future violations and monitor compliance with probation and depending how serious the violation, the Board added the option of prohibiting

solo practice/supervised structured environment to monitor competency. The Board wanted suspension as an option due to the seriousness of the violation and patient harm.

B & P 2234 (c) Repeated Negligence Acts

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 30 calendar days suspension or more; education course; pharmacology/ prescribing course; written exam; clinical assessment and training; monitor: practice/billing; solo practice prohibition/ supervised structure; prohibited practice; medical ethics course. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The goal of the course work and clinical assessment and training would be to retrain respondent to prevent similar violations in the future. The Board added options ranging from complete prohibition of practice to no solo practice only supervised practice, all which can be better applied on a case by case basis to protect the public. The monitor would both actively prevent future violation and monitor compliance with probation and depending how serious the violation, the Board added the option of prohibiting solo practice/supervised structured environment to monitor competency. The Board wanted suspension as an option due to the seriousness of the violation and patient harm.

B & P 2234 (d) Incompetence

Factual Basis/ Purpose

This is an existing violation that the Board modified. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline of stayed revocation with 5 years probation remains the same, but the words “standard terms and conditions and” were added. The following discipline was added: 30 calendar days suspension; clinical assessment and training; monitor: practice/ billing; solo practice prohibition/ supervised structure; prohibited practice; and medical ethics course.

The following existing terms were modified: education course, pharmacology course, supervised structured environment, restricted practice, medical evaluation, medical treatment. The restricted practice was replaced by a range of options ranging from prohibition of practice or no solo practice to a supervised structured environment. The supervised structured environment

was modified to include the prohibition of solo practice. The medical evaluation and medical treatment discipline were eliminated. The education course was modified to include a stand alone education course and a separate clinical assessment and training program and medical ethics course work options. The note about the deficiency not being a present danger to the public was eliminated. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The modification of restricted practice gives much broader options for the Board to determine appropriate discipline depending on whether the Board deems the respondent able to practice medicine safely. The Board added options ranging from complete prohibition of practice to no solo practice only supervised practice, all which can be better applied on a case by case basis to protect the public. In addition, modifying education to include clinical assessment and training program in addition to an education course provides the Board with the option of having the respondent evaluated for competency and have designated training appropriate to the results of the assessment provided in the program. Medical ethics may also address the violation so that was included as well. The prescribing course work was added in case the violation involves prescribing.

The structured environment was modified to give the Board more options, depending on the case, to not allow practice or to prohibit solo practice and only allow supervised structured practice. Adding the solo practice prohibition better clarifies no solo practice—only supervised practice is allowed. The medical treatment and medical evaluation was eliminated because the Board felt that these were not appropriate for this violation.

B & P 2234 (e) Dishonesty

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 30 calendar days of suspension; education course; clinical assessment and training program; monitor: practice/billing; solo practice prohibition/ supervised structure; medical ethics course; community service; restitution.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language

did not give specific guidance for discipline. The course work addresses preventing future violations; and the monitoring ensures compliance with probation and protects consumers. The community service provides a discipline that gives back to the community. Restitution was added to give the Board the option of negotiating restitution for victims harmed by the violation.

B & P 2236 Criminal Conviction: Felonies/ Multiple Misdemeanors

Factual Basis/ Purpose

This is an existing violation that the Board modified by separating the violation into two separate violations and discipline. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline of stayed revocation with 5 years probation remains the same, but the words “standard terms and conditions and” were added. The following discipline was added: 30 calendar days or more suspension; psychiatric evaluation/psychotherapy; education course; clinical assessment and training program; monitor: practice/billing; medical ethics course; community service; restitution. The existing disciplinary guidance about the terms and conditions depend on the underlying facts of the criminal offense was eliminated in favor of the above specific course work, evaluation, community service, and restitution.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The Board believes that multiple misdemeanors are more serious problems than single misdemeanors and should be treated with more serious discipline. The Board distinguishes the discipline for multiple misdemeanors from the discipline for a single misdemeanor by adding suspension and clinical assessment and training as discipline.

B & P 2236 Criminal Conviction: Single Misdemeanor

Factual Basis/ Purpose

This is an existing violation that the Board modified and separated into two separate violations and discipline. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline of stayed revocation with 5 years probation remains the same, but the words “standard terms and conditions and” were added. The following discipline was added: education course; psychiatric evaluation/psychotherapy; monitor: practice/ billing; medical ethics course; community service; restitution.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The Board’s intent is to distinguish the discipline for

a single misdemeanor from multiple misdemeanors. The discipline addresses a single misdemeanor as a safety concern but not necessarily a pattern of behavior that would warrant more serious discipline.

B & P 2237 Drug Related Conviction

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 90 calendar days or more suspension; pharmacology/prescribing course; clinical assessment and training program; medical ethics course; controlled drugs: total DEA restriction; controlled drugs: surrender of DEA permit; controlled drugs: partial DEA restriction; controlled drug: maintain records; psychiatric evaluation/psychotherapy; practice monitor. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, case appropriate controlled drugs restrictions, suspension, and practice monitoring that all better ensure compliance with probation and protect consumers.

B & P 2238 Violation of Drug Statute

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 90 calendar days or more suspension; pharmacology/prescribing course; clinical assessment and training program; medical ethics course; controlled drugs: total DEA restriction; controlled drugs: surrender of DEA permit; controlled drugs: partial DEA restriction; controlled drug: maintain records; psychiatric evaluation/psychotherapy; practice monitor. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, case appropriate controlled drugs restrictions, suspension and practice monitoring that all better

ensure compliance with probation and protect consumers.

B & P 2239 Self Abuse of Drugs or Alcohol

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The minimum discipline also provides specific reference to the Uniform Standards and the terms and conditions. A note was added that explains that the Uniform Standards apply and are mandated to be used in determining the appropriate discipline. The order must include a clinical diagnostic evaluation and entry into the Board’s Diversion Program. The remaining provisions of the Uniform Standards may apply contingent upon the finding of the clinical diagnostic evaluation that the licensee is a substance abusing licensee.

The discipline includes all of the specific Uniform Standards: clinical diagnostic evaluation; diversion program; abstain from drugs and alcohol; notification to employer; random bodily fluid testing; group support meetings; worksite monitor; results of biological fluid testing; major and minor violations; request to return to practice; request for reinstatement. For reference purposes, the specific Uniform Standards and model language are included by each Uniform Standards term and condition. In addition to the Uniform Standards, the other discipline includes: 10 or more calendar days suspension; controlled drugs: total DEA restriction; controlled drugs: surrender of DEA permit; controlled drugs: partial DEA restriction; controlled drugs: maintain record; psychiatric evaluation/psychotherapy; practice monitor; medical ethics course.

Rationale

The Board adopted the Uniform Standards to have standardized and consistent discipline for substance abusing licensees. The Board is, also, mandated to implement these standards. These standards provide quality standards for the Board’s Diversion Program, which provide appropriate treatment with the goal of assisting licensees to stop their substance abuse. These standards also protect consumers by having high standards that ensure compliance with treatment, probation and evaluate whether licensees can practice medicine safely.

B & P 2241 Furnishing Drugs to an Addict

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and

conditions and” was added. The following discipline was added: 10 calendar days or more suspension; pharmacology/prescribing course; education course; clinical assessment and training program; medical ethics course; controlled drugs: total DEA restriction; controlled drugs: surrender of DEA permit; controlled drugs: partial DEA restriction; controlled drugs: maintain records; psychiatric evaluation/ psychotherapy; practice monitoring. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, case appropriate controlled drugs restrictions, suspension, and practice monitoring that all better ensure compliance with probation and protect consumers.

B & P 2242 Prescribing Drugs without Prior Examination

Factual Basis/ Purpose

This is an existing violation, for which some modifications have been made to the recommendations for discipline. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum penalty changed the word “penalty” to discipline and added “standard terms and conditions and.” The note was deleted. The number of calendar days for suspension was changed from “90 calendar days” to “10 calendar days or more” and the wording “if warranted” deleted. The “prescribing” course work was added to “pharmacology” course. A clinical assessment and training and medical ethics course were added as discipline. Psychiatric evaluation/psychotherapy was added. The oral/practical examination and supervised structured environment discipline was deleted. The wording “if self-user of drugs: see B &P 2239” was deleted. The wording for “if warranted, maintain drug records for review (13)” was replaced with new wording: “controlled drugs: maintain records.” The wording “monitoring (29) was replaced with the wording: “monitor: practice.” The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation and deleted discipline they felt was no longer appropriate for this violation. In updating this discipline recommendation, the focus is on controlled drug restrictions, course work, practice monitoring, and clinical assessment and training. The clinical assessment and training provides a customized evaluation and appropriate treatment option for licensees and protects public safety. The Board felt that practice monitoring was sufficient and a supervised structured environment was not necessary. The Board may prefer to revoke the license if the licensee needed a supervised

structured environment. The reference to “self-user of drugs” was deleted because now the Board has specific well developed disciplinary terms for “self-use of drugs/ alcohol” that was not present in 1996. The rest of the changes were updates for readability.

B & P 2250 Failure to Comply with Sterilization Consent Provisions

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the prior 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” was added. The following discipline was added: education course; pharmacology/prescribing course; written examination; clinical assessment and training program; monitoring: practice/ billing; solo practice prohibition/supervised structure; prohibited practice; medical ethics course. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, case appropriate practice monitoring including prohibiting solo practice, if necessary, to better ensure compliance with probation and protect consumers.

B & P 2251 Use of Silicon

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: 30 calendar days or more suspension, pharmacology/prescribing course work, education course work, clinical assessment and training program, medical ethics course work and prohibited practice if warranted. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, case appropriate suspension and prohibited practice, if warranted, to better ensure compliance with probation and protect consumers.

B & P 2252 Illegal Cancer Treatment

Factual Basis/ Purpose

This is an existing violation, which the Board updated with modifications. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline of stayed revocation, 5 years probation is the same but the wording “standard terms and conditions and” was added. The following discipline was added: 30 calendar days or more of suspension; pharmacology/prescribing course work; clinical assessment and training program; medical ethics course work; controlled drugs: total DEA restriction; controlled drugs: surrender of DEA permit; controlled drugs: partial DEA restriction; controlled drugs: maintain record; psychiatric evaluation/ psychotherapy.

Suspension was an existing term but no specific time was specified in the 1996 version. Community service was an existing term that the Board eliminated. Monitoring was an existing term but more clarification was provided by the Board adding the word “practice” to monitoring. The only existing term unmodified is education course work. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The Board eliminated community service because it felt that such an option may not be appropriate given the nature of the violation. The Board imposed additional training and course work in addition to practice monitoring, prohibited practice and no solo practice is warranted. These additional terms allow the Board to impose more stringent and appropriate discipline depending on the severity of the violation. The monitoring ensures compliance with probation, while the prohibited practice term allows the Board to take away aspects of practice that the Board no longer trusts the licensee to carry out safely. Such prohibited practice protects consumers.

B & P 2261 Making or Signing False Documentation**Factual Basis/ Purpose**

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: suspension of 30 calendar days or more; education course; record keeping course; medical ethics course; monitoring: practice/ billing; prohibited practice; solo practice prohibition/supervised structure.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training,

suspension and practice/ billing monitoring, prohibited practice, prohibition of solo practice and required supervised structure that all better ensure compliance with probation and protect consumers.

B & P 2262 Alteration of Medical Records/ False Medical Records

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The wording of this term and condition was modified to add the wording “alteration of medical records.” The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added. The following discipline was added: suspension of 30 calendar days or more; education course; record keeping course; pharmacology/ prescribing course; medical ethics course; monitoring: billing/ practice; prohibited practice; solo practice prohibition/supervised structure. The pharmacology course was expanded to include “prescribing” course work.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The Board wanted more options for discipline and more specific guidance, which these additional terms provide. The discipline includes course work and training, suspension and practice monitoring, prohibited practice and prohibited solo practice and required supervised structure to better ensure compliance with probation and protect consumers.

B & P 2263 Violation of Professional Confidence

Factual Basis/ Purpose

This is an existing violation, which the Board updated with modifications. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The wording “standard terms and conditions and” were added to the minimum discipline. The existing term “suspension” was modified to add a specific time frame of 30 calendar days or more. The existing terms “community service” and “restitution” were eliminated. The following additional terms were added: medical ethics course work; monitoring: billing/ practice; prohibited practice; solo practice prohibition/ supervised structure.

Rationale

The Board added the discipline they felt was appropriate for this violation. The Board eliminated community service and restitution because they did not feel they were appropriate disciplinary actions for this violation. Instead, the Board focused on additional training, defined suspension

and more control over the practice of licensee. These additional terms better protect consumers by ensuring licensees practice medicine safely.

B & P 2264 Aiding and Abetting Unlicensed Practice

Factual Basis/ Purpose

This is an existing violation, which the Board updated with modifications. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The minimum discipline was modified to increase the probation from 3 years to 5 years and “standard terms and conditions and” were added to the minimum discipline wording. The suspension time frame was modified from 60 calendar days to 90 calendar days or more. The oral/practical or written examination was eliminated as a term and condition. The term “monitor” was modified to add “billing/practice.” The existing term “restricted practice” was modified to add “prohibited practice” and “solo practice prohibition and supervised structure” as disciplinary options. Educational course work was added.

Rationale

The Board added the discipline they felt was appropriate for this violation. The Board eliminated the oral/ practical or written examination because they felt examinations were no longer appropriate discipline for this violation. The Board increased the overall discipline for this violation by increasing the time for suspension and expanding the Board’s control and restrictions over the licensee’s practice. The Board wanted the option of prohibiting practice and prohibiting solo practice when appropriate to further protect consumers. The additional control over a licensee’s practice of medicine also ensures compliance with probation and protect consumers.

B & P 2265 Use of Qualified Physician Assistant without Approval

Factual Basis/ Purpose

This violation and disciplinary recommendations were deleted because the statutory provision was repealed.

B & P 2271, 651 Deceptive Advertising

Factual Basis/ Purpose

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 1 year probation and “standard terms and conditions and” were added. The following discipline was added: medical ethics course work; education course work; community service.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community, which the Board feels is appropriate for this violation.

B & P 2272 Anonymous Advertising**Factual Basis/ Purpose**

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 1 year probation and “standard terms and conditions and” were added. The following discipline was added: medical ethics course; education course; community service.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community, which the Board feels is appropriate for this violation.

B & P 2273 Employment of Runners, Cappers and Steerers**Factual Basis/ Purpose**

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 3 years probation and “standard terms and conditions and” were added. The following discipline was added: suspension of 90 calendar days or more; education and medical ethics course work; monitoring: billing/ practice; prohibited practice; solo practice prohibition/supervised structure.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work and training, suspension and billing/ practice monitoring, prohibited practice, prohibition of solo practice requiring supervised structure to better ensure compliance with probation and protect consumers.

B & P 2274 Misuse of Title**Factual Basis/ Purpose**

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 1 year probation and “standard terms and conditions and” were added. The following discipline was added: medical ethics course; education course; community service.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community,

B & P 2275 Use of “M.D.”**Factual Basis/ Purpose**

This is an existing violation, for which there was no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 1 year probation and “standard terms and conditions and” were added. The following discipline was added: medical ethics course; education course; community service.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community, which the Board feels is appropriate for this violation.

B & P 2276 Use of “D.O.”**Factual Basis/ Purpose**

This is an existing violation, for which there were no specific terms listed in the 1996 version; thus, all terms added to this section are new. The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 1 year probation and “standard terms and conditions and” was added. The following discipline was added: medical ethics course; education course; community service.

Rationale

The Board added the discipline they felt was appropriate for this violation. The prior language did not give specific guidance for discipline. The discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community, which the Board feels is appropriate for this violation.

B & P 2280 Intoxication while Treating Patient

Factual Basis/ Purpose

This is an existing violation that has been modified and updated. The maximum discipline of revocation was added and the word “penalty” was changed to “discipline.” The maximum discipline of revocation was added. The minimum discipline of stayed revocation, 5 years probation and “standard terms and conditions and” were added.

The minimum discipline also provides specific reference to the Uniform Standards and the terms and conditions. A note was added that explains that the Uniform Standards applies and is mandated to be used in determining the appropriate discipline. The order must include a clinical diagnostic evaluation and entry into the Board’s Diversion Program. The remaining provisions of the Uniform Standards may apply contingent upon the finding of the clinical diagnostic evaluation that the licensee is a substance abusing licensee.

The first term related to “drugs” was modified and reworded to refer to “controlled drugs” instead of “drugs” and that wording was carried throughout the term to modify the different levels of DEA permit access: controlled drugs: total DEA restriction, controlled drugs: surrender of DEA permit, controlled drugs: partial DEA restriction; and controlled drugs: maintain records was reworded from its existing wording. This “drug” term was separated into four separate terms and conditions were renumbered. The wording “if warranted” was deleted from the former existing terms #3, #7, #8, #12, #13 and #14.

The existing term “psychiatric evaluation” was modified to add psychotherapy. Psychiatric treatment and drug or alcohol rehabilitation program, medical evaluation and or treatment, pharmacology course work, education course work, oral/practical examination, supervised structured environment terms and conditions were deleted and replaced with the Uniform Standards. The existing terms drugs-abstain from use and biological fluid testing, abstain from alcohol were modified and included within the Uniform Standards new terms that were added.

The new discipline includes all of the specific Uniform Standards: clinical diagnostic evaluation; diversion program; abstain from drugs and alcohol; notification to employer; random bodily fluid

testing; group support meetings; worksite monitor; results of biological fluid testing; major and minor violations; request to return to practice; request for reinstatement. For reference purposes, the specific Uniform Standards and model language term and condition numbers are included for reference purposes.

In addition to the Uniform Standards, the other newly added discipline includes: 10 or more calendar days suspension; practice monitor; medical ethics course work.

Rationale

The Board added the Uniform Standards to have standardized and consistent discipline for substance abusing licensees. The Board is mandated to implement these standards. These standards provide quality standards for the Board's Diversion Program that provide treatment with the goal of assisting licensees to stop their substance abuse. These standards also protect consumers by having high standards that ensure compliance with treatment and probation and evaluate whether licensees can practice medicine safely.

B & P 2285 Use of Fictitious Name without Permit

Factual Basis/ Purpose

This is an existing term and condition that was modified and updated. The maximum discipline of revocation was added and the word "penalty" was changed to "discipline." The minimum discipline was modified to reduce the number of years of probation from 3 years to 1 year and add "standard terms and conditions and" wording. The wording "if warranted" was deleted. The term "restitution" and "actual suspension" were deleted. Medical ethics course work was added.

Rationale

The Board modified the discipline to make it more appropriate for this violation. The Board felt that 3 years probation was too harsh a discipline for this violation and that 1 year was more reasonable. Restitution was deleted because it was not relevant to this violation. The term "actual suspension" was eliminated because it was duplicative of the suspension period already included in the minimum discipline.

Overall, the discipline includes course work that trains the licensee about the violation and how not to repeat such a violation in the future. The community service is intended as a way for the licensee to give back to the community, which the Board feels is appropriate for this violation.

B & P 2235 Obtaining License by Fraud

Factual Basis/ Purpose

This is a new violation with new terms and conditions that the Board added to address the

violation of obtaining a license by fraud. The maximum and minimum discipline is revocation.

Rationale

The nature of this violation renders the license illegitimate and as such makes anything but revocation inappropriate. The Board added this violation to protect consumer safety.

B & P 2288 Impersonation of Applicant in Exam

Factual Basis/ Purpose

This is a new violation and new terms and conditions that the Board added to the issue of impersonation of an applicant in an exam. The maximum and minimum discipline is revocation.

Rationale

The nature of this violation renders the license illegitimate and makes anything but revocation inappropriate. The Board added this violation to protect consumer safety.

B & P 2306 Practice during Suspension

Factual Basis/ Purpose

This is a new violation and new terms and conditions that the Board added to address licensees who violate probation and continue to practice during ordered suspension from practice. The maximum and minimum discipline is revocation.

Rationale

The Board added the discipline they felt was appropriate for this violation. Typically, suspension is a condition of probation, so violating probation can result in revocation. In this case, the Board has determined that practicing during suspension is serious enough to warrant revocation.

B & P 2305 Discipline by another State or Federal Agency

This is an existing violation for which the terms and conditions remain the same. The word “penalty” was changed to “discipline.”

Rationale

There is no reason for the Board to modify discipline from another State or Federal Agency other than to change the wording “penalty” to “discipline.” Imposing the actual discipline from another State or Federal Agency further protects consumer safety.

Violation of Probation: Repeated Violations

This is an existing term and condition for which there was no specific statutory citation, but rather a regulatory policy to provide guidance to the Board in determining the appropriate

discipline for repeated violation of probation. The word “penalty” was changed to “discipline.” The title “violation of probation: repeated violation” was added.

Rationale

The Board wanted more formal guidance for determining the follow-up discipline for repeated violation of probation.

Note: It having been found pursuant to the Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code Osteopathic Medical Board of California Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees of 2018 and the Quarterly Declaration form OMBC 10 (1/18) is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 95834

Underlying Data:

Technical, theoretical or empirical studies or reports relied upon (if any):

- (1) SB 1441, Chapter 548, Statutes of 2008 (Ridley-Thomas), amended Business and Professions Section 315 statutory language.
- (2) SB 1441 Senate Business and Professions Committee Analysis of SB 1441, dated April 14 2008.
- (3) SB 1441 Assembly Business and Professions Committee Analysis of SB 1441, date June 24, 2008.
- (4) Uniform Standards for Substance Abusing Licensees (2011)
- (5) May 18, 2017 Board meeting minutes of discussion of revisions to proposed regulatory language including updating disciplinary recommendations.
- (6) June 28, 2017 Board meeting minutes of discussion and adoption of the revised regulatory language.
- (7) The 1997 Quarterly Reporting Form that is being replaced with new updated form for enforcement.
- (8) The Osteopathic Medical Board of California Disciplinary Guidelines of 1996.

Business Impact/Specific Technologies or Equipment:

This regulation will not have a significant adverse economic impact on businesses, specific technologies, or equipment. This regulation only impacts licensees disciplined by the Osteopathic Medical Board of California. This regulation does not mandate the use of specific technologies or equipment.

Economic Impact Assessment:

This regulation will not have a significant adverse economic impact on the creation or elimination of jobs or businesses in the State of California. This initial determination is based on the fact that the regulation will only impact physicians who have been placed on probation who are ordered to cease practice for testing positive for drugs and/or alcohol use. The number of physicians impacted would be less than a half of one percent of the licensee population.

The regulation will not affect the expansion of businesses currently doing business within the State of California because the regulations will only affect licensed individuals and not businesses already operating in the State.

Benefits of the Proposed Action: This regulatory proposal benefits the health and welfare of California residents by providing protection from substance-abusing osteopathic physicians, requiring the osteopathic physicians to be completely compliant with the conditions in their recovery program and/or probation, or the Board can issue a cease practice order.

The regulatory proposal does not affect worker safety nor will it affect the state's environment because it does not affect those areas of law.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.