

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 28, 2022
ATTENTION: Members, Medical Board of California
SUBJECT: Physician and Surgeon Health and Wellness Program - Discussion and Possible Action on Proposed Rulemaking
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION:

After review and consideration of the proposed rulemaking for the Physician and Surgeon Health and Wellness Program (PHWP), make a motion to:

1. Approve the text;
2. Direct staff to Prepare the necessary regulatory documents to submit to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
3. Upon DCA and Agency approval, submit the documents to the Office of Administrative Law (OAL) to notice the proposed regulatory language to: Amend sections 1357, 1357.1, 1357.9, and 1361.5(c)(3); Repeal Sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8, and Adopt Sections 1357.10, 1357.11, 1357.12, 1357.13, 1357.14, 1357.15, and 1357.16 of, Division 13, of Title 16 of the California Code of Regulations; and
4. If no substantive adverse comments are received during the 45-day comment period, authorize staff to finalize the rulemaking file and submit it to DCA and Agency, and upon approval, to the Office of Administrative Law, and to make any technical or non-substantive changes without returning to the Board.

BACKGROUND

Senate Bill (SB) 1177 (Galgiani, Chapter 591, Statutes of 2016), authorized the Medical Board of California (Board) to establish a Physician and Surgeon Health and Wellness Program (PHWP) with the goal of providing early identification of, and appropriate interventions to support rehabilitation from, substance abuse to ensure physicians remain able to practice medicine in a manner that will not endanger the public and will maintain the integrity of the medical profession. SB 1177, under Business and Professions Code (BPC) section 2340.2(e), requires the PHWP to comply with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) as adopted by the Substance Abuse Coordination Committee (SACC) of the Department of Consumer Affairs (DCA) pursuant to BPC section 315. A copy of the Uniform Standards is attached.

On October 28, 2016, the Board voted to move forward with establishing the PHWP. Board staff held two interested parties meetings in 2017, to review the law and the Uniform Standards and to discuss ideas for regulatory language.

Staff prepared draft regulations, which were approved by the Board and submitted to DCA for review in April 2018. The first draft of regulations set forth in detail the requirements for the PHWP without requiring interested parties to refer to sections of the Board's Uniform Standards under Title 16 CCR sections 1361.5 through 1361.54. However, after the PHWP regulations were submitted to DCA, the SACC met and approved some changes to the Uniform Standards. In light of these changes and the possibility of further amendments, staff redrafted the proposed PHWP regulations to be more efficient and flexible to future modifications to the Uniform Standards. The modified proposal also formally repealed the inoperable sections relating to the Board's defunct diversion program. The Board approved the new rulemaking language on November 8, 2019.

Staff submitted the proposed rulemaking file to the Department of Consumer Affairs (DCA) on May 6, 2021, and have worked with DCA's Regulation Unit to further revise the proposed language, which is attached for review and consideration.

Once the rulemaking file is approved by DCA and Agency, it will be submitted to OAL to be noticed for a 45-day comment period.

Upon approval by OAL and filing with the Secretary of State, Board staff will seek bids for the vendor. After the contract with the vendor is in place, Board staff will then draft regulations to set the fees for participants in the PHWP.

STAFF RECOMMENDATION:

Make and approve the motion indicated above under Requested Action in support of the proposed rulemaking language for the PHWP or provide alternative instructions to staff.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

**Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee**



Brian J. Stiger, Director
April 2011



Substance Abuse Coordination Committee

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CA Department of Alcohol & Drug Programs

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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 diagnosis 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 fulltime 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:

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

*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:
 - (a) 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 drug testing.
 - (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 (6).

(b) 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.

(c) 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.
2. 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.
3. 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.
4. 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.

(d) 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.

(e) 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.

#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.

**DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.
MEDICAL BOARD OF CALIFORNIA**

**PROPOSED REGULATORY LANGUAGE
Physician and Surgeon Health and Wellness Program**

Legend: Added text is indicated with an underline.
Deleted text is indicated by ~~strikeout~~.

Amend sections 1357, 1357.1, 1357.9, and 1361.5(c)(3); Repeal Sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8, Adopt Sections 1357.10, 1357.11, 1357.12, 1357.13, 1357.14, 1357.15, and 1357.16 of, Division 13, of Title 16 of the California Code of Regulations to read as follows:

Article 2. ~~Impaired Physician Program~~ Physician and Surgeon Health and Wellness Program

§ 1357. Definitions.

As used in this article:-

(a) "Program" means the impaired physician diversion program authorized pursuant to Article 14 (commencing with Section 2340) of the Medical Practice Act.

(b) "Committee" means a diversion evaluation committee.

(a) "Board" means the Medical Board of California or its designee unless otherwise specified.

(b) "Clinical Diagnostic Evaluation" includes any exam performed by a licensed physician and surgeon, and used to determine:

- (1) whether the participant has a substance abuse problem;
- (2) whether the participant is a threat to themselves or others; and
- (3) recommendations relating to the participant's treatment, rehabilitation, and/or the participant's ability to practice medicine safely.

(c) "Conflict of Interest" means having a financial, personal, or familial relationship with the participant, or other relationship that could reasonably be expected to compromise the ability of the other to render impartial and unbiased reports.

(d) "Contractor" includes a contractor or a subcontractor who contracts to perform services for the vendor, including medical, mental health, laboratory, or other

service providers.

- (e) “Employer” includes the participant’s employer, supervisor, chief of staff, the health or wellbeing committee chair, or equivalent, as applicable to the participant’s practice setting, if any.
- (f) “Full-time practice” means the licensee is not subject to any practice restriction imposed by the program or Board.
- (g) “Licensee” means a California licensed physician and surgeon or a holder of a California physician and surgeon postgraduate training license.
- (h) “Participant” means a licensee enrolled in the program pursuant to a signed agreement with the program, regardless of whether the licensee enrolled pursuant to a condition of probation imposed by the Board, or as a self-referral.
- (i) “Practice restriction” means a restriction from practicing medicine for any period of time or a limitation on any of the following:
 - (1) Number of hours the participant is authorized to practice medicine;
 - (2) Locations where a participant is authorized to practice medicine;
 - (3) The types of services or procedures the participant may perform.
- (j) “Program” means the Physician and Surgeon Health and Wellness Program authorized pursuant to Article 14 commencing with Section 2340 of the code.
- (k) “Vendor” means the entity contracted with the Board to perform services required to administer the program or its designee.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 2064.5, 2340, 2340.2, 2340.4, 2340.6, and 2340.8, Business and Professions Code.

§ 1357.1. Criteria for Admission.

An applicant The participant shall meet the following criteria for admission to the program:

- (a) The applicant participant shall be a California licensed physician and surgeon or hold a physician and surgeon postgraduate training license be otherwise legally authorized to practice medicine in this state.
- (b) The applicant participant is found to abuse dangerous drugs substances or alcoholic beverages, or suffer from mental or physical disability in a manner which may affect the physician's participant's ability to practice medicine safely or competently.

- (c) The applicantparticipant shall have voluntarily requested admission to the program or have been referred by the Board pursuant to a disciplinary order.
- (d) The applicantparticipant agrees in writing to undertake any medical or psychiatric examinations ordered to evaluate the application for participation in the program.
- (e) The applicantparticipant cooperates with the program by providing medical information, disclosure authorizations and releases of liability as may be necessary for participation in the program.
- (f) The participant agrees in writing to abstain from the use of alcohol and prohibited substances as defined in section 1361.51(e).
- (g) The participant agrees in writing to comply with all practice restrictions requested by the program.
- (f)(h) The applicantparticipant agrees in writing to cooperate with all elements of the diversion agreement for admission into the program, including all sections of this article, and to pay all costs required for participation in the program.

Note: Authority cited: Section 2018, Business and Professions Code.

Reference: Sections 315, 2064.5, 2340, 2340.2, 2340.4, 2340.6, and 2340.82350, Business and Professions Code.

§ 1357.2. Procedure for Review of Applicants.

- (a) Program staff and a committee, shall act as consultants to the program manager for the purpose of interviewing each applicant who requests admission to the program.
- (b) The committee shall recommend such medical and psychiatric examinations as may be necessary to determine the applicant's eligibility for the program and request such other information, authorizations, and releases necessary for the program.
- (c) The committee shall make a recommendation to the program manager whether the applicant should be admitted to the program.
- (d) The program manager's decision on admission of an applicant to the program shall be final.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2350, Business and Professions Code.

§ 1357.3. Evaluating Physicians.

A physician selected by the program manager or his/her designee to conduct medical and psychiatric evaluations of an applicant shall be a licensed physician who is competent in his/her field of specialty.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2350, Business and Professions Code.

§ 1357.4. Causes for Denial of Admission.

The program manager may deny an applicant admission to the program for any of the following reasons:

- (a) The applicant does not meet the requirements set forth in Section 1357.1.
- (b) The applicant has been disciplined by another state medical licensing authority.
- (c) Complaints or information have been received by the division which indicate that the applicant may have violated a provision of the Medical Practice Act or committed any other act that would be grounds for discipline, excluding Sections 822 and 2239 of the code.
- (d) The committee recommends that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety or welfare.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2350 and 2354, Business and Professions Code.

§ 1357.5. Causes for Termination from the Program.

The program manager may terminate a physician's participation in the program for any of the following reasons:

- (a) The physician has failed to comply with the diversion agreement, including but not limited to, failure to comply with the prescribed monitoring or treatment regimen, use of alcohol or other unauthorized drug; or refusal to stop practice when directed to do so by the committee.
- (b) Any cause for denial of an applicant in Section 1357.4.
- (c) The physician has failed to comply with any of the requirements set forth in Section 1357.1.
- (d) The committee recommends that the physician will not benefit from further participation in or has not substantially benefited from participation in the program or that the physician's continued participation in the program creates too great a risk to the public health, safety or welfare.

Note: Authority cited: Sections 2018 and 2355, Business and Professions Code. Reference: Sections 2350, 2351 and 2354, Business and Professions Code.

§ 1357.6. Notification of Termination.

Whenever any physician who is self referred is terminated from the program and has been determined to present a threat to the public health or safety, the program manager shall report such fact to the division, without the inclusion of any confidential information as defined in Section 1357.8.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2350 and 2355, Business and Professions Code.

§ 1357.8. Confidentiality of Records.

- (a) All board, division, committee and program records relating to a physician's application to the program or participation in the program shall be kept confidential

~~pursuant to Section 2355 of the code, including all information provided by the applicant, or by an examining physician, to the program manager, a medical consultant, members of the committee, or other employees of the division in connection with the program. Except as otherwise provided in section 1357.9, such records shall be purged when a physician's participation in the program is either completed or terminated.~~

~~(b) All other information or records received by the board prior to the acceptance of the applicant into the program, or which do not relate to the physician's application to the program, or which do not relate to the physician's participation in the program, shall not be maintained in a confidential manner as required by Section 2355 and may be utilized by the board in any disciplinary or criminal proceedings instituted against the physician.~~

~~Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2346 and 2355, Business and Professions Code.~~

§ 1357.9. Retention of Diversion Program and Participant Records.

The diversion program shall retain the following types of records in a paper or electronic format that is usable, readable, and searchable by the Board (e.g., Microsoft Word, Excel, or a PDF document) for seven (7) years from the date of creation by the program or receipt by the program concerning a participant:

(A)(a) All participant intake reports and case analyses.

(b) All participant agreements and amendments thereto.

(e)(c) All participant file notes, laboratory and incident reports.

(d) All other records related to the participant's performance in the program, including medical records, treatment plans, and documents relating to the participant's compliance or noncompliance with the conditions and procedures for treatment and monitoring by the program.

(e) All correspondence with the Board.

(f) All correspondence with contractors.

(e) All correspondence with the Enforcement Program.

(d) All committee letters.

(f) Computerized records derived from any of the foregoing types of documents.

~~Note: Authority cited: Sections 2018 and 2355, Business and Professions Code.~~

~~Reference: Sections 315, 2340, 2340.2, 2340.4, 2340.6, and 2340.8-2355, Business and Professions Code.~~

§ 1357.10. Requirements for the Physician and Surgeon Health and Wellness Program Vendor and Participants

- (a) The vendor shall comply with and is responsible for ensuring that all contractors and subcontractors comply with the Board's requirements contained in Article 14 of the Code and this article.
- (b) Participants shall meet the criteria set forth in section 1357.1.
- (c) Clinical Diagnostic Evaluation: If the vendor or Board requires a participant to undergo a clinical diagnostic evaluation, the participant shall comply with, and the evaluator shall meet, all the requirements set forth in section 1361.5(c)(1)(A)-(D). For purposes of this program, references to the "Board" in section 1361.5(c)(1)(A)-(D) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants. References to "probationary terms and conditions" and "on probation" in section 1361.5(c) shall mean probationary terms and conditions ordered by the Board for Board-referred participants and the terms of the participant's monitoring agreement with the vendor for self-referred participants.
- (d) Notification of Employer or Supervisor Information: If the participant has an employer or supervisor, the participant shall comply with all the notification and consent requirements set forth in section 1361.5(c)(2). For purposes of this program, references to the "Board" in section 1361.5(c)(2) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (e) Biological Fluid Testing:

 - (1) Participants shall abstain from the use, consumption, ingestion, or administration of prohibited substances, as defined in section 1361.51(e).
 - (2) Participants shall comply with and be tested in accordance with all the requirements set forth in section 1361.5(c)(3). For purposes of this program, references to the "Board" in section 1361.5(c)(3) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.

 - (A) Notwithstanding section 1361.5(c)(3)(I)(4), tolling shall not be allowed for a self-referred participant, so long as the participant has a license to practice in California. A self-referred participant who is moving their place of residence out of state, however, may transfer monitoring and care to a program in the new location upon the vendor's written approval and in compliance with the requirements of this subsection. The self-referred participant shall have the out-of-state program forward its testing results within three (3) business days of the results being

reported to the out-of-state program and compliance reports within three (3) business days of receipt by the out-of-state program to the vendor. The participant shall take all steps required by the out-of-state program to authorize information sharing with the vendor, including signing any authorization or consent to release test results or compliance reports to the vendor.

Any report to the vendor by the out-of-state program of a major violation as defined in section 1361.52(a) or minor violation as defined in section 1361.52(c) shall be reported in writing to the Board consistent with section 1351.13. Within 10 days prior to returning to California to reside, the self-referred participant shall re-enter into a contract for monitoring and care with the vendor. Upon returning to California, if the self-referred participant has not previously met the full first-year testing frequency requirements, the participant shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

- (f) Positive Biological Fluid Tests: When a participant tests positive for a prohibited substance, the vendor shall notify the Board of the positive test in writing within one (1) business day of receiving the results.
- (g) Requirements for Testing Locations/Laboratories and Specimen Collectors: The vendor's contractors that provide testing locations, laboratory services, or specimen collection, shall meet all the standards set forth in section 1361.54. For purposes of this program, references to the "Board" in section 1361.54 shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (h) Type of Treatment: In determining whether a participant shall be required to undergo inpatient, outpatient, or other type of treatment, the vendor and its contractors shall consider the following criteria:
 - (1) If the participant is required to undergo a clinical diagnostic evaluation as specified in section 1357.10, the recommendation of the clinical diagnostic evaluation;
 - (2) License type;
 - (3) Participant's history;
 - (4) Documented length of sobriety/time that has elapsed since substance abuse;

- (5) Scope and pattern of substance use;
- (6) Participant's treatment history;
- (7) Participant's medical history and current medical condition;
- (8) Nature, duration, and severity of substance abuse; and
- (9) Whether the participant is a threat to themselves or the public.

(i) Treatment Providers: A vendor's contractors providing staff and services shall meet all the following requirements:

- (1) Licensure and/or accreditation by the state agency or other authority responsible for the licensure or other regulation of the practice of the particular healthcare profession in the state in which the treatment provider proposes to practice;
- (2) A minimum of three (3) years' experience in the treatment and rehabilitation of health professionals with substance abuse problems;
- (3) Sufficient resources available to adequately evaluate the physical and mental needs of the participant, provide for safe detoxification, and manage any medical emergency;
- (4) Professional staff who are competent and experienced members of the clinical staff with a minimum of three (3) years' experience in the treatment and rehabilitation of healthcare professionals with substance abuse problems;
- (5) Treatment planning involving a multidisciplinary approach and specific aftercare plans; and
- (6) Means to provide treatment and progress documentation to the vendor and Board for Board-referred participants, or to the vendor for self-referred participants consistent with the contract for services. "Means" shall include the staffing, equipment, and procedures in place to meet the requirements of this section.

(j) Group Support Meeting Facilitators: If the participant is required to participate in support group meetings, the participant shall comply with, and the facilitator shall meet, all the requirements set forth in section 1361.5(c)(4). For purposes of this program, references to the "Board" in section 1361.5(c)(4) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-

referred participants.

- (k) Worksite Monitors: If the participant is required to have a worksite monitor, the participant shall comply with, and the monitor shall meet, all the requirements set forth in section 1361.5(c)(5). For purposes of this program, references to the "Board" in section 1361.5(c)(5) shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants.
- (l) Return of Participant to Practice: If participant has been restricted from full-time practice, the participant shall meet all the requirements of section 1361.53 prior to a determination being made to return the participant to full-time practice or returning to practice with restrictions. For purposes of this program, references to the "Board" in section 1361.53 shall mean the Board and the vendor for Board-referred participants, and the vendor for self-referred participants; references to "probation" in section 1361.53 shall mean probation ordered by the Board for Board-referred participants, and the terms of the participant's monitoring agreement with the vendor for self-referred participants.

Note: Authority cited: Sections 2018 and 2340, Business and Professions Code.

Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4, 2340.6 and 2340.8, Business and Professions Code.

§ 1357.11. Report and Public Disclosure of Practice Restrictions for Participants

If a vendor imposes a practice restriction on a participant, the vendor shall report it in writing to the Board within one (1) business day, and the Board shall make the following information public on the participant's profile on the Board's website: 1) the participant's name; 2) whether the participant's license is restricted or in a non-practice status; 3) a detailed description of each restriction imposed. If the participant self-referred, and enrollment in the program was not a condition of probation, then the public disclosure shall not contain information that the restriction or non-practice status is the result of the participant's enrollment in the program. The Board shall remove the practice restriction from the participant's profile within one (1) business day of the Board's receipt of written notice from the vendor that the practice restriction has been lifted.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

§ 1357.12. Reports of Participant Violations, Withdrawals, and Terminations to the Board; Inquiries by the Board

- (a) The vendor shall report in writing to the Board each major violation by a participant, as defined in section 1361.52(a), within one (1) business day of the vendor's finding that the participant committed a major violation, and shall

identify the name and license number of the participant, and a detailed description of the violation(s), including the type and date of each occurrence.

- (b) The vendor shall report in writing to the Board each minor violation by a participant, as defined in section 1361.52(c) within five (5) business days of the vendor's finding that the participant committed a minor violation, and shall identify the name and license number of the participant, and a detailed description of the violation(s), including the type and date of each occurrence.
- (c) The vendor shall report in writing to the Board any participant who withdraws or is terminated from the program within one (1) business day of the withdrawal or termination, and shall identify the name and license number of the participant, the date the participant enrolled in the program, the date of the withdrawal or termination from the program, and a description of the circumstances leading up to the withdrawal or termination.
- (d) If the Board inquires as to whether a licensee is a participant in the program after initiating an investigation on the licensee, the vendor shall provide a written response within three (3) business days of the inquiry indicating whether the licensee is a participant in the program.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

§ 1357.13. Vendor Communication with the Board; Annual Reports

- (a) Within 30 days of receiving a written request by the Board, the vendor shall provide a written report containing the following de-identified information:
 - (1) The number of participants currently enrolled in the program;
 - (2) The number of participants who self-referred;
 - (3) The number of participants who were referred by the Board as a condition of probation;
 - (4) The number of participants who have successfully completed their agreement period;
 - (5) The number of participants who successfully returned to practice;
 - (6) The number of participants who withdrew from the program, and the reasons therefor;

- (7) The number of participants who were terminated from the program, and the reasons therefor;
- (8) The number of participants who committed a major violation as defined in section 1361.52(a), or minor violation as defined in section 1361.52(c), and the types of violations committed;
- (9) The number of patients harmed by a participant while the participant was enrolled in the program. For purposes of this section, "patient harm" means injury or death to a patient caused by the participant's violation of the Medical Practice Act or Medical Practice Regulations established by admission, or by Board decision or order issued after an action taken pursuant to the procedures set forth in the Administrative Procedure Act (Section 11500 et seq. of the Government Code);
- (10) The number and types of reports filed with the Board pursuant to section 1357.13;
- (11) A list of contractors performing treatment or other services for program participants, a description of the services they are contracted to perform, and the number of participants assigned to each;
- (12) The number of participants whose families received services through the program, including the types of services received (e.g., individual counseling, group therapy, etc.), and how many times services were provided;
- (13) The number and types of educational events provided by the vendor, the dates provided, and the number of licensees and other interested parties in attendance. For purposes of this section, "educational events" includes seminars, webinars, distribution of written materials, and any other activity designed to assist with the recognition and prevention of physical, emotional, and psychological problems of licensees.
- (14) Any other program statistics requested in writing by the Board regarding compliance with this article, including statistics showing a subcontractor's compliance with the Board's requirements contained in Article 14 of the Code and this article.

(b) With regard to subdivisions (a)(1) through (a)(12) the report for each category shall include the specific types of substance abuse problems for which treatment is or was being sought (e.g., cocaine, alcohol, Demerol, etc.).

- (c) On a yearly basis, on or before August 31, the vendor shall provide all of the data identified in subdivisions (a) and (b) to the Board for inclusion in the Board's annual report.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4 and 2340.6, Business and Professions Code.

§ 1357.14. External Independent Audits; Responses to Findings; Grounds for Termination; Transfer of Care

- (a) At least once every three (3) years, and at any other time requested by the Board with at least 90 days' notice from the Board, an external, independent audit shall be conducted by a qualified reviewer or review team from outside the Department of Consumer Affairs with no conflict of interest with the vendor (i.e., no reviewer or individual on a review team has a current or prior business, personal, or financial relationship with the vendor or any employee or officer of 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 licensed certified public accountant(s) or public accountant(s) who have at least five (5) years' experience in the professional practice of internal auditing and assessment processes and are qualified to perform audits of monitoring programs. The cost of the audits shall be borne by the vendor and factored into each participant's fee.
- (b) The audit must assess the vendor's performance in adhering to the contract requirements applicable to the program. The auditor must provide a written report of their findings to the Board by June 30 of each three (3)-year period referenced in subsection (a) ("triennial report"), or within 60 days of completing an audit requested by the Board. The report shall not identify participants by name, but shall identify any material inadequacies, deficiencies, irregularities, or other noncompliance with the terms of the vendor's contract with the Board or identify any treatment or monitoring services provided by the vendor that would, in the opinion of the auditor, interfere with the Board's mandate of public protection (collectively referred to herein as "deficiencies"). The report shall further recommend a corrective action plan for each identified deficiency, if any.
- (c) The vendor shall respond to the findings in the audit report in writing to the Board no later than September 1 for each triennial report, or within 60 days of receiving an audit report requested by the Board. If deficiencies were identified in the audit report, then within 60 days of receiving the vendor's response, the Board shall indicate whether and when the contract with the vendor will be terminated along with the reasons therefore, or whether the vendor will be given the opportunity to cure the deficiencies. If the vendor will be given the opportunity to cure the deficiencies, the vendor shall provide a written plan

within 30 days of the Board's request, identifying how each deficiency will be addressed and in what time period. The Board shall determine whether to reject, modify, or approve the plan within 30 days of receipt. The Board may extend the deadlines in this section for purposes of consulting with one or more experts or for other good cause.

- (d) Failure of the vendor to cure all deficiencies within the timeframes set by a plan approved by the Board in subsection (c) shall subject the vendor to termination. Termination of the vendor shall be in the sole discretion of the Board.
- (e) As part of its contract with the Board, the vendor shall have a written plan approved by the Board for transferring care and monitoring of participants if its contract with the Board is terminated, including a plan for transferring participant or other records required by this Article to another vendor designated by the Board.

Note: Authority cited: Sections 2018, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2340, 2340.2, 2340.4, 2340.6 and 2340.8, Business and Professions Code.

§ 1361.5. Uniform Standards for Substance-Abusing Licensees.

...

Amendment only to section 1361.5, subdivision (c)(3) as follows:

- (3) Biological Fluid Testing.
 - (A) The Board shall require biological fluid testing of substance-abusing licensees.
 - (B) For the purposes of this section, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.
 - (C) The Board may order a licensee to undergo a biological fluid test on any day, at any time, including weekends and holidays. Additionally, the licensee shall be subject to 52-104 random tests per year within the first year of probation, and 36-104 random tests per year during the second year of probation and for the duration of the probationary term, up to five (5) years. If there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, testing may be reduced to one (1) time per month.
 - (D) Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's

testing program or has committed a violation as identified in section 1361.52(a), in addition to ordering any other disciplinary action that may be warranted.

(E) The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, except when testing on a specific date is ordered by the Board or its designee.

(F) The licensee shall be required to make daily contact with the Board or its designee to determine if biological fluid testing is required. The licensee shall be tested on the date of the notification as directed by the Board or its designee.

(G) Prior to changing testing frequency or testing locations for any reason, including during vacation or other travel, any alternative testing schedule and testing locations must be approved by the Board and meet the requirements set forth in section 1361.54.

(H) The cost of biological fluid testing shall be borne by the licensee.

(I) Exceptions to Testing Frequency Schedule.

1. Previous Testing Orders/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 in altering the Board's own testing schedule so that the combined testing is equivalent to the requirements of this section.

2. Violation(s) Outside of Employment. A licensee 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 the first-year testing frequency requirements and participate in the second-year testing frequency requirements.

3. Not Employed in Health Care Field. The Board may reduce the testing frequency to a minimum of 12 times per year for any licensee 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 Board. Prior to returning to any health care employment, the licensee shall be required to test at the first-year testing frequency requirement for a period of 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 first-year testing frequency requirement, the licensee shall be required to test at the first-year testing frequency requirement for a full year before he or she may be reduced to testing frequency of at least 36 tests per year.

4. Tolling. A Board may postpone all testing for any licensee whose probation is placed in a tolling status while the licensee is not residing in California, provided

the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to biological fluid testing as provided in this section. If the licensee returns to employment in a health care field and has not previously met the first-year testing frequency requirements, the licensee shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

5. Substance Abuse Disorder Not Diagnosed. In cases where no current substance abuse disorder diagnosis is made, a lesser period of monitoring and biological fluid testing may be adopted by the Board, but shall not be less than 24 times per year.

6. Licensed Supervision During Practice. The Board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the Board.

(J) Reinstatement of License or Reduction of Penalty. 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 section 11522.

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Note: Authority cited: Sections 315, 315.2, 315.4 and 2018, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2227, 2228, 2229, and 2234, and 2340.2, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.