

PHYSICIAN ASSISTANT BOARD
INITIAL STATEMENT OF REASONS

Hearing Date: 9 February 2015

Subject Matter of Proposed Regulations: Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees

Section Affected: California Code of Regulations, Title 16, Division 13.8, Section 1399.523

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

In September 2008, Senate Bill 1441 ("SB") -- 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 concerns with substance-abusing licensees. 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 licensing 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. SB 1441 established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA). The SACC was tasked with developing uniform standards in sixteen specific areas for use in dealing with substance-abusing healing arts licensees, whether or not a Board chooses to have a formal diversion program. The SACC was comprised of Executive Officers of the DCA healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of DCA. In April 2011, the DCA SACC published the document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (hereinafter referred to as the "Uniform Standards").

This proposal will amend Section 1399.523 to incorporate by reference the 4th Edition Guidelines as proposed by the Board in August 2013, which includes provisions that would implement the Uniform Standards formulated by the SACC pursuant to Section 315. As part of that implementation, this proposal would also add a new provision to

Section 1399.523 that would specify that a clinical diagnostic evaluation shall be ordered in every probationary case where the conduct found to be a violation involves drugs, alcohol, or both. Additionally, this proposal will further amend Section 1399.523 to incorporate by reference the SACC's April 2011 Uniform Standards document. This proposal would adopt uniform standards established by the SACC for use in disciplinary cases and also standard language ("Conditions Applying the Uniform Standards") for probationary orders to be used by an Administrative Law Judge, Deputy Attorneys General and the Board if a licensee is determined to be a substance abuser. By incorporating the Uniform Standards by reference and including provisions in its Guidelines to implement the Uniform Standards, the Board is ensuring that the Uniform Standards are applied to licensees consistently and uniformly as required by Business and Professions Code section 315 and subsequent legislation enacted at Business and Professions Code sections 315.2 and 315.4. Finally, this proposal would also specify that the proposed provisions contained in section 1399.523 would not prohibit the Board from imposing additional terms or conditions of probation that would provide greater public protection.

In addition to proposing to adopt the Uniform Standards formulated by the SACC, the Board is also proposing to update the Guidelines violations and penalties to be consistent with current needs. The following updates are being proposed:

1. Senate Bill 1236 (Chapter 332, Statutes of 2012) changed the name of the Physician Assistant Committee to Physician Assistant Board, effective January 1, 2013. The Guidelines language is being modified to reflect the name change throughout the document.
2. The Introduction would be modified to reference the use of the Uniform Standards and their application to probationary orders in light of the Board's public protection mandate. In addition, the Introduction would add "Special Considerations" applicable to certain disciplinary cases involving sexual contact, sexual offenses, drugs, alcohol or violations involving the Medical Practice Act. Section 1399.523 is also re-stated here for ease-of-reference.
3. An explanation of the distinctions between self-referrals and probationary participants and an overview of participant requirements and costs for the Board's alcohol and drug recovery monitoring program would be included at the beginning of the Guidelines to provide those considering self-referral into the Board's program and the imposition of probationary terms with information regarding the costs of the program.
4. In the "Causes for Discipline and License Restriction": Sections 726, 729, and 3527(a) - Sexual Misconduct violations section is being amended to add language from existing Title 16, CCR sections 1399.523 and 1399.523.5 regarding required penalties (revocation/denial) for sexual misconduct if the

individual is required to register as a sex offender. Additional terms and conditions of probation would also be added for this type of violation if probation is imposed and drugs or alcohol violations are present, consistent with the Uniform Standards.

5. In the “Causes for Discipline and License Restriction” portion of the Manual, the following sections will be amended to reference consideration of the Uniform Standards in imposing discipline, including the ability to make the standards contingent upon a clinical diagnostic evaluator’s finding that the individual is a substance abuser:
 - §820 – Mental or Physical Illness;
 - §2237 & §3527(a) Conviction Related to Drugs;
 - §2239 & §3527(a) Drug or Alcohol Abuse
 - §2241 & §3527(a) Furnishing Drugs or Transmitting Drug Orders to Addict;
 - §2242 & 3527(a) Administering or Furnishing Drugs, or Transmitting Drugs Orders, Without Prior Good Faith Examination; and,
 - §3527(a) Administering, Furnishing, or Transmitting Drug Orders Not Prescribed by Supervising Physician.

Additional terms and conditions of probation would also be added for these types of violations if probation is imposed and drug or alcohol violations are present, consistent with the Uniform Standards.

6. In the “Causes for Discipline and License Restriction” portion of the Manual, the following violation sections will be amended to require consideration of a prescribing practices course (as described in the Optional Conditions): excessive treatments, sexual misconduct, gross negligence, repeated negligent acts, incompetence, dishonesty, conviction related to drugs, violation of drug statutes, drug or alcohol abuse, intoxication while treating patients, furnishing drugs or transmitting drug orders to addict, administering or furnishing drugs, or transmitting drugs orders, without prior good faith examination, illegal cancer treatment, making or signing false documents, alteration of medical records, administering, furnishing, or transmitting drug orders not prescribed by supervising physician, practicing medicine without delegated authority from a supervising physician, exceeding delegated scope of practice; and, practicing without adequate supervision.
7. Model Order 3, “Initial Probationary License” “Notes” section is being modified to add clarification language where a license is being issued, and the condition deadlines should commence from the issuance of the license rather than issuance of the decision.

8. Optional Condition 7, “Controlled Drugs – Maintain Record” is being modified to require that controlled substances records must remain at the worksite and be available for inspection by the Board or its designee at all times during business hours.
9. The current Optional Conditions related to abstention from drugs or alcohol, biological fluid testing, and diversion are being modified and moved to a new section entitled “Conditions Applying the Uniform Standards.”
10. Optional Condition 11 “Clinical Training Program” is being modified to include language to clarify the consequences for failure to complete or pass the clinical training program and an Option 2 that requires completion of the clinical training program prior to the issuance of a license (Condition Precedent).
11. Optional Condition 14 “Prescribing Practices Course” has been added. This condition would require the probationer to enroll in a course equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine within 60 days of the effective date of the Board’s decision.
12. Optional Condition 17, “Third Party Chaperone” is being modified to add clarification language that all required logs must remain at the worksite and be available for inspection by the Board or its designee.
13. Optional Condition 19 “Maintenance of Patient Medical Records” “Option 1” is being modified to require that written medical records must remain at the worksite and be available for immediate inspection by the Board or its designee on the premises at all times during business hours.
14. A new section is being added entitled “Conditions Applying Uniform Standards Related to Substance Abuse”, which includes probationary terms that must be used in all cases when the violation involved the licensee’s use of drugs, alcohol, or both. Those terms and conditions are:
 - a) Clinical Diagnostic Evaluation: This condition of probation requires the probationer to undergo a clinical diagnostic evaluation as specified. (Guidelines Condition No. 21; Uniform Standard Nos. 1, 2, and 6.)
 - b) Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs: These conditions of probation require the probationer to abstain completely from the use of alcohol, controlled substances, and dangerous drugs unless lawfully prescribed as specified. (Guidelines Condition Nos. 22 and 23; Uniform Standard Nos. 4 and 8.)

c) Drug and Alcohol Recovery Program: This condition of probation requires the probationer to enroll in and successfully complete the Board's drug and alcohol recovery monitoring program. The probationer is responsible for all costs associated with the program. (Guidelines Condition No. 24; Uniform Standard No. 4.)

d) Biological Fluid Testing: This condition of probation requires the probationer to comply with specified drug and alcohol testing requirements. The probationer is responsible for all costs associated with testing. (Guidelines Condition No. 25; Uniform Standard Nos. 4, 8-10.)

e) Facilitated Group Support Meetings: This condition of probation requires the probationer to attend facilitated group support meetings as specified. (Guidelines Condition No. 26; Uniform Standard No. 5.)

f) Work Site Monitor: This condition of probation requires the probationer to comply with specified work site monitor requirements. (Guidelines Condition No. 27; Uniform Standard Nos. 7, 8.)

g) Major Violations: This condition of probation requires the probationer to immediately cease practice upon notification by the Board that the he or she has committed a major violation, as specified. (Guidelines Condition No. 28; Uniform Standard No. 10.)

15. Optional Condition 29 "Approval of Supervising Physician" is being modified to require that if the supervising physician resigns or is no longer available, within 15 days the respondent shall notify the Board of a new supervising physician and respondent may not practice until a new supervising physician has been approved by the Board or its designee.

16. Optional Condition 30 "Notification of Employer and Supervising Physician" is being updated to require respondent to provide a copy of the accusation, decision, and order before accepting or continuing employment. The condition shall also apply to any changes in place of employment. Additional language is included to state that the respondent shall provide practice site information, contact information, and shall give written consent to allow Board staff to communicate with respondent's employer, supervising physician, or work site monitor regarding their work status, performance, and monitoring. (Uniform Standard No. 3.)

17. Optional Condition 35 "Non-practice While on Probation," is being added replacing "Tolling for Out-of-State Practice or Residence" and "Failure to Practice as a Physician Assistant – California Resident" combining the language of the two tolling/non practice conditions (out of state and in state) into one

condition of non-practice for a probationer.

2. Anticipated benefits from this regulatory action:

- Incorporation of Uniform Standards by Reference

The Department of Consumer Affairs directed all healing arts boards, including the Physician Assistant Board, to adopt the Uniform Standards in regulation to ensure that public safety remains the paramount mission of the boards and to implement consistent practices for all healing arts boards when dealing with substance-abusing licensees.

- Inclusion of Specific Conditions to Implement the Uniform Standards in the Guidelines.

The Guidelines were established by the Board to facilitate uniformity in taking disciplinary actions against licensees and to provide transparency in regards to the Board's course of action when imposing discipline. The Guidelines are intended for, and used by, various parties such as Attorney Generals, judges, Board staff, licensees, and the public. The first three parties use the Guidelines to determine proposed penalties for specific violations; and, the latter two parties use the Guidelines for reference to discern penalties that may be imposed on a licensee who has violated the Physician Assistant Practice Act or other laws and regulations. For clarity, the Board is proposing to include in the Guidelines only those standards from the Uniform Standards that apply to a licensee who may be a substance-abusing licensee. Therefore, the Uniform Standards will be incorporated by reference, including all standards, and from that document, only those standards applicable to a licensee who may be a substance-abusing licensee will be included in the Guidelines. This provides clarity for licensees to understand what specifically may apply to them, as well as for judges and Attorney Generals when drafting a decision. Incorporating the Uniform Standards provides maximum protection to California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse. These benefits are a direct result of the Board's statutorily mandated priority set forth in Business and Professions Code section 3504.1. The protection of the public is the highest priority for the Board in exercising licensing, regulatory, and disciplinary functions. The proposed adoption of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public.

- Additional updates to the Guidelines

In addition to proposing to adopt the Uniform Standards, the Board is also proposing to update the Guidelines violations and penalties to be consistent with law and regulation updates. Updates to the Guidelines will ensure appropriate disciplinary action is

imposed for violations of those sections.

Factual Basis/Rationale

This proposal will amend Title 16, California Code of Regulations Section 1399.523 to incorporate by reference the “Manual of Disciplinary Guidelines and Model Disciplinary Orders, 4th Edition 2014” As revised August 26, 2013.

Additionally, this proposal will also amend Title 16, California Code of Regulations Section 1399.523 to incorporate by reference the Department of Consumer Affairs Substance Abuse Coordination Committee’s April 2011 document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.”

- Incorporation of the Uniform Standards by Reference

The Department of Consumer Affairs directed the healing arts boards, including the Board, to adopt the Uniform Standards in regulation to ensure that public safety remains the paramount mission of these boards and to implement consistent practices across the healing arts boards when dealing with substance-abusing licensees. It was determined that DCA does not have legal authority to adopt the Uniform Standards in regulation. SB 1441 charged the DCA SACC with developing the Uniform Standards; however, it did not give the DCA the authority to adopt the Uniform Standards in regulation. Rulemaking authority exists with each individual board.

The Uniform Standards published by the SACC addresses not only the penalties for the licensee, but administrative requirements for the Board and the monitoring program, if applicable, as well. Therefore, the Uniform Standards are being incorporated by reference in their entirety, however, for clarity only, those standards which apply solely to licensees, will also be included in the Guidelines.

- Inclusion of Specific Terms to Implement the Uniform Standards in the Guidelines

The Guidelines were established by the Board to facilitate uniformity in imposing disciplinary action against physician assistant licensees and to provide transparency in regards to the Board’s course of action when imposing discipline. The Guidelines are intended for, and used by, various parties such as Attorney Generals, judges, Board staff, licensees and the public. Attorney Generals, judges, and Board staff use the Guidelines for reference and guidance in determining appropriate penalties for specific violations. Licensees and the public use the Guidelines for reference to identify penalties that may be imposed on a licensee who violated the Physician Assistant Practice Act or other laws and regulations as specified in the Guidelines. This provides clarity for licensees in understanding what penalties may apply for violations. Judges

and Attorney Generals will also find guidance in drafting proposed decisions in applying disciplinary penalties.

The manner in which the Board proposes to adopt the Uniform Standards is supported by DCA pursuant to a memorandum issued April 5, 2012 by the DCA Legal Office, "*Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)*", which references an October 27, 2011 Legislative Counsel opinion and an informal legal opinion rendered by the Office of the Attorney General dated February 29, 2012, which states, in part:

"Some standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will not involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines."

- Additional updates to the Guidelines

In addition to proposing to adopt the Uniform Standards, the Board is also proposing to update the Guidelines violations and penalties to be consistent with law and regulation updates that have occurred since the last revision of the Guidelines. Updates to the Guidelines will ensure appropriate disciplinary action is imposed for violations of those sections.

In addressing the above, the specific proposed changes to the Guidelines include:

Name Change

Senate Bill 1236 (Chapter 332, Statutes of 2012) changed the name of the Physician Assistant Committee to Physician Assistant Board, effective January 1, 2013. Therefore, all references to "Committee" are replaced by "Board" throughout the Guidelines.

Introduction (Page 2)

The "Introduction" section of the Guidelines is being amended to include references to the Uniform Standards.

Additionally, a reference to Business and Professions Code Section 3504.1, which states the Board's highest priority is public protection is being added to the "Introduction" section to affirm this priority. Additionally, in keeping with this priority it permits the Board and Administrative Law Judges to impose additional terms and conditions of probation that would provide greater public protection.

Special Considerations (Page 2)

This section has been added to the Guidelines to reflect requirements mandated by Title 16, California Code of Regulations Section 1399.523(b) which requires a proposed decision that contains any findings of fact that the licensee engaged in any act of sexual conduct, as defined in Business and Professions Code Section 729(c), with a patient or any finding that the licensee has committed a sex offense or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Adding this section here for ease-of-reference and as a reminder to users will help ensure compliance with these requirements.

Violations Involving Drugs, Alcohol, or Both (Page 3)

This section has been added to reflect the incorporation by reference of the Uniform Standards and how they shall be applied to licensees whose violations involve drugs, alcohol, or both. Also included is a statement that a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation.

Adding this section here for ease-of-reference and as a reminder to users will help ensure compliance with these requirements.

Violations of the Medical Practice Act (Page 3)

This section has been updated to reflect the adoption of Title 16, California Code of Regulations Section 1399.523.5 regarding required actions against registered sex offenders. This regulation was adopted in 2011 and, therefore, not included in the previous 3rd edition of the Guidelines.

Title 16, CCR Section 1399.523. Disciplinary Guidelines (Page 3)

For ease-of-reference purposes, the proposed amended version of Section 1399.523 has been added and re-stated here.

Information Related to Cases Involving Drugs and Alcohol Use (Page 5)

Business and Professions Code Section 3534 states that the intent of the Legislature is that the Board shall seek ways and means to identify and rehabilitate physician assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

For clarification purposes, this section has been added to state that participants in the boards “diversion program” are not “diverted” from disciplinary action, rather, participants are monitored for compliance with program terms and conditions.

Clarification language has also been added to address the two types of referrals to the program, Self-Referrals and Probationary Participants.

Drug and Alcohol Recovery Monitoring Program/Overview of Participant Requirements and Costs (Page 6)

This section has been added to the Guidelines to provide general information about participation fees and general information about participant obligations and responsibilities when participating in the program. The Board has found that often licensees who are required to participate in the monitoring program are not aware of the costs and program requirements. This information should better prepare a licensee who participates in the program.

CAUSES FOR DISCIPLINE AND LICENSE RESTRICTIONS

Section 725 Excessive Treatments (page 10)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

Section 726, 729, and 3527(a) Sexual Misconduct (Page 10)

A “notes” section has been added which will require license revocation, application denial or denial of a petition if an individual is required to register as a sex offender.

Additionally, if a licensee has engaged in any act of sexual contact with a patient or has committed a sex offense or been convicted of a sex offense, the license shall be revoked. The proposed decision may not contain an order staying the revocation of the license. The addition of this note is necessary to specify and give notice of the requirements adopted by the Board in Title 16, California Code of Regulations Section 1399.523(b), which requires the Board to impose revocation for these types of offenses.

Section 820 Mental or Physical Illness (Page 11)

In consideration of the Uniform Standards a note has been added stating that if the

licensee has been identified as a substance abusing licensee, then the Conditions Applying the Uniform Standards must be imposed. It also requires that a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may, in the discretion of the Board, be made contingent upon a clinical diagnostic evaluator's report that the individual is a substance-abusing licensee.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent's history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent's compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program at the probationer's cost until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the

course of probation, this term was added. It includes the definitions for major and minor violations as well as specifies the consequences for these violations of probation. 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, must 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 for further disciplinary action.

Section 2234(b) – Gross Negligence

Section 2234(c) – Repeated Negligent Acts

Section 2234(d) - Incompetence (page 12)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the negligence or incompetence violations were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

Section 2234(e) and 3527(a) – Dishonesty (Page 12)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the dishonesty violations were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

Section 2237 and 3527(a) – Conviction Related to Drugs

Section 2238 and 3527(a) – Violations of Drug Statutes (Page 13)

Since these violations involve drugs, the "Notes" section has been updated to require a clinical diagnostic evaluation and application of the Uniform Standards, consistent with the new proposed Section 1399.523 amendments and Section 315 of the Business and Professions Code.

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the

convictions or violations of drug statutes were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent's history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent's compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program at the probationer's cost until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added.

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this term was added to include the definitions for major and minor violations. 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, must 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 for further disciplinary action.

Section 2239 and 3527(a) – Drug or Alcohol Abuse

Section 2280 – Intoxication While Treating Patients (Page 14)

Since these violations involve drug or alcohol abuse, the “Notes” section has been updated to require a clinical diagnostic evaluation and application of the Uniform Standards consistent with the new proposed Section 1399.523 amendments and Section 315 of the Business and Professions Code.

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent’s history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent’s compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this term was added to include the definitions for major and minor violations. 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, must 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 contract /agreement and refer the matter for further disciplinary action.

Section 2241 and 3527(a) – Furnishing Drugs or Transmitting Drug Orders to Addict (Page 14)

Since these violations involve possible drug violations, the “Notes” section has been updated to require a clinical diagnostic evaluation and application of the Uniform Standards consistent with the new proposed Section 1399.523 amendments and Section 315 of the Business and Professions Code.

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent's history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent's compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added.

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added.

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this term was added to include the definitions for major and minor violations. 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, must 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 contract /agreement and refer the matter for further disciplinary action.

Section 2242 and 3527(a) – Administering or Furnishing Drugs, or Transmitting Drug Orders, Without Prior Good Faith Examination (Page 15)

Since these violations involved drugs, the “Notes” section has been updated to require a clinical diagnostic evaluation and application of the Uniform Standards consistent with the new proposed Section 1399.523 amendments and Section 315 of the Business and Professions Code.

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent’s history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent’s compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added.

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring,

and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added.

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this term was added to include the definitions for major and minor violations. 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, must 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 contract /agreement and refer the matter for further disciplinary action.

Section 2252 and 3527(a) – Illegal Cancer Treatment (Page 15)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

Section 2261 and 3527(a) – Making or Signing False Documents

Section 2262 – Alteration of Medical Records (Page 16)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

Section 3502.1 Drug Order Authority

Section 3527(a) Administering, Furnishing, or Transmitting Drug Orders Not Prescribed by Supervising Physician (Page 17)

Since these violations involve drugs, the "Notes" section has been updated to require a clinical diagnostic evaluation and application of the Uniform Standards consistent with

the new proposed Section 1399.523 amendments and Section 315 of the Business and Professions Code.

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

Additionally, in consideration of application of the Uniform Standards the following changes have been made:

- Condition 8 – Drugs Abstain from Use has been replaced by new Condition 23 – Abstain from Use of Controlled Substances and Dangerous Drugs.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent’s history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent’s compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period.

- Condition 9 – Alcohol – Abstain from use has been replaced by new Condition 22 – Abstain from the Use of Alcohol.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 21 – Clinical diagnostic evaluation has been added.

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations

of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards.

- Condition 11 – Diversion program has been replaced by new Condition 24 – Drug and alcohol recovery program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program at the probationer's cost until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee.

- New Condition 26 – Facilitated group support meetings has been added.

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 27 – Work site monitor has been added.

In consideration of the Uniform Standards, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee.

- New Condition 28 – Major violations has been added.

In consideration of the Uniform Standards and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this term was added to include the definitions for major and minor violations. 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, must 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 contract /agreement and refer the matter for further disciplinary action.

Section 3527(a) – Practicing Medicine Without Delegated Authority from a Supervising Physician

Section 3527(a) – Exceeding Delegated Scope of Practice

Section 3527(a) – Practicing Without Adequate Supervision (Page 17)

Condition 14 – Prescribing practices course has been added as a condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition if the violations were related to deficiencies in the respondent's ability to administer, provide to a patient, or transmit a drug order.

MODEL DISCIPLINARY ORDERS

#3 Initial Probationary License (Page 20)

This section has been updated to add clarification language where a license is being issued and specifies that condition deadlines may need to be modified to reflect that a deadline commences from the issuance of the license rather than the issuance of the decision. This is necessary to ensure that users of the Guidelines understand that probationary condition deadlines should be tied to the date of issuance of the license rather than issuance of the decision in cases where conditions precedent to issuance of the license occur. This prevents probationers from inadvertently violating probation since deadlines would be linked to dates when the probationer can legally practice after meeting the Board's pre-licensure requirements and not before issuance of the license.

OPTIONAL CONDITIONS

#8 Drugs –abstain from use (Page 21)

In consideration of application of the Uniform Standards this condition is being deleted and replaced by Condition 23 – Abstain from the use of controlled substances and dangerous drugs.

#9 Alcohol –abstain from use (Page 21)

In consideration of application of the Uniform Standards this condition is being deleted and replaced by Condition 22 – Abstain from the use of alcohol.

#10 – Biological fluid testing (Page 21)

In consideration of application of the Uniform Standards this condition is being deleted and replaced by Condition 25 – Biological Fluid Testing.

11 (Previously #15) – Clinical Training Program (Page 23)

This condition has been modified to add language to specify that (1) the clinical training program will determine whether the respondent has successfully completed the program; (2) respondent shall cease practice if he or she fails to complete or pass the clinical training program; (3) and, “Option 2” has been added that requires completion of the clinical training program prior to issuance of a license (Condition Precedent). These changes are necessary to ensure that probationers understand what constitutes “successful” completion of the program, what the probationer needs to do to remain compliant with probation, and to provide standardized requirements for allowing the Board to make this program a condition precedent for applicants in cases where training or educational deficiencies may be present.

#14 – Prescribing Practices Course (Page 24)

Condition 14 – Prescribing practices course has been added as an optional condition. Business and Professions Code Section 3502.1 authorizes physician assistants to administer or provide medications to a patient, or transmit orally, or in writing on a patient’s record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. Therefore, a prescribing practice course would be an appropriate condition to assist the Board in rehabilitation of the licensee with the goal of public protection if the violations were related to deficiencies in the respondent’s ability to administer, provide to a patient, or transmit a drug order.

#17 (Previously #20) – Third Party Chaperone (Page 26)

This condition has been modified to clarify that the log shall be maintained at the worksite. This change will assist the Board's investigators with monitoring compliance with this probationary requirement. If the log is not at the worksite the Board representative would be unable to review the log to determine compliance with this requirement.

#19 (Previously #22) – Maintenance of Patient Medical Records (Page 26)

This condition has been modified to clarify that patient records shall be maintained at the worksite and available for inspection at all times during business hours. This change will assist the Board's investigators with monitoring compliance with this probationary requirement. If patient records are not at the worksite the Board representative would be unable to review them to determine compliance with this requirement.

CONDITIONS APPLYING THE UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE (Page 27)

In consideration of application of the Uniform Standards this section has been added to the Guidelines. The introduction section states that Administrative Law Judges, parties, and staff are required to use the language contained in this section when the violation involves the licensee's use of drugs, alcohol, or both. Additionally, if the case involves drugs, alcohol, or both, a clinical diagnostic evaluation must be ordered and the other provisions of the Uniform Standards may be waived upon clinical diagnostic evaluator's report finding that the individual is not a substance-abusing licensee.

#21 – Clinical Diagnostic Evaluation (CDE) (Page 27)

The evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license which authorized the practitioner to conduct clinical diagnostic evaluations; has three years of experience in providing evaluations of health care professionals with substance abuse disorders; and, is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations as specified in the Uniform Standards, Nos. 1, 2, and 6.

This condition would increase consumer protection by:

- Specifying requirements for a clinical diagnostic evaluation of the probationer, required qualifications for the providers evaluating the probationer, and timeframes for completion of the clinical diagnostic evaluation.

- Ensuring that the Board is notified quickly if the probationer is a threat to himself/herself or the public while allowing for due process.
- Setting forth minimum standards for clinical diagnostic evaluations and ensures evaluations are conducted in accordance with applicable best practices, while allowing the evaluator the discretion to determine and use the most appropriate tool in assessing the probationer.
- Providing the Board with a professional opinion as to whether the probationer has a substance abuse problem, and whether the probationer is a threat to himself/ herself or others.
- Prohibiting personal, financial and business relationships between the evaluator and probationer, thereby ensuring objectivity in assessments.

By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that probationers who have undergone treatment and have made steps towards recovery can safely return to practice.

#22 – Abstain from the Use of Alcohol (Page 28)

This condition replaces Condition 9 – Alcohol – Abstain from use.

This term would continue to require the probationer to abstain from the use of alcoholic beverages. This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee and is necessary to effectuate the intent and purpose of the Uniform Standards, particularly Nos. 4 and 8. Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's monitoring program and to ensure protection of the public.

#23 – Abstain from the Use of Controlled Substances and Dangerous Drugs (Page 28)

The condition replaces Condition 8 – Drugs Abstain from Use.

This condition will require abstinence from all controlled substances unless lawfully prescribed. Additionally, the respondent shall identify for Board approval a coordinating physician who shall be aware of the respondent's history of substance abuse. The coordinating physician shall report to the Board on a quarterly basis the respondent's compliance with this condition.

Additionally, if the respondent should test positive for any substance not legally authorized, the respondent must cease practice and may not practice unless or until

notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, respondent shall be automatically suspended from practice pending the final decision. This period of suspension will not apply to the reduction of this probationary period. This condition is necessary to effectuate the intent and purpose of the Uniform Standards, particularly Nos. 4 and 8. Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's monitoring program and to ensure protection of the public. Abstinence from any controlled substance is required to prevent the substitution of one addicting substance with another.

#24 – Drug and Alcohol Recovery Monitoring Program

This condition replaces Condition 11 – Diversion program.

Within fifteen calendar days from the effective date of the order, the respondent shall enroll, participate in, and successfully complete the program until the program determines that participation is no longer necessary.

Failure to comply with all components of the program, termination from the program without permission or being expelled from the program shall constitute a violation of probation and the respondent shall be immediately suspended from practice.

Additionally, probation shall automatically be extended until the respondent successfully completes the program.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a respondent is not a substance-abusing licensee. This new term and condition is being used in lieu of the prior "diversion" terminology to more accurately reflect the Board's type of rehabilitation program for licensees who are disciplined for violations involving drugs or alcohol. The Board does not consider licensees who have been ordered to participate in the Board's diversion program to be "in diversion," rather the Board considers these individuals to be in a drug and alcohol recovery monitoring program. As a result, the Board will not use the term "diversion" in these disciplinary guidelines to describe licensees on probation or terms and conditions of probation related to drug and alcohol recovery monitoring. Instead the phrase "drug and alcohol recovery monitoring program" will be used. In addition, the requirements stated in this condition will assist the Board with implementing the new Uniform Standards and monitoring compliance consistently through enrollment in this program. This consistent with the intent and purpose of the Uniform Standards, particularly Uniform Standard Nos. 4 and 8.

#25 – Biological Fluid Testing (Page 29)

This condition replaces Condition 10 – Biological fluid testing.

In consideration of the Uniform Standards Nos. 4 and 8-10, this term was modified to reflect the minimum standards for biological fluid testing and the nature of the testing being conducted. The frequency of testing condition will be placed on Respondent when substance abuse and/or alcohol abuse is diagnosed or where the terms of the Uniform Standards apply. This condition will allow the Board to monitor the Respondent's compliance with abstaining from the use of alcohol or banned substances.

The condition may be waived or modified upon finding, by a clinical evaluation that the licensee is not a substance-abusing licensee.

#26 – Facilitated Group Support Meetings (Page 30)

Within fifteen days of the effective date of the decision, the respondent shall submit to the Board for prior approval the name of one or more meeting facilitators. The proposed amendment specifies the requirements and standards of a facilitated group support meeting and group facilitators.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee. This consistent with the intent and purpose of the Uniform Standards, particularly Uniform Standard No. 5. By specifying the requirements for facilitated group support meetings for the treatment of substance abuse, the probation condition ensures that probationers who have undergone treatment and have made steps towards recovery can safely return to practice.

#27 Work Site Monitor (Page 31)

In consideration of the Uniform Standards Nos. 7-8, this condition has been added. The proposed amendment specifies the requirements and standards of a worksite monitor by setting forth the qualifications, methods of monitoring, and reporting by worksite monitors.

This term may be waived upon findings, by the clinical diagnostic evaluation, that a licensee is not a substance-abusing licensee. This condition would allow the Board to monitor the competency and safety to practice of the probationer by use of a work site monitor who is another healthcare professional.

#28 Major Violations (Page 32)

In consideration of the Uniform Standards No. 10 and to clarify the potential consequences to probationers if these aggravating factors occur during the course of probation, this condition was added to include the definitions for major and minor violations. 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, must 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 contract /agreement and refer the matter for further disciplinary action.

STANDARD CONDITIONS

#30 (Previously #25) – Notification of Employer and Supervising Physician (Page 33)

This condition has been modified to require that the respondent notify his/her current and subsequent employer and supervising physicians of the discipline and provide copies of disciplinary documents before accepting or continuing employment. This will also apply to any changes in place of employment. This condition provides the Board with a mechanism for ensuring that the employer providing medical services is informed of the license status of the probationer so that, if necessary, the work environment can be structured to ensure consumer safety.

This requirement will ensure that the respondent's employer or potential employer is aware of the disciplinary action taken and their responsibilities with regard to hiring and supervising the respondent.

Additionally, the respondent is required to provide the Board names, physical addresses, mailing addresses and telephone numbers of all employers, supervising physicians, and work site monitors as well as facility locations.

This will ensure that Board representatives are able to locate and interview respondent to ensure compliance with terms of their probation.

Additionally, respondent shall give written consent to the Board to allow the Board to communicate with the employer, supervising physician, or work site monitor regarding the respondents work status, performance, and monitoring.

#35 (Previously #30) – Non-practice While on Probation (Page 34)

This condition combines previous condition #30 – Tolling for Out of State Practice or Residence and #31 – Failure to Practice as a Physician Assistant – California Resident.

Combining these two conditions will simplify conditions of non-practice for probationers and users of the Guidelines. The conditions of non-practice should not be dependent upon the respondent's location.

The DCA's Substance Abuse Coordination Committee's document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" dated April 2011 and the Physician Assistant Board "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 4th Edition, 2014 are incorporated by reference in this rulemaking. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. It is available on the Board's website and from the

Board upon request.

Underlying Data

1. Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008)
2. Meeting Minutes: Physician Assistant Board, August 26, 2013 Meeting.
3. DCA Legal Affairs Opinion Regarding Uniform Standards for Substance Abusing Licensees (SB 1441) April 5, 2012
4. A memorandum from Kathleen A. Lynch, Deputy Attorney General from the Government Law Section of the Attorney General's Office, addressed to the Department of Consumer Affairs Legal Affairs Division regarding uniform standards related to substance-abusing licensees as provided in Business and Professions Code §§ 315-315.4, dated , February 29, 2012.
5. A letter, dated October 27, 2011, from the Legislative Counsel Bureau addressed to the Honorable Curren D. Price, Jr. with respect to the healing arts boards adoption of uniform standards - #1124437.
6. DCA Substance Abuse Coordination Committee's document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" dated April 2011.
7. Physician Assistant Board "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 3rd Edition, 2007.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This regulation only impacts licensees disciplined by the Board. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing impact to a business at which a licensee works who is the subject of disciplinary action cannot be projected. Businesses employing licensees who are in compliance with the law will not incur any fiscal impact.

The following studies/relevant data were relied upon in making the above determination:

The Board currently regulates approximately 9,000 physician assistants. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the Board's laws or regulations and would only affect individuals who are disciplined by the Board. Any potential "adverse economic impact" may be avoided simply by complying with the law. Licensees who are placed on probation as a result of a violation involving drugs or alcohol and are deemed to be substance-abusing may incur additional costs as set forth below:

The Board identified potentially significant costs which only impact those licensees who have been deemed substance-abusing and are subject to the Uniform Standards. The

Uniform Standards are part of the monitoring program in which substance-abusing licensees are required to participate, pursuant to their terms of probation. The monitoring program with which the Board contracts with has already implemented the Uniform Standards.

The following costs may be incurred by licensees participating in the Board's monitoring program:

1. Monthly participation fee: \$306. The monthly participation fee increase 3 to 5 % annually.
2. Biological Fluid Testing: the average cost for each test is approximately \$60.00 per test plus a collection fee at the testing site which can cost up to \$125.
3. Professional Support Group Meetings: \$200 to \$500 monthly.
4. Inpatient Treatment Program may be required: \$3,000 to \$5,000.
5. Clinical Diagnostic Evaluation: \$2,000 to \$5,000 per evaluation.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal imposes specific requirements on a specific set of licensees who are subject to disciplinary action due to violations of the law and may be subject to more rigorous Uniform Standards due to violations of law involving drugs or alcohol. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.
- It will not create new business or eliminate existing businesses within the State of California because the proposal imposes specific requirements on licensees who are subject to disciplinary action and may also be subject to the Uniform Standards due to violations of law involving drugs or alcohol. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a

business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

- It will not affect the expansion of businesses currently doing business within the State of California because the proposal imposes specific requirement on licensees who are subject to disciplinary action and may also be subject to the Uniform Standards due to violations of law involving drugs or alcohol. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact, including the ability to expand business.
- This regulatory proposal benefits the health and welfare of California residents because it will continue to provide protection to California consumers against licensees who are found to be in violation of laws and regulations or have a substance-abuse problem. In addition, incorporating the Uniform Standards provides maximum protection to California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse. These benefits are a direct result of the Board's statutorily mandated priority set forth in Business and Professions Code section 3504.1. The protection of the public is the highest priority for the Board in exercising licensing, regulatory, and disciplinary functions. The proposed adoption of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, updated Guidelines will provide clarity for licensees to understand what specifically could apply to them in the disciplinary matters. Administrative Law Judges and Attorney Generals will also benefit from the updated Guidelines when drafting decisions, which will help ensure consistency in interpretation and application of penalties in disciplinary matters.
- This regulatory proposal does not affect worker safety because it does not impose any requirements affecting working environments.
- This regulatory proposal does not affect the state's environment because it relates to specific requirements on licensees who are subject to disciplinary action and may also be subject to the Uniform Standards.

Specific Technologies or Equipment

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

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Do not seek a regulatory change. This alternative was rejected because the Board's highest priority is protection of the public while exercising its licensing, regulatory, and disciplinary functions. The proposed changes will update the Board's Guidelines to ensure continued protection of the public.
2. Adopt the regulation. This alternative was determined to be the most feasible because it will update the Board's Guidelines with regard to licensee discipline and implement the Uniform Standards as required by Section 315 of the Business and Professions Code. As it relates to the determination whether a licensee is a substance abuser to whom the uniform standards should apply, three options were considered by the Board at its August 2013 meeting. The Board voted unanimously to accept Option 2 which is currently part of this proposed rulemaking. The Board considered that an evaluator's opinion would ensure that a neutral expert with experience in chemical dependency would determine if a licensee must be subject to the Uniform Standards.