PHYSICIAN ASSISTANT BOARD

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

HEARING DATE: February 9, 2015

SUBJECT MATTER OF PROPOSED REGULATIONS: Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees

SECTION AFFECTED: Title 16, Division 13.8, California Code of Regulations, Section 1399.523.

UPDATED SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The following information is provided as an addendum to the Initial Statement of Reasons:

Factual Basis/Rationale

Cover Page: Further changes to the Manual were made at the Board's February 9, 2015 meeting. As a result, the proposed language is being modified to more appropriately state that the "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 4th Edition" is the 2015 edition, with a proposed revision date of February 9, 2015.

Additional changes to the "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 4th Edition" are being proposed.

Page 3: Title 16, CCR Section 1399.523. Disciplinary Guidelines.
The proposed language is being modified to more appropriately state that the "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 4th Edition" is the 2015 edition, with a proposed revision date of February 9, 2015.

Pages 6-7: Delete the entire "Drug and Alcohol Recovery Monitoring Program Overview of Participant Requirements and Costs" section.

Including the costs and the program requirements in the guidelines is confusing and misleading to the participants since those requirements can change depending on the vendor and the contract that the Board uses, which would mean that the guidelines would have to be continually updated.

Page 20: Added Title "Standard Model Probationary Order" and a new "Model Order for Granting Application and Placing License on Probation after Applicant Completes Condition Precedent" sample order. The order would allow an administrative law judge or the board to require that an applicant meet certain conditions (e.g., restitution, completion of CME, completion of rehabilitation program, take and pass licensing exam (National Commission on Certification of Physician Assistants)) prior to issuance of a license to help ensure public protection and that minimum standards for licensure are met.

This change is needed to ensure consistency in application and clarity regarding the Board's orders. The Board has had problems recently with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the manual when outright denial of an initial license or denial of a reinstated license is not warranted.

Page 30: Delete the words "but not to exceed one hundred and four (104)" for the random testing requirement for the first year.

The SACC's guidelines on page 8, as pointed out by the DCA's Regulatory and Legislative Review Unit, states that: "Nothing precludes a board from increasing the number of random tests for any reason." Putting a cap into the testing requirements would preclude the Board from requiring more than 104 tests, which is contrary to public protection and possibly the recommendations by the SACC. So, the Board is proposing removing the cap.

Page 34: Corrects an incorrect cross-reference.

The notice of change of address requirement is located at Title 16, California Code of Regulations Section 1399.511, not Title 16, California Code of Regulations Section 1399.523.

Page 35: Deletes that "Respondent's license shall be automatically canceled" replaces with "It shall be considered a violation of probation...". This change also add the words "Respondent shall not be considered in violation of probation" to the existing text that allows for an exemption to the tolling requirement if the person is not practicing as a physician assistant in California but is practicing in another state and on probation with another physician assistant licensing authority.

The Board could be subjected to legal challenge if it were interpreted that the Board did not give notice and hearing of any possible new violations before a license was taken away. This change makes it clearer that it shall be considered only a violation of probation, and the license would not be cancelled, if Respondent fails to practice as a physician assistant for a total of two years. Any alleged violations of probation by the Board would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing. A probationer would not be considered in violation for non-practice as long as respondent is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant licensing authority of that state, in which case the two year period would begin on the date probation is completed or terminated in that state.

Page 36: "Voluntary License Surrender" Standard term: Adds the requirement that the request to surrender must be made by the Respondent "in writing" and that the writing must contain the following: his or her name, license number, case number, address of record, and an explanation of the reason(s) why Respondent seeks to surrender his or her license. Additional language also clarifies that a respondent shall not be relieved of the requirements of his or her probation unless the Board or its designee notifies

Respondent in writing that Respondent's request to surrender his or her license has been accepted.

Currently, there is no requirement specifying what is needed for the Board to process a request for surrender, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and clarifies, in accordance with Business and Professions Code section 118, that the Board does not lose jurisdiction to act on the license and that a probationer is not relieved from complying with probation until the Board acts to accept his or her surrender.

Page 36: Proposed Revision. The document revision date is being updated to reflect the most current and correct date of February 9, 2015.