

OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA
DISCIPLINARY GUIDELINES
and
UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSES
OF 2018



Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 96834
(916)928- 8390
www.ombc.ca.gov

**OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA DISCIPLINARY GUIDELINES
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INTRODUCTION

The Osteopathic Medical Board of California (Board) is a consumer protection agency with the primary mission of protecting consumers of osteopathic physician and surgeon services within the State of California. In keeping with its mission and obligation to ensure the safe and qualified practice of Osteopathic Medicine, the Board has adopted the following recommended guidelines for disciplinary orders and model terms and conditions of probation for violations of the Osteopathic and Medical Practice Acts.

The Disciplinary Guidelines are designed for use by administrative law judges (ALJs), attorneys, the Board, and others involved in the disciplinary process. The Board may revise these guidelines from time to time as necessary.

In addition, the guidelines incorporate relevant factors to be considered by the Board when imposing discipline upon a licensee, including consideration of the Uniform Standards for Substance Abusing Licensees, probationary terms and conditions, and penalty guidelines for specific offense(s). The guidelines for specific offense(s) reference the applicable statutory and regulatory provision(s) of the California Business and Professions Code and Title 16 of the California Code of Regulations.

The terms and conditions of probation are divided into three general categories:

- (1) Standard Terms and Conditions are those terms and conditions, which will generally appear in all cases involving probation as a standard term and condition;
- (2) Optional Terms and Conditions are those terms and conditions, which may be used to address the sustained violations and any significant mitigating or aggravating circumstances of a particular case;
- (3) Uniform Standards for Substance Abusing Licensee Terms and Conditions are those terms and conditions of probation that are required to be used in cases involving the licensee's use of drugs and/or alcohol.

ORGANIZATION OF DISCIPLINARY GUIDELINES

The Disciplinary Guidelines are divided into four parts:

Part I, begins with an introductory overview of the purpose and organization of these guidelines. The General Considerations section lays out relevant factors and considerations that ALJs and other users of the guidelines should take into account when a disciplinary matter is being resolved. Part I also defines each type of discipline.

Part II, incorporates the Uniform Standards for Substance Abusing Licensees into the Disciplinary Guidelines in its entirety. These standards are strictly applicable to violations involving the licensee's use of alcohol and/ or drugs and require the Board and ALJ to adhere to the standards when determining final disciplinary orders and outcomes for such violations. These standards include

disciplinary terms and conditions for cases involving substance abusing licensees. The standards also include administrative standards and requirements related to vendors, disclosure of information, data gathering, and reporting.

Part III, Model Language for Probationary Orders contains Terms and Conditions for probationary orders. It is divided into the following three categories: Section A, Standard Terms and Conditions; Section B, Optional Terms and Conditions; and Section C, Terms and Conditions of the Uniform Standards for Substance Abusing Licensees. The Standard Terms and Conditions must be included in all disciplinary orders. The Optional Terms and Conditions are considered discretionary because they are not required to be included in every disciplinary order and thus are optional based on the nature of the violation(s). The terms and conditions contained in Section C only apply to cases involving a licensee's use of alcohol and/ or drugs.

Part IV, contains recommended discipline and is organized by violation. Each violation lists the statutory cause of action and specifies the minimum and maximum discipline that may be imposed, along with the applicable probationary terms and conditions.

GENERAL CONSIDERATIONS

Each disciplinary matter must be considered on a case-by-case basis. Consumer protection is the Board's paramount duty. The Board should carefully consider the totality of the circumstances of each disciplinary case, including any mitigating or aggravating factors present. The Board recognizes that an individual case may necessitate a departure from these guidelines for disciplinary orders. However, in such a case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact," which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the Board expects outright revocation or denial of the license. This is particularly true in any case of patient sexual abuse. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be appropriate.

The Board requests that proposed decisions following administrative hearings include the following:

1. Specific code sections violated with their definitions.
2. Clear description of the violation.
3. Respondent's explanation of the violation if he/she is present at the hearing.
4. Findings regarding aggravation, mitigation, and rehabilitation, where appropriate.
5. When suspension or probation is ordered, the disciplinary order should include terms within the recommended guidelines for the specific offense unless the reason(s) for the departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

In determining whether revocation, suspension or probation is to be imposed in a given case, the following factors should be considered:

1. Nature and severity of the act(s), offense(s), or crimes(s) under consideration.

2. Actual or potential harm to any consumer, client, or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation or Aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Petition for Reinstatement or Modification of Penalty set forth in California Code of Regulations, Title 16, section 1657; and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board will not retry the original revocation or probation case.

The Board will consider, pursuant to Section 1657, the following criteria of rehabilitation:

- (1) The nature and severity of the act(s) or crime(s) for which the petitioner was disciplined.
- (2) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) for which the petitioner was disciplined which also could be considered as grounds for denial under Code Section 480.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) above.
- (4) The extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed.
- (5) Petitioner's activity during the time the certificate was in good standing.
- (6) Evidence, if any, of the rehabilitation submitted by the petitioner.
- (7) Petitioner's professional ability and general reputation for truth.

The Board requests that comprehensive information be elicited from the petitioner regarding his or her rehabilitation. The petitioner should provide details that include:

- A. Why the penalty should be modified or why the license should be reinstated.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. Continuing education pertaining to the offense and its effect on his or her practice of medicine.
- D. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- E. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.

F. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Rehabilitation is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation for why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice medicine. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.

In the Petition Decision, the Board requests a summary of the offense and the specific codes violated that resulted in the revocation, surrender, or probation of the license. If the Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the ALJ provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches that demonstrate rehabilitation. If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such inaction shall result in a default decision to deny reinstatement of the license or registration or reduction of penalty.

DEFINITIONS: TYPES OF DISCIPLINE

Revocation: Permanent loss of a license. Once the license is revoked, respondent may take affirmative action to petition the Board for reinstatement of his/her license and demonstrate to the Board's satisfaction that he/she is rehabilitated pursuant to the Board's applicable regulations.

Suspension: Invalidation of a license for a temporary, fixed period. The licensee must cease practice immediately and is not permitted to practice during any period of suspension.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation order. This stay of probation is conditioned on full compliance with the terms and conditions of probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation order. The stay of a suspension order is conditioned on full compliance with the terms and conditions of probation.

Probation: A period of time during which a respondent's discipline is stayed in exchange for respondent's compliance with specified terms and conditions set forth in the order relating to the violation(s).

Uniform Standards for Substance Abusing Licensees. The standards adopted pursuant to Business and Professions Code Section 315 by the Substance Abuse Coordination Committee in April 2011, relating to substance abusing licensees. These specific standards are mandatory and apply to cases involving substance abusing licensees.

The Board's Uniform Standards for Substance Abusing Licensees, which are derived from the Department of Consumer Affairs' Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (4/11)" pursuant to section 315 of the Business and Professions Code, describe those terms or conditions that shall be applied to a substance abusing licensee, and are incorporated into the terms and conditions of probation.

If the conduct is found to be a violation involving the use of drugs, alcohol, or both, a clinical diagnostic evaluation shall be ordered by the Board as a condition of probation. This clinical diagnostic evaluation determines and defines whether the licensee is in fact a substance abusing licensee and therefore subject to compliance with the Uniform Standards for Substance Abusing Licensees. In cases, where the clinical diagnostic evaluator's report finding is that the individual is not a substance-abusing licensee, then the remaining provisions of the Uniform Standards may be waived.

Diversion Program

There are two pathways into the Board's drug and alcohol recovery monitoring program: 1) Participants with drug and/or alcohol addiction issues who have self-referred to the program and are not under a disciplinary order; and 2) Participants who have been ordered into the Board's Diversion program as a result of violations related to drug and/or alcohol use.

Self-Referrals

A licensee can enroll in the Board's Diversion program at any time. In these self-referral cases, the Board may not have any conviction related information, or evidence of alcohol or substance abuse to warrant disciplinary action. When a licensee enrolls in the Board's Diversion program as a self-referral, the participation is confidential. Each licensee who requests participation in the Diversion program shall agree to cooperate with the Board's Diversion program designed for him or her. Any failure to comply with the program may result in the licensee's termination of participation in the program.

If a self-referred participant is determined to be too great a risk to the public health, safety, and welfare to continue practicing, the facts shall be reported to the Board's Executive Director and all documents and information pertaining to and supporting that determination shall be provided to the Executive Director. The matter may be referred for investigation and disciplinary action by the Board.

Probationary Participants

Probationary participants are required to comply with terms and conditions of probation or otherwise risk losing their license. A clinical diagnostic evaluation will be ordered as a term of probation and the conditions applying the Uniform Standards will be included.

Uniform Standards
Regarding Substance-Abusing
Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implemented

by

Department of Consumer Affairs,
Substance Abuse Coordination Committee

Brian J. Stiger, Director

April 2011

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts Board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnostic evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the Board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the Board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/Board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing Board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a Board diversion program or whose license is on probation has an employer, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee’s work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A Board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II*</u>	<u>Year 2+</u>	<u>36-104 per year</u>

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a Board from increasing the number of random tests for any reason. Any Board who finds or has suspicion that a licensee has committed a violation of a Board’s testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's Board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the Board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the Board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each Board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each Board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned

substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each Board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversion Participant Dates

Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test Dates

Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels) Date

Contractor Notified Board of Questionable Test Identify

Substances Detected or Questionably Detected Dates Failed

to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing Dates

Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which) Final

Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a Board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the Board shall give

consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the Board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;

- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse; and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A Board may require the use of worksite monitors. If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the Board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.

- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The Board shall order the licensee to cease practice;

2. The Board shall contact the licensee and instruct the licensee to leave work; and
3. The Board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the Board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the Board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the Board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a Board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the Board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;

4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;

5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support

their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.

4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a Board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the Board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the Board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the Board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:
 - Specimen Collectors:
 - (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
 - (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
 - (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
 - (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drugtesting.
 - (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.

- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4.

- Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the Board, and,
- (5) shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

- Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) the monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor

with like practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) all have an active unrestricted license, with no disciplinary action within the last five (5) years.
- (4) shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
- Interview other staff in the office regarding the licensee's behavior, if applicable.
- Review the licensee's work attendance.

Any suspected substance abuse must be verbally reported to the contractor, the Board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:

- the licensee's name;
- license number;
- worksite monitor's name and signature;
- worksite monitor's license number;
- worksite location(s);
- dates licensee had face-to-face contact with monitor;
- staff interviewed, if applicable;
- attendance report;
- any change in behavior and/or personal habits;
- any indicators that can lead to suspected substance abuse.

(a) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(b) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate Board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a Board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The Board shall disclose the following information to the public for licensees who are participating

in a Board monitoring/diversion program regardless of whether the licensee is a self-referral or a Board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee’s participation in a diversion program.

- Licensee’s name;
- Whether the licensee’s practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a Board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee shall be implemented.

#15 Uniform Standard

1. If a Board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the Board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor’s performance in adhering to the uniform standards established by the Board. The reviewer must provide a report of their findings to the Board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor’s monitoring services that would interfere with the Board’s mandate of public protection.
3. The Board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each Board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each Board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a Board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a Board is determining whether a license should be revoked or placed on probation.

The Board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

MODEL PROBATIONARY TERMS AND CONDITIONS

Unless otherwise specified, the use of the term “Board” in these conditions includes the Board itself or its designee. The model probationary terms and conditions are divided into three general categories:

(A) Standard Terms and Conditions of Probation. Those conditions of probation that will generally appear in all cases involving probation as a standard term and condition;

(B) Optional Terms and Conditions of Probation. Those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of the particular case; and

(C) Terms and Conditions of the Uniform Standards for Substance Abusing Licensees. These terms and conditions must be used in cases where the violation involves the use of drugs or alcohol.

A summary list of the model conditions appears below, followed by the model text for each condition.

A. STANDARD TERMS AND CONDITIONS FOR PROBATIONARY ORDERS MODEL LANGUAGE**A. STANDARD TERMS AND CONDITIONS FOR PROBATIONARY ORDERS (MODEL LANGUAGE)**

- (1) Obey all Laws
- (2) Quarterly Reports
- (3) Probation Surveillance Program
- (4) Interviews with Medical Consultants
- (5) Cost Recovery
- (6) License Surrender
- (7) Tolling for Out of State Practice or In-state Non-Practice (Inactive)
- (8) Probation Violation/Completion of Probation
- (9) Notification to Board of Employers; Notification to Employers of Discipline
- (10) Supervision of Physician Assistants and Advanced Practice Nurses

B. OPTIONAL TERMS AND CONDITIONS FOR PROBATIONARY ORDERS (MODEL LANGUAGE)

- (11) Suspension
- (12) Controlled Drugs – Total Restriction
- (13) Controlled Drugs – Surrender of DEA Permit
- (14) Controlled Drugs – Partial Restriction
- (15) Controlled Drugs – Maintain Record
- (16) Pharmacology/Prescribing Course
- (17) Record Keeping Course
- (18) Education Course
- (19) Professional Boundaries Course
- (20) Medical Ethics Course

- (21) Clinical Assessment and Training Program
- (22) Written Examination
- (23) Third-Party Presence
- (24) Prohibited Practice
- (25) Psychiatric Evaluation
- (26) Psychotherapy
- (27) Physical Health Evaluation
- (28) Medical Treatment
- (29) Community Service
- (30) Restitution
- (31) Monitoring – Billing/Practice
- (32) Solo Practice Prohibition/Supervised Structure

C. TERMS AND CONDITIONS OF THE UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES (MODEL LANGUAGE)

- (33) Clinical Diagnostic Evaluation
- (34) Diversion Program – Alcohol and Drugs
- (35) Drugs – Abstain from Use
- (36) Alcohol – Abstain from Use
- (37) Notification to Employer
- (38) Biological Fluid Testing
- (39) Group Support Meetings
- (40) Worksite Monitor
- (41) Results of Biological Fluid Tests
- (42) Major and Minor Violations
- (43) Request by a Substance Abusing Licensee to Return to Practice
- (44) Request by a Substance Abusing Licensee for Reinstatement of a Full and Unrestricted License--
Petition for Reinstatement

A. STANDARD TERMS AND CONDITIONS FOR PROBATIONARY ORDERS (MODEL LANGUAGE)

1. Obey all Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

2. Quarterly Reports

Respondent shall submit quarterly reports to the Board using the Quarterly Report of Compliance Form, OMB 10 ~~(5/97)~~ (1/18), which is hereby incorporated by reference, declaring under penalty of perjury whether there has been compliance with all the conditions of probation.

3. Probation Surveillance Program

Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of Business and residence, which shall both serve as addresses of record for purposes of service of process. Changes of such addresses shall be immediately communicated in writing to the Board. A post office box shall not be permitted to serve as an address of record.

Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than thirty (30) calendar days.

4. Interviews with Medical Consultants

Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.

5. Cost recovery

Respondent shall reimburse the Board the amount \$ _____ [insert amount] within 90 calendar days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

6. License surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

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

In the event respondent shall leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Board or its designee in writing within ten (10) calendar days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Section 2051 and /or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of the state shall be considered as time spent in the practice of

medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition will extend the probationary period by the period of out-of-state residence or non-practice. Respondent's period of non-practice while on probation shall not exceed two (2) years.

8. Probation Violation/Completion of Probation

If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be automatically extended until the matter is final. Respondent shall comply with all financial obligations (e.g., cost recovery) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's license will be fully restored.

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

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers, and supervisors and shall give specific written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

Respondent shall notify any employer of the terms of this probation by providing a copy of this decision to each and every employer within 30 calendar days of this effective date of the decision, asking each employer to acknowledge receipt in writing, and submitting such acknowledgement to the Board.

10. Supervision of Physician Assistants and Advanced Practice Nurses.

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

B. OPTIONAL TERMS AND CONDITIONS FOR PROBATIONARY ORDERS (MODEL LANGUAGE)

11. Suspension

Respondent shall be suspended from the practice of medicine for [insert] beginning the effective date of this decision.

[Optional: Respondent shall be suspended from the practice of medicine until terms [insert] are completed and evidence of the completion is received and acknowledged by the Board.]

12. Controlled Drugs: Total Restriction

Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substance Act (Act) except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

13. Controlled Drugs: Surrender of DEA Permit

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.

14. Controlled Drugs: Partial Restriction

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act, except for those drugs listed in Schedule(s) [insert] _____ of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.

(OR)

Respondent is permitted to prescribe, administer, dispense or order controlled substances list in Schedule(s) [insert] _____ of the California Uniform Controlled Substances Act for in-patients in a hospital setting, and not otherwise.

NOTE: Use the following additional paragraph only if there is an actual elimination of the authority to prescribe a Scheduled Controlled Substance.

[OPTION]

Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.

15. Controlled Drugs: Maintain Record

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following: (1) the name and address of the patient; (2) the date; (3) the character and quantity of the controlled substances involved; and (4) the pathology and purpose for which the controlled substance was furnished. Respondent shall keep these records in

a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

16. Pharmacology/Prescribing Course

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in Pharmacology/Prescribing practices course equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices/pharmacology course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirement for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board within fifteen (15) calendar days after successful completion.

17. Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in record keeping which respondent shall successfully complete during the first year of probation. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

18. Education Course

Within 90 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course and enroll in the approved educational course(s) related to the violations charged in the Accusation that would be equivalent to similar courses offered by the Physician

Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of probation enrollment. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

An education course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

19. Professional Boundaries Course

Within 90 calendar days of the effective date of this decision, respondent, with prior approval from the Board, shall enroll in a Board approved Professional Boundaries course related to the violations charged in the Accusation that would be equivalent to similar courses offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of probation enrollment. All courses shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A Professional Boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of the condition if the course would have been approved by the Board.

Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

20. Medical Ethics Course

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation. All courses shall be at the respondent's expense and shall be in addition to the

Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall submit written evidence of successful completion of the course to the Board with fifteen (15) calendar days after successful completion.

21. Clinical Assessment and Training Program

Within 90 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical assessment and training program equivalent to the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the Accusation. Respondent shall successfully complete the program within six (6) months from the date of enrollment and may be required to pass an examination administered by the Board or its designee related to the program's contents.

The program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health, basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to the area of practice to which the violation(s) related and, at a minimum, a 40 hour program of clinical education in the area of practice to which the violations related and that takes into account the assessment, decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the program.

Based upon respondent's performance and test results in the assessment and clinical education, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional education or training, treatment needed for any medical or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the recommendations of the program.

The Board may immediately order respondent to cease the practice of medicine without a hearing if the respondent should fail to enroll, participate in, or successfully complete the program within the time specified. The respondent may not resume the practice of medicine until enrollment or participation in the program is complete.

Respondent shall submit written evidence of successful completion of the program to the Board within fifteen (15) calendar days after successful completion.

OPTION # 1: Condition Precedent

Respondent shall not practice medicine until respondent has successfully enrolled, participated in, completed, and submitted written evidence of successful completion to the Board and the Board has confirmed receipt of such evidence of completion.

NOTE: The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence or incompetence or repeated acts of negligence where

the physician's fitness to practice should be evaluated before he or she may practice to ensure the public is protected.

OPTION #2: Additional Professional Enhancement Program

Within 60 calendar days after respondent has successfully completed the clinical assessment and training program, respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in such professional enhancement program at the respondent's own expense during the term of probation, or until the Board, or its designee, determines that further participation is no longer necessary.

22. Written Examination

Within 60 calendar days of the effective date of this decision, (or upon completion of the required education course) (or upon completion of the required clinical training program) respondent shall take and pass a written examination administered by the Board or its designee. The written exam will be the COMVEX. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The respondent shall pay the costs of all examinations.

(Use either of the following two options with the above paragraph.)

OPTION # 1: Condition Precedent

Respondent shall not practice medicine until respondent has passed this examination and has been so notified by the Board in writing.

Note: The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence where the physician's fitness to practice should be evaluated before he/she may practice, or any other case where public protections requires confirmation of respondent's skills prior to a return to practice medicine.

OPTION #2: Condition Subsequent

If respondent fails to take and pass this examination by the end of the first six (6) months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.

23. Third-Party Presence

During probation, respondent shall have a third-party present while examining or treating [insert: male, female, minor] patients. Respondent shall, within 30 calendar days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will act as the required third-party present. The respondent shall execute a release authorizing the third-party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.

The respondent shall provide written notice to respondent's patients that the respondent is on probation and as a condition of probation the respondent must have a third-party monitor that shall be present during all consultations, examinations, or treatment with [insert: male, female or minor] patients. The patient must sign the notice acknowledging receipt of the notice and the respondent shall maintain a copy of the original notification in the patient's file; and shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain notification for the entire term of probation. The practice monitor shall inspect all patient files and confirm in a report to the Board the status of compliance with such notice and maintenance of signed acknowledgement in patient's file.

NOTE: Sexual contact, as defined in Business and Professions Code (BPC) Section 729, and BPC Section 2246 requires revocation without stay of probation. Additionally, Title 16 of the California Code of Regulations, Section 1663(b), requires revocation without stay of probation. This term should be used where public protection requires monitoring of a licensee's contact with specific patient populations.

24. Prohibited Practice

During probation, respondent is prohibited from practicing [insert] _____.

25. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.

In the event further treatment is recommended by the evaluating psychiatrist to ensure public protection, respondent may be required by the Board or its designee to undergo psychiatric treatment. Respondent shall within 30 calendar days of notice by the Board, submit to the Board for its prior approval the name and qualification of a psychiatrist of respondent's choice to provide the further treatment. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status reports to the Board indicating whether or not the respondent is capable of practicing medicine safely.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until further notified by the Board of its determination that respondent is mentally fit to practice safely.

26. Psychotherapy

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluation by a Board appointed psychiatrist. Respondent shall pay all costs of the psychotherapy and the psychiatric evaluation.

NOTE: This condition is for those cases where the evidence suggests that the respondent has had impairment (for example, impairment by mental illness, alcohol abuse and drug abuse) that related to the violations.

27. Physical Health Evaluation

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a physical health evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the physical health evaluation.

In the event further treatment is recommended by the evaluating physician to ensure public protections, respondent may be required by the Board or its designee to undergo such further treatment. Respondent shall, within 30 calendar days of the written notice by the Board, submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall pay the cost of such medical treatments.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is medically fit to practice safely.

28. Medical Treatment

Within 60 calendar days of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of physician of respondent's choice. Upon approval, respondent shall undergo and continue until the Board deems that no further medical treatment is necessary. Respondent shall

have the treating physician submit quarterly status reports of the periodic medical evaluations. Respondent shall pay the costs of such medical treatments. Respondent shall comply with any treatment recommended by the physician that the physician determines is required to ensure that respondent may continue to practice safely.

29. Community Service

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program, in which respondent provides free medical services on a regular basis to a community or charitable facility or agency for at least [insert] _____ hours a month for the first [insert] _____ months of probation.

NOTE: Not for quality of care issues.

30. Restitution

Respondent shall provide restitution to [insert] _____ in the amount of [insert] _____ prior to the completion of the first year of probation.

NOTE: Restitution should be issued to patients only.

31. Monitoring: Practice/Billing

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval a _____ [insert: practice, billing or practice and billing monitor(s)], the names and qualifications of one or more licensed physicians (D.O. or M.D.) whose licenses are valid and in good standing. A monitor shall have no prior business relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to be neutral and objectively monitor the respondent. Respondent shall pay for all monitoring costs. The monitor shall be provided with copies of all decision(s), accusation(s) and other information deemed relevant by the Board or its designee. Failure to comply with this term and condition may result in an automatic order from the Board for the respondent to cease the practice of medicine until such a monitor has been approved by the Board.

32. Solo Practice Prohibition/Supervised Structure

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a licensed physician (D.O. or M.D.) whose license is valid and in good standing and who will supervise the respondent. Respondent shall not engage in the solo practice of medicine, and shall be employed as a physician, in which there is a supervised structure and environment, and wherein respondent reports to directly to another licensed

physician (D.O. or M.D.). The respondent shall pay all costs incurred by supervision of the respondent by the licensed physician.

Notice of changes to the respondent's employment or nature of practice shall be provided to the Board or its designee within five (5) calendar days of such change. Respondent shall cease the practice of medicine when the respondent is no longer in a supervised environment. The respondent shall not engage in the practice of medicine until such time as the Board appoints another licensed physician to supervise the respondent.

C. TERMS AND CONDITIONS APPLYING THE UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES (MODEL LANGUAGE)

(NOTE: These terms and conditions must be included in any probationary order where the violation involves the use of drugs and/or alcohol.)

33. Clinical Diagnostic Evaluation (Uniform Standards for Substance Abusing Licensees #1, #2 and #6)

Upon order of the Board, respondent shall undergo a clinical diagnostic evaluation. The evaluator(s) shall be approved by the Board. The evaluator must hold a valid, unrestricted license to practice, with a scope of practice to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health professionals with substance abuse disorders. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion: whether the licensee has a substance abuse problem; whether the licensee is a threat to himself/herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such determination.

The evaluator shall not have any financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. Respondent shall provide the evaluator with a copy of the Board's decision prior to the clinical diagnostic evaluation being performed.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) calendar days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) calendar days. The cost of such evaluation shall be borne by the licensee.

Respondent shall cease practice during the clinical diagnostic evaluation and review by the Board. While the results of the clinical diagnostics evaluation are pending, the licensee shall be randomly drug tested at least two (2) times per week.

The Board will review the results of the clinical diagnostic evaluation to determine whether or not respondent is safe to return to either part time or full time practice and what restrictions or recommendations should be imposed on respondent and whether inpatient, outpatient, or other type of treatment is necessary after considering the following criteria: recommendation of the clinical diagnostic evaluation; license type; licensee history; documented length of sobriety; time that has elapsed since substance use; scope and pattern of use; treatment history, licensee's medical history and current medical condition; nature, duration, and severity of the substance abuse; and whether the licensee is a threat to himself/ herself or others.

Respondent's license shall remain suspended until the Board determines that he or she is able to safely practice either full time or part time, and has had at least 30 calendar days of negative drug test results.

34. Diversion Program: Alcohol and Drugs (Uniform Standards for Substance Abusing Licensees #13, #14, #15, #16)

Within thirty (30) calendar days of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Failure to comply with the requirements of the Diversion program, quitting the Diversion Program without the Board's permission, or being expelled from the program for cause shall constitute a violation of probation by respondent. Respondent's probation shall be automatically extended until respondent successfully completes the program. The Board's Diversion program shall utilize the Uniform Standards for Substance Abusing Licensee, as set forth in Part II of the Disciplinary Guidelines.

Respondent shall comply with all components of the Board's Diversion program. Respondent shall sign a release authorizing the Board's Diversion program to report all aspects of participation of the Diversion program as requested by the Board or its designee.

The Diversion program shall comply with the following Uniform Standard for Substance Abusing Licensees:

A vendor that provides Diversion services must report to the Board any major violations, as defined in Uniform standard # 10 within (1) business day. A vendor must report to the Board any minor violation, as defined in Uniform Standard #10 within (5) business days.

A Vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

Specimen Collectors:

- The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.

- The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- The provider or subcontractor must provide collection sites that are located in areas throughout California.
- The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.
- The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- Must undergo training as specified in Uniform Standard #4.

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- must have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse;
- must be licensed or certified by the state or other nationally certified organization;
- must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- shall report any unexcused absence within 24 hours to the Board, and,
- shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors:

The worksite monitor must meet the following qualifications:

1. Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or,

as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.

3. Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
 - Interview other staff in the office regarding the licensee's behavior, if applicable.
 - Review the licensee's work attendance.

Any suspected substance abuse must be verbally reported to the contractor, the Board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:

- the licensee's name;
- license number;
- worksite monitor's name and signature;
- worksite monitor's license number;
- worksite location(s);
- dates licensee had face-to-face contact with monitor;
- staff interviewed, if applicable;
- attendance report;
- any change in behavior and/or personal habits;
- Any indicators that can lead to suspected substance abuse.

Treatment Providers:

Treatment facility staff and services must have:

- Licensure and/or accreditation by appropriate regulatory agencies;
- Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- Professional staff who are competent and experienced members of the clinical staff;
- Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- Means to provide treatment/progress documentation to the provider.

General Vendor Requirements:

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely Diversion services as follows:

- The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services; of said contractor within 30 business days of notification of failure to provide adequate services.
- The vendor shall notify the appropriate Board within five (5) business days of termination of said subcontractor.

External Independent Audits

If the Board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent review team from outside the department with no real or apparent conflict of interest with the vendor providing the Diversion/monitoring services. In addition, the reviewer shall not be a part of or under the control of the Board. The independent review or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs. The audit must assess the vendor's performance in adhering to the uniform standard, established by the Board. The reviewer must provide a report of their findings to the Board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, irregularities, or other non-compliance with the terms of the vendor's Diversion/monitoring services that would interfere with the Board's mandate of public protection. The Board and the department shall respond to the findings in the audit report.

Disclosure

The Board shall disclose the following information to the public for licensees who are participating in a Board Diversion/monitoring program regardless of whether the licensee is a self-referral or a Board referral:

- The licensee's name
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction(s) imposed.

This disclosure shall not contain information that the restrictions are the result of the licensee's participation in a Diversion program.

35. Drugs: Abstain from Use

Respondent shall abstain completely from the personal use or possession, injection, consumption by any route, including inhalation of all controlled substances as defined in the California Uniform

Controlled Substances Act, and dangerous drugs as defined in the California Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent by another practitioner, for a bona fide illness or condition.

[Optional language: This condition may be waived or modified by the Board upon a written determination by the Clinical Diagnostic Evaluation that respondent is not a substance abusing licensee.]

36. Alcohol: Abstain from Use

Respondent shall abstain completely from the use of alcoholic beverages.

[Optional language: This condition may be waived by the Board upon a written finding by the Clinical Diagnostic Exam that respondent is not a substance abusing licensee.]

37. Notification to Employer (Uniform Standards for Substance Abusing Licensees #3)

If a licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board, the worksite monitor, and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

38. Biological Fluid Testing (Uniform Standards for Substance Abusing Licensees #4)

Respondent shall undergo random and directed biological fluid or specimen testing as determined by the Board or its designee. Respondent shall be subject to [a minimum of fifty-two (52)] random tests [per year within the first year of probation, and a minimum of thirty-six (36) random tests per year thereafter,] for the duration of the probationary term. Biological fluid or specimen testing may be required on any day, including weekends and holidays. The cost of such testing shall be borne by the Respondent.

The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, so that respondent can make no reasonable assumption of when he/she will be tested. Respondent shall be required to make daily contact to determine if the drug testing is required.

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance abuse

TESTING FREQUENCY SCHEDULE

The Board may order a licensee to drug test at any time. Additionally, each licensee shall be tested randomly in accordance with the following schedule:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>LEVEL I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>LEVEL II*</u>	<u>Year 2+</u>	<u>36-104 per year</u>

* The minimum range of 36-104 identified in level II, is for the second year of probation or Diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or suspects that a licensee has committed a violation of the Board’s testing program or has committed a “major violation”, as defined in Uniform Standard #10, may re-establish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

Any detection through testing of alcohol, or of a controlled substance, or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, may cause the Board or its designee to increase the frequency of testing, in addition to any other action including but not limited to further disciplinary action.

Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that he or she is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation.

If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an “out of range result” is obtained, the Board may require respondent to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted results and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An “out of range result” is one in which, based on scientific principles, indicates the respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that respondent altered the test results, the results shall be considered an admission of a positive urine screen and constitutes a violation of probation and respondent must cease practicing. Respondent shall not resume practice until notified by the Board. If respondent tests positive for a banned substance, respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board.

The Board or its designee may require less frequent testing if any of the following apply.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE:

- **Previous Testing Sobriety.** In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing prior to being subject to testing by the Board, the Board may give consideration to that testing frequency schedule so that it is equivalent to this standard.
- **Violation(s) Outside of Employment.** Where the basis for probation or discipline is a simple incident or conviction involving alcohol or drugs, or two incidents or convictions involving alcohol or drugs that were at least seven (7) years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.
- **Not Employed in Health Care Field.** The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 calendar days. At such time, the licensee returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.
- **Tolling.** The Board may postpone all testing for any person whose probation or Diversion is placed in a tolling status if the overall length of the probationary or Diversion period is also tolled. The licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II shall be in effect.
- **Substance Use Disorder Not Diagnosed.** In cases where no current substance use disorder diagnosis is made, a lessor period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

- Biological fluid or specimen testing may be required on any day, including weekends and holidays. Respondent shall be required to make daily contact to determine if drug testing is required. The Board should be prepared to report data to support back-to-back testing as well as, number different intervals of testing.
- Licensees shall be drug tested on the date of notification as directed by the Board.
- Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

- Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
- Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
- Collection of specimens shall be observed.
- Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board
- Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.
- A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) business days of receipt of the specimen. The Board should be notified of a non-negative test result within one (1) business day and will be notified of negative test results within seven (7) business days.
- The Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternative testing method is appropriate.

[Optional: This condition may be waived or modified by the Board or its designee upon a written finding by the Clinical Diagnostic Evaluator that respondent is not a substance abusing licensee.]

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit the Board's authority to reduce or eliminate the penalties herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code 11522 or statutes applicable to the Board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, the Board shall collect and report historical data and post implementation data as follows:

Historical Data: Two Years Prior to Implementation of Standard

The Board shall collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has:

- 1) tested positive for a banned substance,
- 2) failed to appear or call in, for testing on more than three occasions,
- 3) failed to pay testing costs, or
- 4) a licensee who has given a diluted or invalid specimen.

Post Implementation Data: Three Years

The Board shall collect the following data annually, for a period of three years, for every probationer and Diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data collected shall be reported to the Department of Consumer Affairs and the Legislature on a yearly basis and shall include, but may not be limited to:

- 1) Probationer/Diversion Participant Unique Identifier
- 2) License Type
- 3) Probation/Diversion Effective Date
- 4) General Range of Testing Frequency by/for Each Probationer/Diversion Participant
- 5) Dates Testing Requested
- 6) Identify the Entity that Performed Each Test
- 7) Dates Tested Positive
- 8) Dates Contractor (if applicable) was informed of Positive Test
- 9) Dates Board was informed of Positive Test
- 10) Dates of Questionable Tests (e.g. dilute, high levels)
- 11) Date Contractor Notified the Board of Questionable Test
- 12) Identify Substances Detected or Questionably Detected
- 13) Dates Failed to Appear
- 14) Dates Contractor Notified Board of Failure to Appear
- 15) Dates Failed to Call in for Testing
- 16) Date Contractor Notified Board of Failure to Call in for Testing
- 17) Dates Failed to Pay for Testing
- 18) Date(s) Removed/Suspended from Practice (identify which)
- 19) Final Outcome and Effective Date (if applicable)

39. Group Support Meetings (Uniform Standards for Substance Abusing Licensees #5, #13)

[OPTIONAL: If the Board requires respondent to participate in group support meetings then the following applies:]

Respondent shall participate in group support meetings. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Any costs associated with attending and reporting on group support meetings shall be paid by respondent.

When determining the frequency of group support meeting to be attended, the Board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications:

A group meeting facilitator for any support group meeting:

- must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- must be licensed or certified by the state or other nationally certified organization;
- must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- shall report any unexcused absence within 24 hours to the Board, and,
- shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

[Optional: This condition may be waived or modified by the Board or its designee upon a written finding by the Clinical Diagnostic Evaluator that respondent is not a substance abusing licensee.]

40. Worksite Monitor (Uniform Standards for Substance Abusing Licensees #7, #13)

OPTIONAL: If the Board requires respondent to use a worksite monitor then the following applies:

Respondent shall obtain a worksite monitor. Respondent shall submit the name of the proposed worksite monitor within twenty (20) calendar days of the effective date of the decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding respondent and the worksite monitor's requirements and reporting responsibilities. If the worksite monitor terminates the agreement with the Board and respondent, respondent shall not resume practice until another worksite monitor is obtained by respondent and approved by the Board.

The Worksite Monitor Must Meet the Following Qualifications:

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional. If no monitor with like practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed health professional, he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
- Interview other staff in the office regarding the licensee's behavior, if applicable.
- Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall comply with the following:

1. Any suspected substance abuse must be verbally reported to the contractor, the Board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

[Optional: This condition may be waived or modified by the Board or its designee upon a written determination by the Clinical Diagnostic Evaluator that respondent is not a substance abusing licensee.]

41. Results of Biological Fluid Tests (Uniform Standards for Substance Abusing Licensees #8 and #9)

If the results of a biological fluid test indicate that a licensee has used, consumed, ingested or administered to himself or herself a prohibited substance, the Board shall order the licensee to cease practice and contact the licensee and instruct him or her to leave work immediately. The Board shall also immediately notify the licensee's employer that the licensee may not work.

Thereafter, the Board should determine whether the positive test result is in fact evidence of prohibited use by consulting the specimen collector and laboratory, communicating with the licensee and/or any physician who is treating the licensee, and communicating with any treatment provider, including group facilitator(s). If the Board confirms that a positive test result is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined by Uniform Standard #10, and the Board shall impose the consequences of committing a major violation set forth in Uniform Standard #10, in addition to any other terms and conditions the Board determines are

necessary to ensure public protection or to enhance the rehabilitation of the licensee. If no prohibited use exists, the Board shall immediately lift the cease practice order.

42. Major and Minor Violations (Uniform Standards for Substance Abusing Licensees #10)

Major Violations include, but are not limited to:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating patients while under the influence of drugs/alcohol;
5. Committing any drug/alcohol offense that would constitute a violation of the California Business and Professions Code, or other state/federal laws;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard for Substance Abusing Licensee # 9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. A Board order to cease practice. The Board may also order the licensee to undergo a new clinical diagnostic evaluation. The Board's order may state that the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other actions as determined by the Board.

Minor Violations included, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

43. Request by a Substance – Abusing Licensee to Return to Practice (Uniform Standards for Substance Abusing Licensees # 11)

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

44. Request by a Substance Abusing Licensee for Reinstatement of a full and unrestricted license Petition for Reinstatement (Uniform Standards for Substance Abusing Licensees #12)

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative e Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrate sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery/Diversion Program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

The general bases for discipline are listed by statute number in the Business and Professions Code. An accusation, statement of issues, or other charging document may also allege violations of other related statutes or regulations. The bases are followed by the Board-determined penalty. The standard terms of probation as stated shall be included in all decisions and orders. Except where there is a finding that respondent is a substance-abusing licensee, the Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations that take into account unique circumstances. However, in all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the ALJ hearing the case include an explanation of the deviations or omissions in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision for final action.

B & P 725 EXCESSIVE PRESCRIBING OR TREATMENTS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions and

1. Controlled Drugs: Total DEA restriction (12)
2. Controlled Drugs: Surrender DEA permit (13)
3. Controlled Drugs: Partial DEA Restriction (14)
4. Controlled Drugs: Maintain Records (15)
5. Pharmacology/ Prescribing Course (16)
6. Education Course (18)
7. Written Examination (22)
8. Clinical Assessment and Training Program (21)
9. Monitor for Practice (31)
10. If warranted, suspension: 30 calendar days or more (11)

B & P 726 SEXUAL MISCONDUCT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 10 years probation, standard terms and conditions, and

1. Suspension: 90 business days or more (11)
2. Education Course (18)
3. Clinical Assessment and Training Program (21)
4. Psychiatric Evaluation/Psychotherapy (25),(26)
5. Third-Party Presence (23)

6. Professional Boundaries Course (19)

7. Medical Ethics Course (20)

Note: If violation constitutes sexual contact or sexual exploitation, revocation must be ordered and not stayed. Sexual contact as defined in Business and Professions Code (BPC) Section 729, and BPC Section 2246 requires revocation without stay of probation. Additionally, Title 16, California Code of Regulations, Section 1663(b), subsection (b) herein, requires revocation without stay of probation.

B & P 729 SEXUAL EXPLOITATION

Maximum Discipline: Revocation

Minimum Discipline: Revocation

Pursuant to Business and Professions Code Sections 2246, this cause of actions is grounds for revocation. Revocation may not be stayed by the Administrative Law Judge or Board.

B & P 810 INSURANCE FRAUD

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)

2. Education Course (18)

3. Clinical Assessment and Training Program (21)

4. Monitor: Practice/Billing (31)

5. Solo Practice Prohibition/Supervised Structure (32)

6. Medical Ethics Course (20)

7. Restitution (30)

Note: Suspension or revocation may be mandated by law's provision. See Business and Professions Code Section 810 subdivision (c).

B & P 820 MENTAL OR PHYSICAL ILLNESS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Psychiatric Evaluation/Psychotherapy (25),(26)

2. Physical Health Evaluation (27)

3. Written Examination (22)

4. Solo Practice Prohibition/Supervised Environment (32)

5. Prohibited Practice (24)
6. Monitoring: Practice/Billing (31)
7. Clinical Assessment and Training Program (21)

B & P 2234(b) GROSS NEGLIGENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted] (16)
4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 2234 (c) REPEATED NEGLIGENT ACTS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted](16)
4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 2234 (d) INCOMPETENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Pharmacology/Prescribing Course [if warranted] (16)

4. Written Examination (22)
5. Clinical Assessment and Training Program (21)
6. Monitor: Practice/ Billing (31)
7. Solo Practice Prohibition/ Supervised Structure (32)
8. Prohibited Practice (24)
9. Medical Ethics Course (20)

B & P 2234 (e) DISHONESTY

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 year probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Clinical Assessment and Training Program (21)
4. Monitor: Practice/ Billing (31)
5. Solo Practice Prohibition/Supervised Structure (32)
6. Medical Ethics Course (20)
7. Community Service (29)
8. Restitution (30)

B & P 2236 CRIMINAL CONVICTION: FELONIES/MULTIPLE MISDEMEANORS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Psychiatric Evaluation/Psychotherapy (25),(26)
3. Education Course (18)
4. Clinical Assessment and Training Program (21)
5. Monitor: Practice/ Billing (31)
6. Medical Ethics Course (20)
7. Community Service (29)
8. Restitution (30)

B & P 2236 CRIMINAL CONVICTION; SINGLE MISDEMEANOR

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Education Course (18)
2. Psychiatric Evaluation/Psychotherapy (25),(26)
3. Monitor: Practice/ Billing (31)
4. Medical Ethics Course (20)

- 5. Community Service (29)
- 6. Restitution (30)

B & P 2237 DRUG RELATED CONVICTION

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

- 1. Suspension: 90 calendar days or more (11)
- 2. Pharmacology/ Prescribing Course (16)
- 3. Clinical Assessment and Training Program (21)
- 4. Medical Ethics Course (20)
- 5. Controlled Drugs: Total DEA Restriction (12)
- 6. Controlled Drugs: Surrender of DEA Permit (13)
- 7. Controlled Drugs: Partial DEA Restriction (14)
- 8. Controlled Drugs: Maintain Record (15)
- 9. Psychiatric Evaluation/ Psychotherapy (25),(26)
- 10. Monitor: Practice (31)

B & P 2238 VIOLATION OF DRUG STATUTE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

- 1. Suspension: 90 calendar days or more (11)
- 2. Pharmacology/Prescribing Course (16)
- 3. Clinical Assessment and Training Program (21)
- 4. Medical Ethics Course (20)
- 5. Controlled Drugs: Total DEA Restriction (12)
- 6. Controlled Drugs: Surrender of DEA Permit (13)
- 7. Controlled Drugs: Partial DEA Restriction (14)
- 8. Controlled Drugs: Maintain Record (15)
- 9. Psychiatric Evaluation/Psychotherapy (25),(26)
- 10. Monitor: Practice (31)

B & P 2239 SELF ABUSE OF DRUGS OR ALCOHOL

Note: Because this cause of action involves licensee use of alcohol or substance abuse, the probation must include an order by the Board for a clinical diagnostic evaluation and entry into the Board's Diversion Program. The remaining provisions of the Uniform Standards for Substance Abusing Licensees may apply contingent upon the finding of the clinical diagnostic evaluation that the licensee is a substance abusing licensee.

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, Uniform Standards for Substance Abuse Licensees 1-16 and terms and conditions (31-42), and

1. Suspension: 10 calendar days or more (11)
2. Controlled Drugs: Total DEA Restriction (12)
3. Controlled Drugs: Surrender of DEA Permit (13)
4. Controlled Drugs: Partial DEA Restriction (14)
5. Controlled Drugs: Maintain Record (15)
6. Psychiatric Evaluation/Psychotherapy (25),(26)
7. Monitor: Practice (31)
8. Medical Ethics Course (20)
9. Conditions Applying to the Uniform Standards 1-16 & Model Language (33-44), including:
 - a. Clinical Diagnostic Evaluation (Uniform Standard 1,2,6, Model Language (33))
 - b. Diversion Program (Uniform Standard 13,14,15,16, Model Language (34))
 - c. Drugs: Abstain from Use (Model Language (35))
 - d. Alcohol: Abstain from Use (Model Language (36))
 - e. Notification to Employer (Uniform Standard 3, Model Language (37))
 - f. Random Bodily Fluid Testing (Uniform 4, Model Language (38))
 - g. Group Support Meetings (Uniform Standard 5,13, Model Language (39))
 - h. Worksite Monitor (Uniform Standard 7,13, Model Language (40))
 - i. Results of Biological Fluid Testing (Uniform Standard 8,9, Model Language (41))
 - j. Major and Minor Violations (Uniform Standard 10, Model Language (42))
 - k. Request to Return to Practice (Uniform Standard 11, Model Language (43))
 - l. Request for Reinstatement (Uniform Standard 12, Model Language (44))

B & P 2241 FURNISHING DRUGS TO AN ADDICT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

If warranted,

1. Suspension: 10 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Course (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Controlled Drugs: Total DEA Restriction (12)
7. Controlled Drugs: Surrender of DEA Permit (13)
8. Controlled Drugs: Partial DEA Restriction (14)
9. Controlled Drugs: Maintain Record (15)
10. Psychiatric Evaluation/Psychotherapy (25),(26)
11. Monitor: Practice (31)

B & P 2242 PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 10 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Controlled Drugs: Total DEA Restriction (12)
7. Controlled Drugs: Surrender of DEA Permit (13)
8. Controlled Drugs: Partial DEA Restriction (14)
9. Controlled Drugs: Maintain Record (15)
10. Psychiatric Evaluation/Psychotherapy (25),(26)
11. Monitor: Practice (31)

B & P 2250 FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Education Course (18)
2. Pharmacology /Prescribing Course [if warranted] (16)
3. Written Examination (22)
4. Clinical Assessment and Training Program (21)
5. Monitor: Practice/ Billing (31)
6. Solo Practice Prohibiting/Supervised Structure (32)
7. Prohibited Practice (24)
8. Medical Ethics Course (20)

B & P 2251 USE OF SILICONE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Prohibited Practice [if warranted] (24)

B & P 2252 ILLEGAL CANCER TREATMENT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Pharmacology/ Prescribing Course (16)
3. Education Program (18)
4. Clinical Assessment and Training Program (21)
5. Medical Ethics Course (20)
6. Monitor: Practice/ Billing (31)
7. Prohibited Practice (24)
8. Solo Practice Prohibition/ Supervised Structure (32)

B & P 2261 MAKING OR SIGNING FALSE DOCUMENT

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Record Keeping Course (17)
4. Medical Ethics Course (20)
5. Monitoring: Practice/ Billing (31)
6. Prohibited Practice (24)
7. Solo Practice Prohibition/ Supervised Structure (32)

B & P 2262 ALTERATION OF MEDICAL RECORDS/ FALSE MEDICAL RECORDS

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Record Keeping Course (17)
4. Pharmacology/ Prescribing Course (16)
5. Medical Ethics Course (20)
6. Monitoring: Billing/ Practice (31)
7. Prohibited Practice (24)
8. Solo Practice Prohibition/Supervised Structure (32)

B & P 2263 VIOLATION OF PROFESSIONAL CONFIDENCE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 30 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitoring: Billing/ Practice (31)
5. Prohibited Practice (24)
6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2264 AIDING AND ABETTING UNLICENSED PRACTICE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, and

1. Suspension: 90 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitor: Billing / Practice (31)
5. Prohibited Practice (24)
6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2271, 651 DECEPTIVE ADVERTISING

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2272 ANONYMOUS ADVERTISING

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2273 EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS

Maximum Discipline: Revocation.

Minimum Discipline: stayed revocation, 3 years probation, standard terms and conditions, and

1. Suspension: 90 calendar days or more (11)
2. Education Course (18)
3. Medical Ethics Course (20)
4. Monitor: Billing/ Practice (31)
5. Prohibited Practice (24)
6. Solo Practice Prohibition/Supervised Structure (32)

B & P 2274 MISUSE OF TITLE

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2275 USE OF "M.D."

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2276 MISUSE OF "D.O. "

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2280 INTOXICATION WHILE TREATING PATIENTS

Note: Because this cause of action involves licensee use of alcohol or substance abuse, the probation must include an order by the Board for a clinical diagnostic evaluation and entry into the Board's Diversion Program. The remaining provisions of the Uniform Standards for Substance Abusing

Licensees may apply contingent upon the finding of the clinical diagnostic evaluation that the licensee is a substance abusing licensee.

Maximum Discipline: Revocation.

Minimum Discipline: Stayed revocation, 5 years probation, standard terms and conditions, Uniform Standards for Substance Abuse Licensees 1-16 and terms and conditions (33-44), and

1. Suspension: 10 calendar days or more (11)
2. Controlled Drugs: Total DEA Restriction (12)
3. DEA: Surrender of DEA Permit (13)
4. Controlled Drugs: Partial DEA Restriction (14)
5. Controlled Drugs: Maintain Record (15)
6. Psychiatric Evaluation/ Psychotherapy (25),(26)
7. Monitor Practice (31)
8. Medical Ethics Course (20)
9. Conditions Applying to the Uniform Standards 1-16 & Model Language (33-44), including:
 - a. Clinical Diagnostic Evaluation (Uniform Standard 1,2,6, Model Language (33))
 - b. Diversion Program (Uniform Standard 13,14,15,16, Model Language (34))
 - c. Drugs: Abstain from Use (Uniform Standard Model Language (35))
 - d. Alcohol: Abstain from Use (Model Language (36))
 - e. Notification to Employer (Uniform Standard 3 Model Language (37))
 - f. Random Bodily Fluid Testing (Uniform 4, Model Language (38))
 - g. Group Support Meetings (Uniform Standard 5,13, Model Language (39))
 - h. Worksite Monitor (Uniform Standard 7,13, Model Language (40))
 - i. Results of Biological Fluid Testing (Uniform Standard 8,9, Model Language (41))
 - j. Major and Minor Violations (Uniform Standard 10, Model Language (42))
 - k. Request to Return to Practice (Uniform Standard 11, Model Language (43))
 - l. Request for Reinstatement (Uniform Standard 12, Model Language (44))

B & P 2285 USE OF FICTITIOUS NAME WITHOUT PERMIT

Maximum Discipline: Revocation.

Minimum Discipline: 90 calendar days suspension, 1 year probation, standard terms and conditions, and

1. Medical Ethics Course (20)
2. Education Course (18)
3. Community Service (29)

B & P 2235 OBTAINING LICENSE BY FRAUD

Maximum Discipline: Revocation.

Minimum Discipline: Revocation

B & P 2288 IMPERSONATION OF APPLICANT IN EXAM

Maximum Discipline: Revocation

Minimum Discipline: Revocation

B & P 2306 PRACTICE DURING SUSPENSION

Maximum Discipline: Revocation

Minimum Discipline: Revocation

B & P 2305 DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY

Minimum penalty: add actual period of suspension

Maximum penalty: impose penalty that is stayed

VIOLATION OF PROBATION: REPEATED VIOLATIONS

A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum Discipline. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 calendar days or more, as well as other appropriate terms and conditions.

~~OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA
DISCIPLINARY GUIDELINES OF 1996~~

~~[LOGO]~~

~~Osteopathic Medical Board of California
2720 Gateway Oaks Drive, Suite 350
Sacramento, CA 95833~~

~~(916)263-3100~~

**OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DISCIPLINARY GUIDELINES OF 1996**

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I. Disciplinary Penalties

The following disciplinary penalties for selected Business and Professions Code violations are guidelines for use by administrative law judges at hearings as well as for use in settlement of cases. Individual penalties may vary depending upon the particular circumstances of the case resulting in aggravation or mitigation of offenses alleged. If probation is imposed as part of a penalty, the probation should include: (1) standard conditions, which will appear in all cases; and (2) the optional conditions, which will be tailored according to the nature of the offense.

A. STANDARD CONDITIONS OF PROBATION

The standard of probation conditions are as follows:

- (1) Obey all laws (1) *;
- (2) File quarterly reports (2);
- (3) Probation surveillance program (3);
- (4) Interviews with medical consultants (4);
- (5) Cost Recovery (5);
- (6) License Surrender (6);
- (7) Tolling of probation, if out of state (7); and
- (8) Probation violation/completion of probation (8)

** The number in parentheses refers to the sample model orders found in Part II: Sample Model Orders*

B. OPTIONAL CONDITIONS OF PROBATION

The following conditions of probation, generally listed by statute order as set forth by Business and Professions Code, are recommended by the Board for proven or stipulated violations. In all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation. Additionally, violations of Business and Professions Code Sections 2235 (obtaining license

by fraud), 2288 (impersonation of an applicant in an examination), and 2306 (practice under suspension) shall all result in an order of revocation.

~~B & P 725 – EXCESSIVE PRESCRIBING~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. Drugs — Total DEA restriction (10)~~
- ~~————— Surrender DEA (11)~~
- ~~————— (or) — Partial DEA restriction (12) —~~
- ~~2. Pharmacology course (18)~~
- ~~3. If warranted, education course (19)~~
- ~~4. If warranted, supervised structured environment (29)~~
- ~~5. If warranted, oral/practical examination (22)~~
- ~~6. If warranted, suspension of at least 90 days (9)~~
- ~~7. If warranted, maintain drug records for review (13)~~

~~B & P 725 – EXCESSIVE TREATMENTS~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. Education course (20)~~
- ~~2. If warranted, supervised structured environment (29)~~
- ~~3. If warranted, oral/practical examination (22)~~
- ~~4. If warranted, suspension of at least 90 days (9)~~

~~B & P 726 – SEXUAL MISCONDUCT~~

~~Minimum penalty: Stayed revocation, 10 years probation~~

- ~~1. Education course (19)~~
- ~~2. Psychiatric evaluation (25)~~
- ~~————— Or, psychotherapy (26)~~
- ~~3. If warranted, supervised structured environment (29)~~
- ~~4. Required third part present when examining patients (23)~~

~~B & P 820 – MENTAL OR PHYSICAL ILLNESS~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. If warranted, restricted practice (24)~~
- ~~2. If warranted, monitoring (29)~~

~~B & P 2234 (b) – GROSS NEGLIGENCE~~

~~B & P 2234 (c) – REPEATED NEGLIGENT ACTS~~

~~B & P 2234 (d) – INCOMPETENCE~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. Pharmacology course (18)~~
- ~~_____ 2. Education course (19)~~
- ~~_____ Clinical training program (21)(where deficiency is noted by the physician is not a present danger to the public)~~
- ~~_____ 3. Oral/practical examination (22)~~
- ~~_____ 4. If warranted, supervised structured environment (29)~~
- ~~_____ 5. If warranted, restricted practice (24)~~
- ~~_____ 6. If warranted, medical evaluation (27)~~
- ~~_____ 7. If warranted, medical treatment (28)~~

~~B & P 810 – INSURANCE FRAUD~~

~~B & P 2234 (e) – DISHONESTY~~

~~B & P 2261 – MAKING OR SIGNING FALSE DOCUMENT~~

~~B & P 2262 – FALSE MEDICAL RECORDS~~

~~B & P 2263 – VIOLATION OF PROFESSIONAL CONFIDENCE~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~_____ 1. If warranted, community service program (30)~~
- ~~_____ 2. If warranted, actual suspension (9)~~
- ~~_____ 3. If warranted, restitution (31)~~
- ~~_____ 4. Education course (19)~~

~~B & P 2236 – CRIMINAL CONVICTION~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

~~Terms and conditions depend on the underlying facts of the criminal offense.~~

~~B & P 2237 – DRUG RELATED CONVICTION~~

~~B & P 2238 – VIOLATION OF DRUG STATUTE~~

~~B & P 2241 – FURNISHING DRUGS TO AN ADDICT~~

~~B & P 2242 – PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. Drugs — total DEA restriction (10)~~
- ~~Or — surrender DEA permit (11)~~
- ~~Partial DEA permit (11)~~
- ~~2. Pharmacology course (18)~~
- ~~3. Education Course (19) and/ or a clinical training program (21)~~
- ~~4. If warranted, oral/ practical examination (22)~~
- ~~5. If warranted, supervised structured environment (29)~~
- ~~6. If self-user or drugs: See B & P 2239~~
- ~~7. If warranted, suspension of at least 90 days (9)~~
- ~~8. If warranted, maintain drug records for review (13)~~
- ~~9. If warranted, monitoring (29)~~

NOTE: Unless there is extensive mitigation, outright revocation for conviction of illegal sales of controlled drugs is the proper penalty.

~~B & P 2239 — SELF-ABUSE OF DRUGS OR ALCOHOL~~

~~B & P 2250 — FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS~~

~~B & P 2251 — USE OF SILICONE~~

~~B & P 2252 — ILLEGAL CANCER TREATMENT~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. If warranted, period of actual suspension (9)~~
- ~~2. Community service (30)~~
- ~~3. Education (19)~~
- ~~4. If warranted, monitoring (29)~~

~~B & P 2264 — AIDING AND ABETTING UNLICENSED PRACTICE~~

~~Minimum penalty: Stayed revocation, at least 3 years probation~~

- ~~1. If warranted, suspension of at least 60 days (9)~~
- ~~2. If warranted, oral/practical or written examination (22)~~
- ~~3. If warranted, monitoring (29)~~
- ~~4. If warranted, restricted practice (24)~~

~~B & P 2265 — USE OF QUALIFIED PHYSICIAN ASSISTANT WITHOUT APPROVAL~~

~~Minimum penalty: 90 days stayed suspension, one year probation~~

- ~~1. If warranted, period of actual suspension (9)~~
- ~~2. If warranted, community services (30)~~

~~B & P 2271, 651 — DECEPTIVE ADVERTISING~~

~~B & P 2272 — ANONYMOUS ADVERTISING~~

~~B & P 2273 — EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS~~

~~B & P 2274 — MISUSE OF TITLE~~

~~B & P 2275 — USE OF “M.D.”~~

~~B & P 2276 — MISUSE OF “D.O.”~~

~~B & P 2280 — INTOXICATION WHILE TREATING PATIENTS~~

~~Minimum penalty: Stayed revocation, 5 years probation~~

- ~~1. If drugs — total DEA restriction (10)~~
- ~~Or — surrender or DEA permit (11)~~
- ~~Partial DEA restriction (12)~~
- ~~2. If alcohol — abstain from alcohol (16)~~
- ~~3. If warranted, in case of drug abuse, abstain from alcohol (16)~~
- ~~4. Drugs — abstain from use (15)~~
- ~~5. Biological fluid testing (17)~~
- ~~6. Psychiatric evaluation (25)~~
- ~~7. If warranted, psychiatric treatment (26)~~
- ~~8. If warranted, drug or alcohol rehabilitation program (14)~~
- ~~9. Medical evaluation (27) and/or medical treatment (28)~~
- ~~10. Pharmacology course (18)~~
- ~~11. Education course (19)~~
- ~~12. If warranted, oral/practical examination (22)~~
- ~~13. If warranted, supervised structured environment (29)~~
- ~~14. If warranted, maintain drug records for review (13)~~

~~B & P 2285 — USE OF FICTITIOUS NAME WITHOUT PERMIT~~

~~Minimum penalty: 90 days stayed suspension, 3 years probation~~

- ~~1. If warranted, actual suspension (9)~~
- ~~2. If warranted, community service (30)~~
- ~~3. If warranted, restitution (31)~~
- ~~4. If warranted, education course (19)~~

~~B & P 2305 — DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY~~

~~Minimum penalty: add actual period of suspension~~

~~Maximum penalty: impose penalty that was stayed~~

~~A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum penalty. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 days or more.~~

~~II. SAMPLE MODEL ORDERS~~

~~A. STANDARD CONDITIONS OF PROBATION~~

~~1. Obey all laws—~~

~~Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.~~

~~2. Quarterly reports—~~

~~Respondent shall submit to the Board quarterly declaration under penalty of perjury on the Quarterly Report of Compliance Form, OMB 10 (5/97) which is hereby incorporated by reference, stating whether there has been compliance with all the conditions of probation.~~

~~3. Probation surveillance program—~~

~~Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of Business and residence, which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Board. Under no circumstance shall a post office box serve as an address of record.~~

~~Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than thirty (30) days.~~

~~4. Interviews with medical consultants—~~

~~Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.~~

~~5. Cost recovery—~~

~~The respondent is hereby ordered to reimburse the Board the amount \$ _____ within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.~~

~~6. License surrender—~~

~~Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.~~

~~7. Tolling for out of state practice or residence, or in state non practice (inactive license).~~

~~In the event respondent shall leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-compliance within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 2051 and /or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of the state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition shall not apply to the reduction of the probationary period.~~

~~8. Probation violation/completion of probation—~~

~~If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Upon successful completion of probation, respondent's certificate will be fully restored.~~

B. OPTIONAL CONDITIONS OF PROBATION

~~9. Actual suspension—~~

~~Respondent shall be suspended from the practice of medicine for _____ beginning the effective date of this decision.~~

~~10. Controlled drugs—total restriction—~~

~~Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~11. Controlled drugs—surrender of DEA permit—~~

~~Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that the respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.~~

~~12. Controlled drugs—partial restriction—~~

~~Respondent shall not prescribe, administer, dispense, order or possess any controlled substance as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s) _____ of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~_____~~ (or)

~~Respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedule(s) _____ of the Act for in-patients in a hospital setting, and not otherwise.~~

~~*Note: Use the following paragraph only if there is an actual elimination of authority to prescribe a Scheduled Controlled Substance.*~~

~~Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.~~

~~13. Controlled drugs — maintain record —~~

~~Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing the following: (1) the name and address of the patient (2) the date, (3) the character and quantity of controlled substances involved and (4) the pathology and purpose for which the controlled substance was furnished.~~

~~Respondent shall keep these records in a separate file or ledger, in chronological order and shall make them available for inspection and copying by the Board or its designee, upon request.~~

~~14. Diversion program — alcohol and drugs —~~

~~Within 30 days of the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation by respondent.~~

~~15. Drugs — abstain from use —~~

~~Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined the Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~16. Alcohol — abstain from use —~~

~~Respondent shall abstain from the use of alcoholic beverages.~~

~~17. Biological fluid testing —~~

~~Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.~~

~~18. Pharmacology course —~~

~~Within 60 days of the effective date of this decision, respondent shall enroll in a course in Pharmacology course, approved in advance by the Board or its designee, and shall successfully complete the course during the first year of probation.~~

~~19. Education course –~~

~~Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval an education program or course related to the violations charged in the accusation. This shall be completed during the first year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Board or its designee may administer an examination to test the respondent's knowledge of the course. Respondent shall provide proof of attendance for both continuing medical education requirements and education course on a yearly basis.~~

~~20. Medical ethics course –~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation.~~

~~21. Clinical training program –~~

~~Within 90 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the accusation. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Board or its designee related to the program's contents.~~

~~22. Oral/practical or written examination –~~

~~Within 60 days of the effective date of this decision, (or upon completion of the required education course)(or upon completion of the required clinical training program) respondent shall take and pass a(n) oral/practical and/or written) examination to be administered by the Board or its designee. Written examination may be the Special Purpose Exam. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The respondent shall pay the costs of all examinations.~~

~~(Use either of the following two options with the above paragraph)~~

~~OPTION #1: Condition precedent~~

~~Respondent shall not practice medicine until respondent has passed this examination and has been so notified by Board in writing.~~

~~OPTION # 2: Condition subsequent~~

~~If respondent fails to take and pass this examination by the end of the first six months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.~~

~~23. Third party presence—~~

~~During probation, respondent shall have a third party present while examining or treating (male, female, minor) patients. Respondent shall within 30 days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will act as the third party present. The respondent shall execute a release authorizing the third party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.~~

~~NOTE: Sexual transgressors should normally be placed in a supervised structured environment.~~

~~24. Prohibited practice—~~

~~During probation, respondent is prohibited from practicing _____.~~

~~25. Psychiatric evaluation—~~

~~Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.~~

~~If respondent is required by the Board or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status report to the Board indicating whether the defendant is capable of practicing medicine safely.~~

~~{OPTIONAL}~~

~~Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is mentally fit to practice safely.~~

~~26. Psychotherapy—~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status report to the Board. The Board may require response to undergo psychiatric evaluation by a Board appointed psychiatrist. Respondent shall pay all cost of the psychiatric evaluation.~~

~~NOTE: This condition is for those cases where the evidence demonstrated that the respondent has had impairment (impairment by mental illness, alcohol abuse and drug self abuse) related to the violations but is not at present a danger to his/her patients.~~

~~27. Medical evaluation —~~

~~Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the medical evaluation.~~

~~If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a physician of the respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further medical treatment is necessary. Respondent shall not engage in the practice of medicine until notified by the Board of its determination that the respondent is medically fit to practice safely. Respondent shall pay the costs of such medical treatment.~~

~~NOTE: This condition is for those cases where the evidence demonstrates drug or alcohol impairment or medical illness or disability was a contributing cause of the violations.~~

~~28. Medical treatment —~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, response shall undergo and continuing treatment until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports of the periodic medical evaluations by a Board appointed physician. Respondent shall pay the cost of such medical treatments.~~

~~29. Supervised structured environment —~~

~~Respondent is prohibited from engaging in solo practice. With 30 days of the effective date of this decision, respondent shall submit to the Board and receive its prior approval, for a plan of practice limited to a supervised structured environment in which respondent's activities will be overseen and supervised by another physician, who shall provide reports to the Board.~~

~~30. Community services —~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least _____ hours a month for the first _____ months of probation.~~

~~NOTE: Not for quality of care issues.~~

~~31. Restitution —~~

Respondent shall provide restitution to _____ in the amount of _____ prior to the completion of the first year of probation.

NOTE: For patients only.