

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 14, 2019  
ATTENTION: Members, Medical Board of California  
SUBJECT: Physician and Surgeon Health and Wellness Program  
Proposed Regulations  
FROM: Kerrie Webb, Senior Staff Counsel

### REQUESTED ACTION:

After review and consideration of the attached proposed regulations relating to the Physician and Surgeon Health and Wellness Program (PWHP), make a motion to direct staff to proceed with the following:

- 1) Prepare the necessary regulatory documents to submit to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
- 2) Upon DCA and Agency approval, submit the documents to the Office of Administrative Law (OAL) to notice the proposed regulatory language to repeal Title 16 of the California Code of Regulations (CCR) sections 1357, 1357.1, 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, 1357.8, and 1357.9; and to add sections 1357.10, 1357.11, 1357.12, 1357.13, 1357.14, 1356.15, and 1357.16; and
- 3) Authorize staff to make non-substantive changes to the language and respond to non-substantive comments during the rulemaking process 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 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 DCA pursuant to BPC section 315.

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.

Draft regulations were prepared by staff, 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, since the PHWP regulations were submitted to DCA, the SACC met and approved some changes to the Uniform Standards. The SACC has not yet officially incorporated and disseminated the revised Uniform Standards, but this development, along with other factors, caused staff to

reconsider the format of the draft PHWP regulations. When the SACC formally changes the Uniform Standards, the Board will be required to go through the rulemaking process to amend its own Uniform Standards set forth in regulation. If the requirements were repeated in both the Board's Uniform Standards and the PHWP regulations, then two rulemakings would be necessary every time the SACC changed the Uniform Standards, thereby causing inefficiency. Additionally, in light of the arduous rulemaking review process, staff is hopeful that referring to the Board's Uniform Standard regulations already approved by OAL will facilitate the review at every level. Therefore, this new draft does not separately lay out the requirements already covered by the Board's previously-approved regulations, but instead, directs the reader to the relevant regulatory sections for the requirements.

Finally, this proposed rulemaking repeals regulations relating to the Board's diversion program under 16 CCR sections 1357 through 1357.9, which no longer exists. Formally repealing these inoperable sections will streamline the Board's regulations and help avoid confusion.

Once these regulatory changes are approved by OAL and filed with the Secretary of State, Board staff will seek bids for the vendor. Once 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:

Staff recommends the Board grant authorization to proceed with preparing the necessary documents to submit to DCA and Agency for approval, prior to sending the documents to OAL to notice the proposed rulemaking. Staff further recommends the Board authorize staff to make non-substantive changes to the language and respond to non-substantive comments during the rulemaking process without returning to the Board.

**MEDICAL BOARD OF CALIFORNIA**  
**Physician and Surgeon Health and Wellness Program**  
**Specific Language of Proposed Regulations**

Legend

Underlined text: Indicates new proposed language.

~~Strikeout~~: Indicates proposed deletions.

Repeal Sections 1357, 1357.1, 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, 1357.8, and 1357.9;  
Add Sections 1357.10, 1357.11, 1357.12, 1357.13, 1357.14, 1357.15, and 1357.16, Article 2,  
of Chapter 2, 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.~~

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

**~~§ 1357.1. Criteria for Admission.~~**

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

~~(a) The applicant shall be a licensed physician or be otherwise legally authorized to practice medicine in this state.~~

~~(b) The applicant is found to abuse dangerous drugs or alcoholic beverages, or suffer from mental or physical disability in a manner which may affect the physician's ability to practice medicine safely or competently.~~

~~(c) The applicant shall have voluntarily requested admission to the program.~~

~~(d) The applicant agrees to undertake any medical or psychiatric examinations ordered to evaluate the application for participation in the program.~~

~~(e) The applicant 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 applicant agrees in writing to cooperate with all elements of the diversion agreement.~~

~~Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2350, 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 Participant Records.~~**

~~The diversion program shall retain the following types of records concerning a participant:~~

- ~~(A) All intake reports and case analyses.~~
- ~~(b) All agreements and amendments thereto.~~
- ~~(c) All correspondence with the Enforcement Program.~~
- ~~(d) All committee letters.~~
- ~~(e) All file notes, laboratory and incident reports.~~
- ~~(f) Computerized records derived from any of the foregoing types of documents.~~

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

### **1357.10. Definitions.**

As used in this article:

- (a) "Board" means the Medical Board of California or its designee unless otherwise specified.
- (b) "Clinical Diagnostic Evaluation" includes any exam performed by a licensee, and used to determine:
  - (1) whether the participant has a substance abuse problem;
  - (2) whether the participant is a threat to himself or herself 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" for purposes of this article 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 a vendor, including medical, mental health, 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.

(h) "Participant" means a California licensed physician and surgeon enrolled in the Program pursuant to a signed agreement with the Program, regardless of whether the participant 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 and 2340, Business and Professions Code. Reference: Sections 315, 2340, 2340.2, 2340.4, 2340.6, 2340.8, Business and Professions Code.

### **1357.11. Requirements for the Physician and Surgeon Health and Wellness Program Vendor**

A vendor under this article shall comply with the following requirements:

(a) General Vendor Requirements:

(1) The vendor shall attest in writing to its understanding and agreement to comply with Article 14 commencing with section 2340 of the code and applicable regulations.

- (2) The vendor shall have a minimum of five (5) years' experience in monitoring and rehabilitating health professionals with substance abuse problems.
  - (3) The vendor shall contract with a physician and surgeon licensed in California with a minimum of five (5) years' experience in treating addiction to serve as the vendor's medical director.
  - (4) The vendor shall not have a conflict of interest with its contractors.
  - (5) The vendor is fully responsible for the acts and omissions of its contractors and of persons either directly or indirectly employed by any of them. No contract or subcontract shall relieve the vendor of its responsibilities and obligations. All applicable statutes, regulations, and agreements between the Board and the vendor apply to all of the vendor's contractors.
  - (6) If a contractor fails to provide effective or timely services as required by statute, regulation, or contractual agreement, the vendor will terminate services of said contractor within 30 business days of written notification of failure to provide adequate services.
  - (7) The vendor shall notify the Board in writing within five (5) business days of termination of a contractor.
  - (8) The vendor shall ensure that before each participant enrolls in the Program, the participant signs an acknowledgment form to be maintained in his or her Program file that includes, but is not limited to, the following information:
    - a. Participation in the Program will not shield the participant from disciplinary action by the Board. A participant's termination or withdrawal from the Program, or committing any major violation as defined in section 1361.52(a) or minor violation as defined in section 1361.52(c), will be reported in writing to the Board;
    - b. The vendor shall inform the Board of any practice restrictions placed on the participant, and the Board shall post the practice restriction on the participant's profile on the Board's website without revealing the individual's participation in the Program, as required by section 1357.12; and
    - c. The participant shall pay all costs associated with participation in the Program, including, but not limited to: Program costs; clinical diagnostic evaluations; biological fluid testing; in-patient or out-patient care; medical or psychological treatment; support group meetings; and worksite monitors, as applicable.
- (b) Clinical Diagnostic Evaluation: If the vendor or Board requires a participant to undergo a clinical diagnostic evaluation, all the requirements set forth in section 1361.5(c)(1)(A)-(D) shall apply. 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.

- (c) Employer Notification: If the participant has an employer, all the requirements set forth in section 1361.5(c)(2) shall apply. 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.
- (d) Biological Fluid Testing:
- (1) The vendor shall require participants to abstain from the use, consumption, ingestion, or administration of prohibited substances, as defined in section 1361.51(e).
  - (2) The vendor shall require biological fluid testing of participants consistent 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)(l)(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 out of state, however, may transfer monitoring and care to a program in the new location upon the vendor’s approval. The self-referred participant shall have the out-of-state program automatically forward testing results and compliance reports to the vendor. Any 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. Prior to moving back to California, the self-referred participant shall re-enter into a contract for monitoring and care with the vendor. Upon moving back 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.
- (e) Positive Biological Fluid Tests: When a participant tests positive for a prohibited substance, the vendor shall take all the following actions:
- (1) Notify the Board of the positive test in writing within one (1) business day of receiving the results;
  - (2) Notify the participant in writing within one (1) business day of receiving the results that the participant must cease practice immediately; and
  - (3) Notify the participant’s employer, if any, and worksite monitor, if any, in writing within one (1) business day of receiving the results that the participant may not practice until further written notice.
- (f) Requirements for Laboratories/Testing locations and Specimen Collectors: The vendor's contractors that provide testing locations, laboratory services, or specimen collection, shall meet all the requirements 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.

(g) Type of Treatment: In determining whether inpatient, outpatient, or other type of treatment is necessary, the vendor and its contractors shall consider the following criteria:

- (1) 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 himself or herself or the public.

(h) Treatment Providers: A vendor's contractors providing treatment shall meet all the following requirements:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (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;
- (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.

- (i) Support Group Meeting Facilitators: If the vendor or Board requires a participant to participate in support group meetings, all the requirements set forth in section 1361.5(c)(4) shall apply. 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.
- (j) Worksite Monitors: If the vendor or Board requires a participant to have a worksite monitor, all the requirements set forth in section 1361.5(c)(5) shall apply. 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.
- (k) Return of Participant to Practice: If participant has been restricted from full-time practice, the vendor shall ensure the participant meets all the requirements of section 1361.53 prior to returning 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” 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.

### **1357.12. Report and Public Disclosure of Practice Restrictions for Participants**

If a vendor imposes a practice restriction on a participant, the vendor shall report in writing to the Board, 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 being notified in writing by the vendor that the practice restriction has been lifted.

Note: Authority cited: Sections 2018 and 2340, 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. 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, 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, 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, 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 indicating whether the licensee is a participant in the Program, and if so, the date the licensee enrolled in the Program, the services being provided to the licensee, and whether the licensee is compliant with the Program.

Note: Authority cited: Sections 2018 and 2340, 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. Vendor Communication with the Board; Annual Reports**

- (a) On a periodic basis, whenever requested by the Board, and no less than quarterly to coincide with presentations at the Board's regularly-scheduled Board meetings, the vendor shall report in writing 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 participant while 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 deviation from the standard of care established by admission or Board decision following an accusation;
- (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 (i.e., 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. At each educational event provided by the vendor, attendees shall be asked to complete an evaluation of the event and speaker(s), and the evaluation results and comments shall be reported in writing to the Board;
- (14) An accounting of all amounts collected, expenses incurred, and amounts disbursed and for what purposes; and
- (15) Any other data requested in writing by the Board and available to the vendor.
- (b) With regard to subsections (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 (i.e., cocaine, alcohol, Demerol, etc.).
- (c) On a yearly basis, by a date set by the Board, the vendor shall provide all of the data identified in subsections (a) and (b) to the Board for inclusion in the Board's annual report.

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

### **1357.15. External Independent Audits**

- (a) At least once every three (3) years, or at any time requested by the Board, an external, independent audit shall be conducted 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 be approved in advance by the Board, and consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs. The 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 financial status and performance in adhering to the statutes and regulations applicable to the Program. The auditor must provide a written report of his or her findings to the Board by June 30 of each three (3) year cycle. 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 treatment or monitoring services that would 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 Board shall respond to the findings in the audit report in writing no later than September 1 of each three (3) year cycle. In its response, if deficiencies were identified in the audit report, 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 approved by the Board, identifying how each deficiency will be addressed and in what time period. The vendor shall not be given longer than 60 days to cure a deficiency.
- (d) Failure of the vendor to cure all deficiencies within 60 days shall subject the vendor to termination. Termination of the vendor shall be in the sole discretion of the Board.
- (e) 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.

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.

### **1357.16. Maintenance of Records**

The vendor shall maintain the following records for each participant while the participant is active in the program and for at least seven (7) years thereafter:

- (a) All intake reports and case analyses;
- (b) All agreements and amendments thereto;
- (c) All correspondence with the Board;
- (d) All correspondence with the participant;
- (e) All correspondence with contractors;

(f) All file notes, laboratory test results, and incident reports;

(g) Other records as required by the Board, and set forth in the contract.

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.