

## TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at The Mission Inn, 3649 Mission Inn Avenue, Riverside, CA 92501 at 9:00 a.m., on October 25, 2013. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on October 22, 2013, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 2018 of the Business and Professions Code, and to implement, interpret or make specific sections 315, 315.2, and 315.4 of said Code, the Medical Board of California is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

#### A. Informative Digest

A proposal to implement SB 1441 was heard on July 19, 2013, at the Board's quarterly meeting held in Sacramento, CA. The Board granted the proposal to amend section 1361 in Article 4, Chapter 2, Division 13 and add section 1361.5 entitled "Uniform Standards for Substance-Abusing Licensees."

The Board currently regulates approximately 125,000 physicians and surgeons. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees; disciplining licensees for violations of the Medical Practice Act (Act); and monitoring licensees whose licenses have been placed on probation for substance abuse, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law requires the Department of Consumer Affairs (DCA) to establish Uniform Standards regarding substance-abusing licenses, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law, Business and Professions Code (Code) section 2018 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Medical Practice Act.

Existing law, Code section 315, established the Substance Abuse Coordination Committee (SACC) within the DCA and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Existing law, Code section 315.2, specifies that a healing arts board within the DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Code section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under section 315. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Government Code section 11400.20, authorizes an agency to adopt regulations to govern an adjudicative proceeding.

The main purpose for this proposal is to amend section 1361 and add section 1361.5 of Title 16 of the California Code of Regulations. The proposed language is necessary to aid the Board in the discipline of substance-abusing licensees to provide better public protection to the people of California.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This regulation will incorporate the Uniform Standards for Substance Abusing Healing Arts Licensees, as required by SB 1441 by proposing to add the standards, which shall be adhered to in all cases in which a licensee is placed on probation due, in part, to a substance abuse problem. These standards shall be followed in all instances, but will also allow the Board to impose more restrictive conditions, if necessary, to protect the public.

C. Consistency and Compatibility with Existing State Regulations

The Board considered other possible related regulations and we find that these are the only regulations dealing in this subject area. Therefore, the Board finds that these proposed regulations are compatible and consistent with the intent of the Legislature in implementing SB 1441, as well as with existing State

regulations.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code sections 17500 - 17630 Require Reimbursement: None

### Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### Cost Impact on Representative Private Person or Business:

Implementation of the proposed regulation will not impact all physicians licensed by the Board, nor will it impact all physicians on probation. Instead, this regulation would impact only those physicians on probation who are identified as "substance abusing" and subject to the Uniform Standards for Substance-Abusing Licensees. Once so designated, this subset of licensees on probation could be impacted by a temporary removal from practice based on either a positive biological fluid test and/or the requirement to undergo the clinical diagnostic evaluation. Under the proposed regulation, no licensee shall be returned to practice until he or she has at least 30 days of negative biological fluid tests.

The Board has access to a report issued by Merritt Hawkins, "*2012 Review of Physician Recruiting Incentives*." This report provides an overview of the salaries, bonuses, and other incentives customarily used to recruit physicians. This data is national; there is no commensurate report focusing only on California. Section 8 of the report offers a breakdown of the "low," "average," and "high" base salary for the income offered to the "Top 20 Recruited Specialties." The average is \$27,250 per physician.

The Board also anticipates that this proposed regulation could create an additional fiscal impact to licensees on probation who test positive for a banned substance in that another clinical diagnostic evaluation can be ordered to ensure the licensee is considered "safe to practice".

The cost of the "clinical diagnostic evaluation" is estimated to be approximately \$2,000-5,000 per evaluation.

Therefore, the Board estimates that the annual cost will be \$29,250 to \$32,250 per impacted licensee, times the two (2) physicians (the average of those that tested positive in the last five years) not allowed to practice for 30 days, for an annual total of \$58,500 to \$64,500.

This proposed regulation will enhance and strengthen the Board's ability to closely monitor physicians with substance-abuse issues and quickly remove them from practice when appropriate. The Board's mission and mandate is to provide protection for the public and the proposed regulation supports this mandate. Removing physicians from practice who have been found to be a danger to the public will enhance consumer protection.

Effect on Housing Costs: None

### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The Board does not license businesses, the Board licenses individuals; therefore, there is no impact on small businesses or any business.

### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

#### Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant adverse economic impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

#### Benefits of the Regulation:

The Board has determined that this proposed regulation will benefit California consumers by enhancing and strengthening the Board's ability to closely monitor physicians with substance-abuse issues and quickly remove them from practice, when appropriate, thus providing the consumer with enhanced protection from physicians with substance abuse problems.

### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative has been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website:  
[http://www.medbd.ca.gov/laws/regulations\\_proposed.html](http://www.medbd.ca.gov/laws/regulations_proposed.html).

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site below.

## CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Susan Cady
	Medical Board of California
Address:	2005 Evergreen Street, Suite 1200
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The backup contact person is:

Name:	Christine Valine
	Medical Board of California
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Telephone No.:	(916) 263-2466
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E-Mail Address:	<a href="mailto:chris.valine@mbc.ca.gov">chris.valine@mbc.ca.gov</a>

Web site Access: Materials regarding this proposal can be found at  
[http://www.mbc.ca.gov/laws/regulations\\_proposed.html](http://www.mbc.ca.gov/laws/regulations_proposed.html).

**MEDICAL BOARD OF CALIFORNIA**  
**INITIAL STATEMENT OF REASONS**

**Hearing Date:**

**Subject Matter of Proposed Regulations:**

To amend the *Manual of Model Disciplinary Orders and Disciplinary Guidelines* to incorporate the Uniform Standards for Substance-Abusing Healing Arts Licensees as required by SB 1441.

**Section(s) Affected:**

Amend Section 1361 in Article 4 of Chapter 2, Division 13 and add Section 1361.5 entitled "Uniform Standards for Substance-Abusing Licensees"

**Specific purpose of each adoption, amendment, or repeal:**

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the Department of Consumer Affairs (Department) establish a Substance Abuse Coordination Committee (Committee), subject to the Bagley-Keene Open Meeting Act, comprised of the Executive Officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. The Committee developed sixteen uniform standards as required by SB 1441. The Board is proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines through the regulatory process. Uniform Standards 13, 14, and 15 only apply to Boards with diversion programs and are not incorporated in these guidelines because the Board does not have a diversion program. Uniform Standard 16 is also omitted because it is each Board's reporting criteria to the Department and not pertinent to the Disciplinary Guidelines.

**Factual Basis/Rationale:**

In order to comply with SB 1441, the Board proposes to add the following standards, which shall be adhered to in every case where a licensee is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions, if necessary, to protect the public.

**Standard 1. Notice of Employment Information**

Requires a licensee who has an employer to provide the Board with the names, physical addresses, mailing addresses and phone numbers of all employers and supervisors. This standard also requires that the licensee provide written consent to allow Board staff to

communicate with the employer about the licensee's work status, performance and monitoring.

The purpose of this standard is to allow the Board and employers to stay in contact in order to ensure that the licensee is complying with his or her probation. It is widely known that it is best for a person entering recovery to be honest with their employer about their addiction and the steps they are taking to overcome it. Open channels of communication will give the Board the ability to quickly intervene and take the necessary action in order to keep the licensee on track and protect patients, especially if the licensee is using illegal substances or alcohol on the job.

### Standard 2. Clinical Diagnostic Evaluation and Reports

Requires that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. This standard also identifies the information that must be addressed or contained in the evaluation report and timeframes for submitting the report to the Board.

The purpose of this standard is to increase consumer protection by: 1) specifying requirements for a clinical diagnostic evaluation of the licensee and the required qualifications for the providers charged with evaluating the licensee along with timeframes for completing the clinical diagnostic evaluation; 2) ensuring that the Board is notified quickly if the licensee is a threat to himself or herself or the public; 3) ensuring the Board is provided with a professional opinion as to whether the licensee has a substance abuse problem, and whether the licensee is a threat to himself or herself or others; and 4) prohibiting personal, financial and business relationships between the evaluator and licensee, thereby ensuring objectivity in assessments.

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee's ability to practice safely. Many individuals who have substance abuse issues also have other mental problems/diagnoses. The evaluator can present recommendations for a therapeutic treatment plan. The treatment recommendations may be incorporated into a Board order as elements for monitoring. By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

### Standard 3. Worksite Monitor Requirements and Responsibilities

Requires the Board to determine if a worksite monitor is necessary for a particular licensee and outlines the requirements the proposed monitor must meet in order to be approved by the Board to serve as a monitor. In addition, this standard outlines the duties and responsibilities a worksite monitor must perform.



SB 1441 required the Department to establish monitor requirements and standards, including, but not limited to: (1) required qualifications of monitors, (2) required methods of monitoring by monitors, and (3) required reporting by monitors. The worksite monitor's role is to have face-to-face contact with a licensee who has a substance abuse history to ensure that the licensee is not abusing drugs and/or alcohol. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse.

The licensee and the worksite monitor must sign and submit consent forms in order for the Board to communicate with the monitor regarding the licensee's performance while at work. Implementing this standard provides (1) ongoing documentation of the licensee's behavior and would ensure the public's safety, and (2) immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol.

The monitor should not have any financial or personal relationship with the licensee. This will ensure that the monitor is providing impartial evaluations. The standard does contain a provision to allow the Board to waive this requirement as some licensees may only have an employer available to serve as a worksite monitor. Frequent face-to-face contact with the licensee is important in order to assess any changes in appearance and behavior which may suggest substance abuse or impairment. The monitor needs to interview the staff in the office to detect any changes in the licensee's behavior and review the attendance records in order to provide adequate reports to the Board on the licensee's performance in the work environment. Most importantly, this standard identifies the timeline for reporting to the Board any possible substance abuse by the licensee and details what information must be included in the monitor's report.

#### Standard 4. Group Support Meetings

Requires that if the Board orders a licensee to participate in group support meetings, the criteria established in the uniform standards must be used to determine the frequency of group meeting attendance and to verify that the meeting facilitators are experienced, mental health professionals.

The purpose of this standard is to increase consumer protection by:

- Holding licensees placed on probation due to substance abuse accountable for attending meetings and being active in their own recovery;
- Allowing the group meeting facilitator and the Board to work together to assist in the licensee's recovery and quickly prevent relapse with open channels of communication; and
- Ensuring that licensees are receiving professional help from a person not related to them in any way that will allow for objectivity and balance during their recovery.

#### Standard 5. Biological Fluid Testing

Requires the Board to randomly test a licensee whose license is placed on probation due to substance abuse and establishes guidelines for the testing frequency. This standard

also outlines standards for testing, specimen collection and handling and requirements for the laboratories who perform the handling and processing of test results.

Randomness is a very important component in drug testing. The testing frequency schedule being proposed by the Board allows for appropriate randomness in testing (without regular interval or pattern), preventing licensees from gauging when they will be tested. By establishing minimum testing frequency "ranges" and employing randomness in testing, licensees will not be able to consider one or more days as a "safety period" following the submission of a biological sample for testing. Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to "flush" their system overnight. The standard is broad enough to allow the Board to evaluate each licensee's situation on a case-by-case basis, if appropriate. For example, one of the exemptions allows the Board to adjust the testing frequency schedule in cases where a licensee who is an admitted recovered substance abuser or addict, has already participated in a rehabilitation program before being placed on probation. In cases where there is evidence that the person has randomly tested and has maintained sobriety, some flexibility should be granted to the Board in determining the duration of high frequency testing, that is equivalent to the proposed testing schedule. Allowing exceptions will not only protect the public and fit each licensee's needs, but it will ensure successful rehabilitation of the licensee by providing a plan that is manageable and realistic.

#### Standard 6. Results of Biological Fluid Tests

Requires the Board to suspend the licensee if he or she tests positive for a banned substance and notify the licensee's employers that he or she cannot provide medical services while the suspension or cease practice order is in place .

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. In order to carry out this mandate, it is appropriate for the Board to immediately suspend a licensee's license if he or she tests positive for a banned substance until he or she has been assessed and the results interpreted. It is also appropriate for the Board to notify the licensee's employer that the licensee may not practice until the suspension is lifted. Testing positive for a banned substance is a violation of their probation and in the past, many licensees have continued to work until the Board could pursue disciplinary action based on the probation violation.

#### Standard 7. Actions by Licensees and Consequences Thereof

In compliance with SB 1441, major and minor violations and consequences are being defined. If a licensee commits a major violation, the Board could issue an immediate cease practice order and refer the matter for disciplinary action or other action as determined by the Board. If a licensee commits a minor violation, the Board would be required to determine what action is appropriate based on the violation.

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. The Board protects the public through its Practice Act, regulations and related statutes. Major violations would result in consequences that would be the maximum allowed by law under the Board's Practice Act and regulations.

Minor violations would result in consequences determined appropriate by the Board, e.g., issuing a cease practice order or issuing a citation, which is not considered discipline.

#### Standard 8. Request to Return to Full or Partial Practice

In compliance with SB 1441, this standard defines the criteria that a licensee must meet in order to return to practice after practice restrictions were deemed appropriate by the evaluator performing a clinical diagnostic evaluation or following the issuance of a cease practice order.

This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation before the Board will even consider this type of request. All licensees will be held to the same standard.

#### Underlying Data:

1. Senate Bill 1441 (Chapter 548, Statutes of 2008) authored by Senator Ridley-Thomas
2. The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2011"
3. Uniform Standard #4 Subcommittee – Proposed Amendments and Rationale, March 10, 2011
4. Merritt Hawkins "2012 Review of Physician Recruiting Incentives"

#### Business Impact/Specific Technologies or Equipment:

This regulation will not have a significant adverse economic impact on businesses, specific technologies, or equipment. This regulation only impacts licensees disciplined by the Medical Board. This regulation does not mandate the use of specific technologies or equipment.

#### Economic Impact Assessment:

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the fact that the regulation will only impact physicians who have been placed on probation who are ordered to cease practice for testing positive for drugs and/or alcohol use.

This regulatory proposal benefits the health and welfare of California residents because it will provide better protection to California residents because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation or the Board can issue a cease practice order.

#### Specific Technologies or Equipment:

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

**Consideration of Alternatives:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

**TITLE 16. MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**PROPOSED LANGUAGE**

(1) Amend title of Article 4, Division 13 of Title 16 of the California Code of Regulations to read as follows:

Article 4. Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees

(2) Section 1361 of Division 13 of Title 16 of the California Code of Regulations is amended to read:

1361. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (11th Edition/2011), which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Medical Board of California in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Nothing in this section or section 1361.5 shall be construed as a limitation on the Board's authority to seek an interim suspension order against a licensee pursuant to section 11529 of the Government Code.

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

(3) Section 1361.5 is added to Division 13 of Title 16 of the California Code of Regulations to read:

1361.5. Uniform Standards for Substance-Abusing Licensees.

(a) If the licensee is to be disciplined, for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol or both, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. The terms and conditions specified in subsection (c) shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in Section 1361 in any order that the Board determines would provide greater public protection or enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee:

(1) Notice of Employment Information. If a licensee 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 for the Board and his or her employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

(2) Clinical Diagnostic Evaluations and Reports.

(A) Whenever a licensee on probation due to a substance abuse problem is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed physician and surgeon who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board. The evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The cost of an evaluation shall be borne by the licensee.

(B) For a licensee who undergoes a clinical diagnostic evaluation, 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 Board.

(C) While awaiting the results of the clinical diagnostic evaluation, the licensee shall be randomly drug tested at least two (2) times per week.

(D) 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 or 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 or herself or others, the evaluator shall notify the Board within 24 hours of such a determination. In determining whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

(i) License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

(E) 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.

(F) The Board shall review the clinical diagnostic evaluation report to determine whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the licensee based on the recommendations made by the evaluator.

### (3) Worksite Monitor Requirements and Responsibilities.

(A) If the Board determines that a worksite monitor is necessary for a particular licensee, the licensee shall, within 30 calendar days of the effective date of that determination, submit to the Board or its designee for prior approval the names of a worksite monitor(s). The worksite monitor shall meet the following criteria to be approved by the Board:

(i) The worksite monitor shall not have a current or former 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 or supervisee of the licensee.

(ii) The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another physician and surgeon if no monitor with like scope of practice is available.

(iii) The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years.

(B) The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

(C) The worksite monitor shall adhere to the following required methods of monitoring the licensee:

(i) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board but not less than once per week.

(ii) Interview other staff in the office regarding the licensee's behavior, if requested by the Board.

(iii) Review the licensee's work attendance.

(D) The worksite monitor shall verbally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse, the licensee's actions and any other information deemed important by the worksite monitor shall be submitted to the Board within 48 hours of the verbal report.

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

(F) The licensee shall execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(G) If the monitor resigns or is no longer available, licensee shall, within 5 calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If licensee fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, licensee shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Licensee shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

(4) Group Support Meetings.

(A) The Board may require a licensee to participate in group support meetings. The Board may impose participation in group support meetings following such recommendation by the evaluator or in a clinical diagnosis report.



(B) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to 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.

(C) The facilitator of a group support meeting shall conform to the following requirements:

(i) He or she shall 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 nationally certified organizations.

(ii) He or she shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years.

(iii) He or she 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.

(iv) He or she shall report a licensee's unexcused absence to the Board within 24 hours.

(5) Biological Fluid Testing. The Board shall require biological fluid testing of substance-abusing licensees.

(A) For the purposes of this subsection, biological fluid testing means the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.

(B) The following standards shall apply to a licensee ordered to undergo biological fluid testing:

(i) The licensee shall be tested a minimum of 52-104 times per year for the first year of probation and at any time ordered by the Board. After the first year of probation, licensees who are practicing shall be randomly drug tested at least 36-104 times per year, and at any time as directed by the Board.

(1) The Board may revise the frequency specified in section (i) upon a determination that the licensee is not currently employed in a health care field, the licensee suffers from a substance use or abuse disorder, or other circumstances in which a revision of the testing frequency would not impair public protection. In no case may the testing frequency be reduced below twenty-four (24) times per calendar year.

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

(iii) The scheduling of 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.

(iv) Licensees shall be required to make daily contact with the Board to ascertain if testing is required.

(v) Licensees shall submit to all random and specifically ordered biological fluid tests.

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

(vii) Licensees may elect to have the tests performed by an entity under contract with the Board or by another entity, provided that the entity meets all the following standards:

(1) Its 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 United States Department of Transportation.

(2) It conforms to the current United States Department of Transportation Guidelines for Specimen Collection

(3) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(4) The collection of testing specimens shall be observed.

(5) Its laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

(6) Its collection sites submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be subjected to chain of custody procedures. The entity shall process and analyze the specimen and provide legally defensible test results to the Board within seven (7) days of receipt of the specimen.

(6) Results of Biological Fluid Tests.

(A) If the results of a biological fluid test indicates 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 instruct the licensee to leave any place of employment where he or she is practicing medicine or providing medical services. The Board shall also immediately notify all the licensee's employers that the licensee may not provide medical services or practice medicine while the cease practice order is in effect.

(B) After the issuance of a cease practice order, the Board shall determine whether the test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

(C) If no prohibited substance use exists, the Board shall immediately lift the cease practice order.

(D) For the purposes of this section, "prohibited substance" means an illegal or unlawful drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board, alcohol, or other substance.

(7) Actions by Licensees and Consequences Thereof.

(A) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

(i) Fails to undergo a required clinical diagnostic evaluation;

(ii) Commits multiple minor violations of probation conditions and terms;

(iii) Treats a patient or patients while under the influence of drugs or alcohol;

(iv) Commits any drug or alcohol offense that is a violation of state or federal law or any regulation adopted thereto;

(v) Fails to undergo biological testing when ordered;

(vi) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

(vii) Knowingly uses, makes, alters or possesses any object or product in such a way as to defraud a biological fluid test designed to detect the presence of a prohibited substance.

(B) If a licensee commits one or more major violation, the Board may take the following actions:

(i) Issue an immediate cease practice order.

(ii) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection may state that the licensee must test negative for at least a month of continuous drug testing before being allowed to resume practice.

(iii) Increase the frequency of biological fluid testing.

(C) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

(i) Failure to submit required documentation to the Board in a timely manner;

(ii) Unexcused absence at required meetings;

(iii) Failure to contact a worksite monitor as required;

(iv) Failure to comply with another term or condition of his or her probation that does not impair public safety.

(D) If a licensee commits one or more minor violations, the Board may take the following actions:

(i) Issue a cease practice order;

(ii) Issue a citation and fine.

(iii) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee.

(E) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

(8) Request to Return to Full or Partial Practice.

(A) Before determining whether to authorize the return to practice after the issuance of a cease practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board in conjunction with the evaluator shall ensure that the licensee meets the following criteria:

(i) A demonstration of sustained compliance with his or her current treatment or recovery program, as applicable.

(ii) A demonstration of the capability to practice medicine safely as evidenced by current worksite monitor reports, evaluations conducted by licensed health care practitioners, and any other information relating to the licensee's substance abuse and recovery therefrom.

(iii) 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 probation.

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 7, 2013  
ATTENTION: Board Members  
SUBJECT: Implementation of SB 1441 Uniform Standards Regarding  
Substance-Abusing Healing Arts Licensees  
FROM: Susan Cady, Staff Services Manager II  
Kerrie Webb, Staff Counsel

REQUESTED ACTION:

After review and consideration of the attached proposed language providing for the implementation of SB 1441 Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, approve the language and recommend that Board staff do a 15-day public notice on the new language. If no negative comments are received, authorize the Executive Director to finalize the rulemaking package and submit it to the Office of Administrative Law.

BACKGROUND:

At the July 2013 Board meeting, staff introduced proposed language providing for the implementation of SB 1441 Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. Public comment was offered at that meeting pointing out that some provisions of the Uniforms Standards were not included in the proposed language. The Board authorized staff to proceed with instituting the formal rulemaking process, acknowledging that staff would re-review the standards, and the proposed language would be amended where appropriate.

Attached is the amended proposed language with the newly incorporated changes identified by **bold double underline**. New deletions are identified by ~~double strikethrough~~.

**AMENDED PROPOSED REGULATIONS FOR IMPLEMENTATION OF UNIFORM  
STANDARDS REGARDING SUBSTANCE-ABUSING HEALING ARTS LICENSEES  
(SB 1441)**

**Modified Text**

Changes to the originally proposed language are identified by  
**bold double underline** for new text and ~~double strikethrough~~ for deleted text.

Article 4

Disciplinary Guidelines and Uniform Standards for Substance-Abusing Licensees

1. Section 1361 of Title 16 of the California Code of Regulations is amended to read:

Section 1361. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Order and Disciplinary Guidelines With Model Language" (11<sup>th</sup> Edition/2011) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the ~~Medical Board of California~~ in its sole discretion, determines that the facts of the particular case warrant such deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in Section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Nothing in this section or section 1361.5 shall be construed as a limitation on the Board's authority to seek an interim suspension order against a licensee pursuant to section 11529 of the Government Code.

2. Section 1361.5 is added to Title 16 of the California Code of Regulations to read:

1361.5. Uniform Standards for Substance-Abusing Licensees.

(a) If the licensee is to be disciplined, for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol or both, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. The terms and conditions specified in subsection (c) shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in Section 1361 in any order that the Board determines would provide greater public protection or enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee:

(1) Notice of Employment Information. If a licensee 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 for the Board and his or her employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

(2) Clinical Diagnostic Evaluations and Reports.

(A) Whenever a licensee on probation due to a substance abuse problem is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed physician and surgeon who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board. The evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The cost of an evaluation shall be borne by the licensee.

(B) For a licensee who undergoes a clinical diagnostic evaluation, 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 Board.

(C) While awaiting the results of the clinical diagnostic evaluation, the licensee shall ~~be randomly drug tested~~ **undergo random biological fluid testing** at least two (2) times per week.

(D) 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 or 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 or herself or others, the evaluator shall notify the Board within 24 hours of such a determination. In determining whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

(i) License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

(E) 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.

(F) The Board shall review the clinical diagnostic evaluation report to determine whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the licensee based on the recommendations made by the evaluator. **No licensee shall be returned to practice until he or she has at least 30 days of negative biological fluid tests.**

(3) Worksite Monitor Requirements and Responsibilities.

(A) If the Board determines that a worksite monitor is necessary for a particular licensee, the licensee shall, within 30 calendar days of the effective date of that determination, submit to the Board or its designee for prior approval the names of a worksite monitor(s). The worksite monitor shall meet the following criteria to be approved by the Board:

(i) The worksite monitor shall not have a current or former 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 or supervisee of the licensee.

(ii) The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another physician and surgeon if no monitor with like scope of practice is available.

(iii) The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years.

(B) The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

(C) The worksite monitor shall adhere to the following required methods of monitoring the licensee:

(i) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board but not less than once per week.

(ii) Interview other staff in the office regarding the licensee's behavior, if requested by the Board.

(iii) Review the licensee's work attendance.



(D) The worksite monitor shall verbally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse, the licensee's actions and any other information deemed important by the worksite monitor shall be submitted to the Board within 48 hours of the verbal report.

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

(F) The licensee shall execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(G) If the monitor resigns or is no longer available, licensee shall, within 5 calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If licensee fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, licensee shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Licensee shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

(4) Group Support Meetings.

(A) The Board may require a licensee to participate in group support meetings. ~~The Board may impose participation in group support meetings following such recommendation by the evaluator or in a clinical diagnosis report.~~

(B) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to 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.

(C) The facilitator of a group support meeting shall conform to the following requirements:

(i) He or she shall 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 nationally certified organizations.

(ii) He or she shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years.

(iii) He or she 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.

(iv) He or she shall report a licensee's unexcused absence to the Board within 24 hours.

(5) Biological Fluid Testing. The Board shall require biological fluid testing of substance-abusing licensees.

(A) For the purposes of this subsection, biological fluid testing means the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.

(B) The following standards shall apply to a licensee ordered to undergo biological fluid testing:

(i) The licensee shall be tested a minimum of 52-104 times per year for the first year of probation and at any time ordered by the Board. After the first year of probation, licensees who are practicing shall ~~be randomly drug tested~~ **undergo random biological fluid testing** at least 36-104 times per year, and at any time as directed by the Board.

(1) The Board may revise the frequency specified in section (i) upon a determination that the licensee is not currently employed in a health care field, the licensee **does not** suffers from a substance use or abuse disorder, or other circumstances in which a revision of the testing frequency would not impair public protection. In no case may the testing frequency be reduced below twenty-four (24) times per calendar year.

(ii) ~~Drug~~ **Biological fluid** testing may be required on any day, including weekends and holidays. **Prior to vacation or absence, alternative biological fluid testing location(s) must be approved by the Board.**

(iii) 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.

(iv) Licensees shall be required to make daily contact with the Board to ascertain if **biological fluid** testing is required. **Licensees shall be ~~drug~~ tested on the date of notification as directed by the Board.**

(v) Licensees shall submit to all random and specifically ordered biological fluid tests.

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

(vii) Licensees ~~shall~~ **may** elect to have the tests performed by an entity under contract with a **laboratory or service approved in advance by the Board** ~~or by another entity~~, provided that the **laboratory or service** entity meets all the following standards:

(1) Its 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 United States Department of Transportation.

(2) It conforms to the current United States Department of Transportation Guidelines for Specimen Collection.

(3) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(4) The collection of testing specimens shall be observed.

(5) Its laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

(6) Its collection sites submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be subjected to chain of custody procedures. The entity shall process and analyze the specimen and provide legally defensible test results to the Board within seven (7) **business** days of receipt of the specimen. **The 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.**

(6) Results of Biological Fluid Tests.

(A) If the results of a biological fluid test indicates 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 instruct the licensee to leave any place of employment where he or she is practicing medicine or providing medical services. The Board shall also immediately notify all the licensee's employers, **if any, and workplace monitor, if any,** that the licensee may not provide medical services or practice medicine while the cease practice order is in effect.

(B) After the issuance of a cease practice order, the Board shall determine whether the test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

(C) If no prohibited substance use exists, the Board shall immediately lift the cease practice order.

(D) For the purposes of this section, "prohibited substance" means an illegal or unlawful drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board, alcohol, or other substance.

(7) Actions by Licensees and Consequences Thereof.

(A) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

(i) Fails to undergo a required clinical diagnostic evaluation;

(ii) Commits multiple minor violations of probation conditions and terms;

(iii) Treats a patient or patients while under the influence of drugs or alcohol;

(iv) Commits any drug or alcohol offense that is a violation of state or federal law or any regulation adopted thereto;

(v) Fails to undergo biological **fluid** testing when ordered;

(vi) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

(vii) Knowingly uses, makes, alters or possesses any object or product in such a way as to defraud a biological fluid test designed to detect the presence of a prohibited substance.

(B) If a licensee commits one or more major violation, the Board may take the following actions:

(i) Issue an immediate cease practice order.

(ii) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection may state that the licensee must test negative for at least a month of continuous ~~drug~~ **biological fluid** testing before being allowed to resume practice.

(iii) Increase the frequency of biological fluid testing.

(C) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

(i) Failure to submit required documentation to the Board in a timely manner;

(ii) Unexcused absence at required meetings;

(iii) Failure to contact a worksite monitor as required;

(iv) Failure to comply with another term or condition of his or her probation that does not impair public safety.

(D) If a licensee commits one or more minor violations, the Board may take the following actions:

(i) Issue a cease practice order;

(ii) Issue a citation and fine.

(iii) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee.

(E) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

(8) Request to Return to Full or Partial Practice.

(A) Before determining whether to authorize the return to practice after the issuance of a cease practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board in conjunction with the evaluator shall ensure that the licensee meets the following criteria:

(i) A demonstration of sustained compliance with his or her current treatment or recovery program, as applicable.

(ii) A demonstration of the capability to practice medicine safely as evidenced by current worksite monitor reports, evaluations conducted by licensed health care practitioners, and any other information relating to the licensee's substance abuse and recovery therefrom.

(iii) Negative ~~drug~~ **biological fluid** screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of probation.