

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

MODIFIED TEXT

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

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

§ 1661.2 Diversion Evaluation Committee Duties and Responsibilities.

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

(a) To consider recommendations of the program manager and any consultants to the committee;

(b) To set forth in writing for each physician in a program a treatment and rehabilitation plan established for that physician with the requirement for supervision and surveillance.

(c) To use the Uniform Standards for Substance-Abusing Licensees pursuant to Title 16, California Code of Regulations, Section 1663, entitled Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees (1/1/18).

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

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

§ 1663. Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Osteopathic Medical Board of California shall consider and apply the disciplinary guidelines entitled Osteopathic Medical Board of California Disciplinary Guidelines and Uniform Standards of Substance Abusing Licensees of ~~1996-2018~~ 2018 (Rev 1/18), which are hereby incorporated by reference. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Osteopathic Medical Board of California in its sole discretion determines that the facts of the particular case warrant such a deviation; for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b)(1) Notwithstanding subsection (a), the Board shall use the "Uniform Standards for Substance Abusing Licensees for each individual determined to be a substance abusing licensee. The terms and conditions that incorporate the Uniform Standards for Substance Abusing Licensees shall apply as written and be used in the order placing the licensee on

probation.

(2) If the conduct found to be a violation involves the use of drugs, alcohol, or both, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case to determine whether the licensee is a substance abusing licensee. The clinical diagnostic evaluator's report shall be submitted in its entirety to the Board.

(3) The Board defines a substance abusing licensee as a licensee who undergoes a clinical diagnostic evaluation and is determined by the findings of the clinical diagnostic evaluator to be a substance abusing licensee.

(c)(1) Notwithstanding the Disciplinary Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

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

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

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 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

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.xciii), Sections 1, 2018, 2451, and 3600-1, Business and Professions Code; and Section 11400.21, Government Code. Reference: Sections 315, 726 and 729, 2246 Business and Professions Code; Sections 11400.21 and 11425.50(e), Government Code; Sections 261.5, 290, 313.1, 647b, and 647 subdivision (a) or (d), Penal Code.