BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF TELECONFERENCE
ENFORCEMENT COMMITTEE MEETING
May 12, 2015
1:00 p.m.

One or more Committee Members will participate in this meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Enforcement Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

Sergio Azzolino, DC
1545 Broadway St., Suite 1a
San Francisco, CA 94109
(415) 563-3800

Heather Dehn, D.C.
4616 El Camino Ave., Suite B
Sacramento, CA 95821
(916) 488-0202

Frank Ruffino, Public Member
Rancho San Diego Library
11555 Via Rancho San Diego
El Cajon, CA 92019
(619) 660-5370

AGENDA

1. **Call to Order**

2. **Approval of Minutes**
   March 13, 2015

3. **Discussion/Possible Action Regarding Amendments to the Board of Chiropractic Examiners Disciplinary Guidelines**

4. **Discussion/Possible Action Regarding the Incorporation of SB 1441 Uniform Standards Related to Substance Abusing Licensees into the Board of Chiropractic Examiners Disciplinary Guidelines**

5. **Discussion/Possible Action Regarding a Possible Statutory Change to Government Code Section 11522 Which Would Allow the Board to Assign Petitions for Reinstatement or Reduction of Penalty to an Administrative Law Judge**

6. **Discussion and Review of the Question on the Petitioner Application(s):**
   Have you ever had disciplinary action taken against any professional license in this state or any other state?

7. **Public Comment**
   Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125 & 11125.7(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

T (916) 263-5355
F (916) 327-0039
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, California 95814
www.chiro.ca.gov

8. Future Agenda Items

9. Adjournment

ENFORCEMENT COMMITTEE
Sergio Azzolino, D.C., Chair
Heather Dehn, D.C.
Frank Ruffino, Public Member

Meetings of the Board of Chiropractic Examiners' Committee are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board's Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail marlene.valencia@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Suite 142A, Sacramento, CA 95814. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

Board of Chiropractic Examiners
MEETING MINUTES
Enforcement Committee
March 13, 2015
12:30 p.m.
State of California
901 P Street, Suite 142-A
Sacramento, CA 95814

Committee Members Present
Sergio Azzolino, D.C., Chair
Heather Dehn, D.C.
Frank Ruffino

Staff Present
Robert Puleo, Executive Officer
Sandra Walker, Compliance Manager
Dixie Van Allen, Associate Governmental Program Analyst
Spencer Walker, Attorney III
Marlene Valencia, Associate Governmental Program Analyst
Christina Bell, Associate Governmental Program Analyst

Public Present
Marcus McCarther, DCA Executive Office
Deborah Mattos, Lobbyist for Southern California University of Health Sciences
Dr. Khadijah Poole-Khatib, D.C.

Call to Order
Dr. Azzolino called the meeting to order at 12:35 p.m.

Roll Call
Mr. Ruffino called the roll. Dr. Azzolino, Dr. Dehn and Mr. Ruffino were all present.

Approval of January 27, 2015 Minutes

MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES
SECOND: DR. AZZOLINO SECONDED THE MOTION
VOTE: 2-0 (DR. AZZOLINO – AYE, DR DEHN - AYE, MR. RUFFINO – ABSTAINED DUE TO HIS ABSENCE AT THE JANUARY 27, 2015 ENFORCEMENT COMMITTEE MEETING)
MOTION CARRIED

Discussion and Possible Action on Criteria and Standards for Expert Consultant Selection. [2014-2017 Strategic Plan]

The revised Application for Expert Consultant and Guide Book were provided to the committee members. Application revisions were discussed and accepted. The word "Affidavit" on page 5, section 10 of the Application was misspelled; staff was directed to make the requested revision.

MOTION: DR. AZZOLINO MOVED TO ACCEPT THE APPLICATION WITH THE CORRECTION OF THE WORD AFFIDAVIT.
SECOND: DR. DEHN SECONDED THE MOTION
VOTE: 3-0 (DR AZZOLINO – AYE, DR. DEHN – AYE, MR. RUFFINO – AYE)
MOTION CARRIED

It was determined the Application for Expert Consultant and Guide Book did not need to return to the Enforcement Committee.

The Expert Training Timeline was discussed to determine which 2 Board members could attend which training dates. The date of June 23, 2015 was secured for Northern California Expert training.

It was determined another Southern California Board member would be contacted as well, for their availability to attend the Southern California training with Mr. Ruffino.

Discussion and Possible Action on Proposed Language Regarding Maintenance of Patient Records/Amendments to Title 16, California Code of Regulations Sections 312.2 and 318

Dr. Azzolino stated he was pleased with the revisions provided so far.

Dr. Azzolino re-introduced the subject of electronic signatures.

Mr. Walker stated he had conducted some research on this matter and found that the courts upheld this as long as the person intends for a stamp, or a digital or electronic signature to represent their actual signature; that this is acceptable. The Secretary of State digital signature regulations only relate to public entities who desire to do business with the public that they serve. That is not applicable, nor is the California Uniform Electronic Transactions Act. The things that the Board has to rely upon is whether the chiropractor intends to conduct business electronically. Typically an electronic signature is not used unless the business is conducted electronically.

Mr. Walker asked; what is the intent?

Mr. Puleo stated the Board's intent is to comply with the CCR section 318 and determine if we can accept an electronic signature or does it need to be an ink handwritten signature.

Mr. Walker stated we are complying due to the way section 318 is written. The language doesn't specify if the signature has to be a wet, digital, electronic or a stamp. It is the intent behind the signing of the document itself.

Dr. Azzolino stated intake forms should always be signed by patients.

Dr. Azzolino brought up a concern about sign in sheets, due to the HIPPA violation and it is antiquated.

Mr. Walker agreed a sign in sheet would be a HIPPA violation and an invasion of privacy issue.

Dr. Azzolino inquired if we have a regulation that requires a sign in sheet. Ms. Van Allen is researching this issue.

Mr. Walker stated that the proposed language in 318(b) regarding Civil Code section 1798.81 should be written out as to state: "...contained therein by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means." Mr. Walker also stated that the section number is missing in subdivision (c) after the word "Section" on line four (4). He stated that "303" should be placed after that word.

MOTION: DR. AZZOLINO MOVED TO ACCEPT THE PROPOSED TEXT WITH THE ADDITIONAL LANGUAGE RECOMMENDED BY MR. WALKER IN 318(B) AND (C).
SECOND: MR. RUFFINO SECONDED THE MOTION
VOTE: 3-0 (DR AZZOLINO – AYE, DR. DEHN – AYE, MR. RUFFINO – AYE)
MOTION CARRIED

The revised text for 318(b) and (c) will be brought forward to the next Board meeting.

Ms. Walker inquired about the new draft form entitled "Notice of Termination of Practice and Transfer of Patient Records". She asked if the draft form needed to come to the Enforcement Committee or could it go forward with the 318 package to the next Board meeting.

Mr. Walker stated the draft form could go forward to the next Board meeting and did not have to come back to the Enforcement Committee.

Ms. Bell asked if the language in the regulation about the "New Form No. XXX" should also state: "hereby incorporated by reference."

Mr. Walker stated yes.

Dr. Azzolino directed staff to add one bullet item at the top of the "Guidelines for When a Chiropractic Practice Closes" sheet. The additional bullet item should state to: "Officially notify the Board in writing, pursuant to section 318.

Future Enforcement Committee Meetings for 2015

- May 12, 2015 from 1:00 – 3:00 p.m.
- August 24, 2015 from 12:00 – 2:00 p.m.

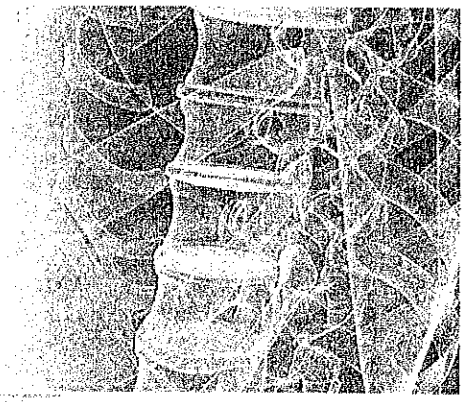
Public Comment
None

Future Agenda Items

- Discussion/Possible Action Regarding a Possible Statutory Change to Government Code Section 11522 [Petition for Reinstatement or Reduction of Penalty of a Revoked or Suspended License]
- Discussion/Possible Action Regarding Implementation of Senate Bill 1441 [Uniform Standards for Substance Abusing Licensees]
- Discussion and Review of Revised Disciplinary Guidelines

Adjournment
Dr. Azzolino adjourned the meeting at 1:37 p.m.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA



~~Board of Chiropractic Examiners~~
~~Disciplinary Guidelines and Model Disciplinary Orders~~
~~Adopted by the Board January 28, 1999~~
~~Revised September 23, 1999~~
~~Revised October 21, 2004~~

Disciplinary Guidelines

And Model Disciplinary Orders

Revised Month, 2015

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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Introduction

The Board of Chiropractic Examiners (hereinafter "the Board") is a consumer protection agency with the primary mission of protecting consumers of chiropractic services from potentially harmful licensee s. In keeping with its mandate to protect the affected population of consumers, the Board has adopted the following recommended guide lines for disciplinary orders and conditions of probation for violations of the Chiropractic Act and/or California Code of Regulations.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that an individual case may necessitate a departure from these guidelines for disciplinary orders. However, in such a case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact" which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken.

The Board recognizes that these conditions are merely guidelines and the mitigating or aggravating circumstances in a particular case may necessitate variations. In such cases, the mitigating circumstances shall be detailed in any proposed decision or any transmittal memorandum accompanying a stipulation.

The Board has found that accusations are rarely filed except in serious cases. In general, the position of the Board is that revocation should always be an option whenever grounds for discipline are found to exist. Board policy is that revocation is always an appropriate order where a respondent is in default, such as when he or she fails to file a notice of defense or fails to appear at a disciplinary hearing.

The Board seeks recovery of all investigative and prosecution costs up to the hearing in all disciplinary cases, including all charges of the Office of the Attorney General including, but not limited to legal services and opinions of expert consultants, because the burden for paying for disciplinary cases should fall on those whose conduct requires investigation and enforcement, not upon the profession as a whole.

~~BOARD INFORMATION~~

~~Board of Chiropractic Examiners 2525 Natomas Park Drive, Suite 260 Sacramento, CA 95833-2931 Phone: (916) 263-5355 Fax: (916) 263-5369~~

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Probation Monitoring Purpose

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The Board will work to:

1) Allow for the probationer's rehabilitation if that is his/her choice;
2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences; and
3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a chiropractor.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

Stipulated Settlements

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

Disciplinary Guidelines

Factors to Be Considered in Determining Penalties

Section 10(b) of the Chiropractic Initiative Act provides that the Board may discipline the holder of, or suspend or revoke, any license issued by the Board.

In determining whether the minimum, ~~or an~~ intermediate or maximum penalty is to be imposed in a given case, factors such as the following should be considered:

~~1.~~ 1. Actual or potential threat or harm to the public, consumer or patient.
~~2. Actual or potential harm to any consumer.~~
~~3.~~ 2. Prior disciplinary record, including level of compliance with disciplinary orders~~.~~ or probation terms.
~~4.~~ 3. Prior warnings of record, including final citations issued within the last 5 years.
~~5.~~ 4. Number and/or variety of current violations.
~~6.~~ 5. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
~~7.~~ 6. Mitigating evidence.
~~8.~~ 7. Rehabilitation evidence.
~~9.~~ 8. Compliance with terms of any criminal sentence.
~~10.~~ 9. Overall criminal record.
~~11.~~ 10. Time passed since the act(s) or offense(s) occurred.
~~12.~~ 11. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
~~13.~~ 12. The financial benefit to the respondent from the misconduct.
~~14.~~ 13. Intent of actions.
~~15.~~ 14. Act(s) of remorse.
~~16.~~ 15. Death of patient or consumer due to gross negligence, criminal violations or serious bodily injury.

No one of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

Terms of Probation

Probation conditions are divided into two categories: 1) standard conditions that shall appear in all probation cases, and 2) optional conditions, that depend on the nature and circumstances of a particular case. The Board prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order. The Board may also impose other conditions appropriate to the case as long as the condition is not contrary to public policy.

Disciplinary Guidelines Cont.

Standard Conditions - To be included in all probation decisions/orders.

1. Obey All Laws
2. Quarterly Reports
3. Probation Monitoring
4. Interview With Board
5. Continuing Education
6. Reimbursement of Board Costs
7. Tolling of Probation
8. No Preceptorships or Supervision of Interns
9. Violation of Probation
10. Notification of Employment
11. Notice to Employers
12. Notice to Employees
13. License Surrender
14. Completion of Probation

Optional Conditions

1. Actual Suspension
2. Drugs - Abstain From Use
3. Drug and Alcohol Abuse Treatment/Counseling ~~abuse counseling/detoxification~~
4. Alcohol - Abstain From Use
5. ~~Alcohol abuse counseling/detoxification~~ Drug and Alcohol Testing
6. ~~Blood and/or urine testing~~ California Law and Professional Practice Examination (CLPPE)
7. ~~Law Examination~~ Special Purposes Examination for Chiropractic (SPEC)
8. ~~SPEC Examination~~ Practice Monitoring by Another Licensed Doctor of Chiropractic
9. ~~Monitoring~~ Restitution for Consumers
10. ~~Auditing of billing practices~~ Psychiatric or Psychological Evaluation
11. ~~Restitution for consumers~~ Psychotherapy
12. ~~Psychiatric or Psychological evaluation~~ Medical Evaluation
13. ~~Psychotherapy~~ Ethics and Boundaries Examination
14. ~~Medical evaluation~~ Education Course
15. ~~Ethics Course~~ Community Service
16. ~~Education Course~~ Restricted Practice
17. ~~Community service~~ Third Party-Patient Chaperone
18. ~~Restricted practice~~ Notification to Patients
19. ~~Third party presence - sexual transgressors~~ Criminal Probation/Parole Reports
20. ~~Notification to patients~~ Billing Monitor
21. ~~Criminal Probation/Parole Reports~~

Categories of Violations and Recommended Penalties

The Chiropractic Initiative Act and the California Code of Regulations specify the offenses for which the Board may take disciplinary action. The following are categories of violations used by the Board in determining appropriate disciplinary penalties.

The Board also has the authority, pursuant to California Code of Regulations section 304, to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the Board will typically correspond with the discipline imposed by the other jurisdiction for similar offenses.

CATEGORY I

Minimum: Revocation stayed; 1-2 year probation
Maximum: Revocation
All standard terms and conditions
Optional terms and conditions, as applicable

1. Actual Suspension
2. Drugs - Abstain From Use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain From Use
5. ~~Alcohol abuse counseling/detoxification~~ Drug and Alcohol Testing
6. ~~Blood and/or urine testing~~ California Law and Professional Practice Examination (CLPPE)
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18. ~~Restricted practice~~ Criminal Probation/Parole Reports
19. ~~Third party presence - sexual transgressors~~ Billing Monitor
20. ~~Notification to patients~~
21. ~~Criminal Probation/Parole Reports~~

CATEGORY I CONTINUED

Recommended but not limited to ~~for~~ the following violations which are relatively minor, but are potentially harmful, or for repeated violations of a relatively minor nature:

Chiropractic Initiative Act
5 Practicing without a valid license
10(b) Improper use of fictitious names

California Code of Regulations
302.5 Use of Laser
303 ~~Practicing without notifying Board of business address~~ Filing of Address
304 Discipline by Another Jurisdiction
308 ~~Practicing without properly posting license; failure to obtain and post satellite office certificate~~ Display of License
310 Change of name
310.2 Use of the title "Chiropractor" by unlicensed persons
311 Advertising
312 Unlicensed practice *(for use in **less** egregious cases or for applicants)*
314 Law Violators
317(v) Waiving co-payments or deductibles
317(x) Substitution of a spinal manipulation for vaccination
317.2 Gag Clauses in Civil Agreements Prohibited
317.3 Licensee Reporting Requirements
318(a)(b) Chiropractic Patient Records/Accountable Billings
319.1 Informed Consent
366 Continuing Education Audits
367.5 Application for chiropractic corporation
367.7 Name of corporation
367.9 Shares: ownership and transfer

Business and Professions Code
1051 Application for registration as a chiropractic corporation

Health and Safety Code
123110 Failure to provide treatment records

CATEGORY II

Minimum: Revocation stayed, 3 year probation
Maximum: Revocation
All standard terms and conditions of probation
Optional terms and conditions, as applicable

1. Actual Suspension
2. Drugs - Abstain From Use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain From Use
5. ~~Alcohol abuse counseling/detoxification~~ Drug and Alcohol Testing
6. ~~Blood and/or urine testing~~ California Law and Professional Practice Examination (CLPPE)
7. ~~Law Examination~~ Special Purposes Examination for Chiropractic (SPEC)
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18. ~~Restricted practice~~ Third party-Patient Chaperone
19. ~~Third party presence - sexual transgressors~~ Notification to patients
20. ~~Notification to patients~~ Criminal Probation/Parole Reports
21. ~~Criminal Probation/Parole Reports~~ Billing Monitor

CATEGORY II CONTINUED

Recommended for violations with a more serious potential for harm, for violations which involve greater disregard for chiropractic law and public safety, or for violations which reflect on ethics, care exercised or competence.

Chiropractic Initiative Act
10(b) Advertising treatment of sexual disorders
15 Misleading use of title

California Code of Regulations
306.1(c) Failure to appear for hearing
311 Advertising
312 Unlicensed practice *(for use in more egregious cases)*
314 Law Violators
317(l) Making or signing false documents
317(n) Making false statement on the license application
317(p) False, misleading, or deceptive advertising
317(r) Unauthorized disclosure of patient information; failure to maintain confidentiality
317.1 Failure to register referral service
318(a) Chiropractic patient records
318(b) Accountable billings
319 Inappropriate billing for services advertised as free or discounted
319.1 Informed Consent
~~355 Renewal and Restoration~~
366 Continuing Education Audits

Business and Professions Code
650.3 Group advertising and referral services
651 False, misleading, or deceptive advertising

CATEGORY III

Minimum: Revocation stayed, minimum 30 days suspension, 5 year probation
Maximum: Revocation
All standard terms and conditions of probation
Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~ Drug and Alcohol Testing
6. ~~Blood and/or urine testing~~ California Law and Professional Practice Examination (CLPPE)
7. ~~Law Examination~~ Special Purposes Examination for Chiropractic (SPEC)
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16. ~~Education Course~~ Restricted practice
17. ~~Community service~~ Third party-Patient Chaperone
18. ~~Restricted practice~~ Notification to patients
19. ~~Third party presence - sexual transgressors~~ Criminal Probation/Parole Reports
20. ~~Notification to patients~~ Billing Monitor
21. ~~Criminal Probation/Parole Reports~~

CATEGORY III CONTINUED

Recommended for less egregious criminal convictions involving moral turpitude, sexual misconduct or fraudulent acts committed in connection with the licensee's practice. Also to be used in cases involving gross negligence/incompetence, capping, steering, accepting fees for patient referrals, excessive treatment or for failure to refer a patient to another licensed care provider.

Chiropractic Initiative Act
7 Unauthorized practice of medicine

California Code of Regulations
302(a) Practice exceeding the scope of practice
302(a)(5) Use of drug or medicine in materia medica
302.5 Use of Laser
312(c) Failure to properly supervise
313 Inducing student to practice chiropractic
314 Law Violators
316(a) Responsibility for conduct on premises *(for use in less egregious cases)*
316(b) License used in connection with sexual acts *(for use in less egregious cases)*
316(c) Sexual relations with a patient *(for use in less egregious cases)*
317(a) Gross negligence *(for use in less egregious cases)*
317(b) Repeated negligent acts *(for use in less egregious cases)*
317(d) Excessive treatment *(for use in less egregious cases)*
317(e) Intentionally or recklessly causing harm to the public
317(f) Administering or use of drugs or alcohol
317(g) Conviction of a crime *(for use in less egregious cases, including fraud)*
317(h) Conviction involving moral turpitude, dishonesty, or corruption *(for use in less egregious cases, excluding fraud)*
317(i) Conviction involving dangerous drugs or alcohol
317(j) Dispensing or administration of drugs
317(k) Commission of dishonest or fraudulent act related to duties or functions of license
317(l) Making or signing false documents
317(m) Aiding and abetting unlicensed activity
317(q) Obtaining fee by fraud or deceit
317(s) Use of cappers or steerers 317(t) Fee for referrals
317(w) Failure to refer a patient to other licensed health care provider
318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)

Business and Professions Code
~~1054 Name of a chiropractic corporation~~
~~1055 Officers of chiropractic corporation not licensed as required in Professional Corporation Act~~
725 Excessive prescribing or treatment *(for use in less egregious cases)*
726 Sexual relations with patients *(for use in less egregious cases)*
810 False or fraudulent claims *(for use in less egregious cases)*

CATEGORY IV

Penalty: Revocation

Recommended for **more egregious** cases including, but not limited to, fraudulent activity, physical violence, sexual misconduct, excessive treatment, or improper use of license in connection with sexual acts. Revocation is also recommended when: 1) respondent fails to file a notice of defense or to appear at a disciplinary hearing where the Board has requested revocation in the accusation; 2) respondent violates the terms and conditions of probation from a previous disciplinary order; and 3) where prior discipline has been imposed, as progressive discipline unless respondent can demonstrate satisfactory evidence of rehabilitation.

California Code of Regulations
302.5 Use of Laser
316(a) Responsibility for conduct on premises
316(b) License used in connection with sexual acts
316(c) Sexual relations with a patient
317(a) Gross negligence
317(b) Repeated negligent acts
317(d) Excessive treatment
317(g) Conviction of a crime
317(h) Conviction involving moral turpitude, dishonesty, or corruption
317(l) Making or signing false documents
318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)
390.7 Sexual Contact with Patient
390.8 Required Actions Against Registered Sex Offenders

Business and Professions Code
725 Excessive prescribing or treatment
726 Sexual relations with patients
810 False or fraudulent claims

DISCIPLINARY GUIDELINES

FOR USE BY ADMINISTRATIVE LAW JUDGES

To establish consistency in discipline for similar offenses on a statewide basis, the Board of Chiropractic Examiners has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by administrative law judges, attorneys, chiropractors and ultimately the Board, shall be revised from time to time following public hearing by the Board and will disseminated to interested parties upon request. Additional copies of this document may be obtained via the Board's web site at www.chiro.ca.gov or by contacting the Board of Chiropractic Examiners at its office in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 125.3.

The Board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include some statement of this in the proposed decision so that the circumstances can be better understood and evaluated by the Board upon review of the proposed decision and before its ultimate action is taken.

MODEL DISCIPLINARY ORDERS LANGUAGE

Model Number

1. **Revocation - Single Cause**

License No. (Ex: DC-12345) issued to respondent (Ex: John Smith, D.C.) is revoked. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $_____ within 15 days of the effective date of this decision.

(Optional) License No. (Ex: DC-12345) issued to respondent (Ex: John Smith, D.C.) is revoked. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. If respondent petitions the Board ~~is~~ he/she shall pay to the Board its costs associated with the investigation and enforcement in the amount of $_____. Payment of the costs is no guarantee the petition will be granted. If respondent fails to pay the amount specified, the petition shall be denied and the license shall remain revoked.

2. **Revocation - Multiple Causes**

License No. (Ex.: DC-12345) issued to respondent (Ex.: Jane Doe, D .C.) is revoked pursuant to ~~Determination of Issues (Ex: I, II, and III)~~ Causes for Discipline, separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $_____ within 15 days of the effective date of this decision.

(Optional) License No. (Ex.: DC-12345) issued to respondent is revoked pursuant to ~~Determination of Issues (Ex: I, II, and III)~~ Causes for Discipline, separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 2 years from the effective date of this decision. If respondent petitions the Board he/she shall pay to the Board its costs associated

with the investigation and enforcement in the amount of $_____. Payment of the costs is no guarantee the petition will be granted. If respondent fails to pay the amount specified, the petition shall be denied and the license shall remain revoked.

3. **Revocation - Business and Professions Code Section 1003**

License No. (Ex.: DC-12345) issued to respondent (Ex: Jane Doe, D.C.) is revoked pursuant to ~~Determination of Issues (Ex: I, II, and III)~~ Causes for Discipline, separately and together. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her revoked license for 10 years from the effective date of this decision. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $_____ within 15 days of the effective date of this decision.

4. ~~**Exam applicants**~~ **Applicants who are placed on probation**

The application of respondent (Name) for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions.

~~5. **Endorsement applicants who are placed on probation**~~

~~The application of respondent (Name) for licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions.~~

6. **Reinstatement of license with conditions of probation**

The application of respondent (Ex.: John Doe, D.C.) for license reinstatement is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of (Ex.: five) years on the following terms and conditions.

(Optional) Upon successful completion of the California law examination, a license shall be issued to respondent.

(Optional) The respondent shall enroll in and successfully complete (Ex.: 12, 24) hours of continuing education prior to issuance of the license. ~~The respondent is suspended from practice until the required continuing education is successfully completed.~~

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation term requiring payment of original cost recovery must be included in the reinstatement decision.

7. **Standard Stay Order**

However, (revocation) is stayed and respondent is placed on probation for (Ex: five) years upon the following terms and conditions:

8. **Surrender of License**

~~Respondent surrenders license number (Ex: DC-12345) as of the effective date of this decision. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his/her license for 2 years from the effective date of this decision. Respondent stipulates that should he/she the Board after the 2 year period has elapsed, all allegations contained in accusation number _____ will be deemed to be true. Respondent shall meet all requirements for licensure as of the date the petition is submitted to the Board, including, but not limited to taking and passing the California chiropractic law exam prior to reissuance or reinstatement of the license.~~

~~Respondent further stipulates that he/she shall reimburse the Board for investigation and enforcement costs in the amount of $_____ within _____ days of the effective date of this decision.~~

~~**(Optional)** Respondent stipulates that should respondent apply for reinstatement of his/her license he/she shall pay to the Board costs associated with its investigation and enforcement in the amount of $_____ at the time of application.~~

It is hereby ordered that chiropractic license No. (Ex: DC 12345), issued to respondent (John Doe, D.C.), is surrendered, as of the effective date of this decision and accepted by the Board of Chiropractic Examiners.

The surrender of respondent's chiropractic license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent and shall become a part of respondent's license history with the Board.

Respondent shall lose all rights and privileges as a chiropractor in California as of the effective date of the Board's Decision and Order. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within ten (10) days from the date of acceptance.

If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board, shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. _____ shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the

petition. Respondent may not petition the Board for reinstatement of his/her license for two (2) years from the effective date of this decision.

(Optional) Respondent stipulates that should he/she petition for reinstatement of his/her license, he/she shall pay to the Board costs associated with its investigation and enforcement in the amount of $ _____ at the time the petition is filed.

9. Extension of Probation in Lieu of Revocation of Probation

License No. (Ex: DC-12345), issued to respondent (Ex: Jane Doe, D.C.) remains revoked, stayed, and placed on probation for an additional (Ex: 3 years) from the original effective date of Decision and Order AC _____. The additional (Ex: 3 years) will total the number of years of probation to (Ex: 8 years). The original terms and conditions of probation shall remain in full force and effect, and are fully incorporated herein by reference. In addition to the terms and conditions set forth in Decision and Order No. AC _____ that became effective on (date), respondent shall comply with the following terms and conditions of probation.

10. Severability Clause

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order ad all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

11. Uniform Standards for Substance-Abusing Licensees

Pursuant to Business and Profession Code section 315, the Uniform Standard for Substance-Abusing Licensee (Uniform Standards) are applied throughout this order and shall be adhered to throughout the entire term of probation.

DISCIPLINARY ORDERS

PROBATION TERMS AND CONDITIONS

STANDARD CONDITIONS

Model Number

1. **Obey All Laws**

Respondent shall obey all federal, state and local laws, and all statutes and regulations governing the practice of chiropractic in California. A full and detailed account of any and all arrests and or convictions for any violations of law shall be reported by the respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term, and within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process, respondent shall submit to the Department of Justice electronic fingerprint images (Live Scan) and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. ~~completed fingerprint cards and fingerprint fees within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process.~~ Respondent shall submit a recent 2" x 2" photograph of himself or herself within 45 days of the effective date of the final decision.

RATIONALE: See Regulation 321.1 fingerprint submission language; "or who are directed by the Board shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice." With this condition the Board will be alerted of any criminal law violations by the probationer especially any such occurrences following the start of probation and whether or not the probationer has informed the Board's probation monitor or designee of these arrests.

2. **Quarterly Reports**

Respondent shall submit quarterly reports under penalty of perjury on a form entitled "Quarterly Probation Report" (No. QPR100 (Rev. 7/04)), certifying and documenting whether there has been compliance with all conditions of probation. Late or missing reports may be regarded as a violation of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondent. Late reports or missing reports shall be seen as violations. This enforcement tool could not be utilized in the past because mention of it was missing from term language.

3. **Probation Monitoring**

Respondent shall comply with the Board's probation compliance monitoring program, including investigator visits and site inspections. Failure to comply with probation monitoring shall be considered a violation of probation.

RATIONALE: This language includes the investigations unit interacting with probationers as the request of or in coordination with the probation monitor or designee.

4. **Interview with Board**

Respondent shall appear in person for interviews with the Board's enforcement staff, the full Board, or its designee upon request at various intervals and with reasonable notice.

5. **Continuing Education**

Respondent shall provide evidence of continuing education, required for license renewal, if requested by the Board.

6. **Reimbursement of Board Costs**

Respondent shall reimburse to the Board its costs of investigation and enforcement in the amount of $_____. Respondent may be permitted to pay these cots in a payment plan determined by the Board/designee or as determined in this order. Non-payment, by the dates and in the amounts determined by the Board, may be considered a violation of probation. The filing of bankruptcy by Respondent shall not relieve Respondent of his/her responsibility to reimburse the Board. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board. ~~Respondent shall make said payments as follows: _____~~.

~~If respondent fails to pay the costs as directed by the Board and on the date(s) determined by the Board, probation shall be automatically extended until such time that all costs are paid in full.~~

7. **Tolling of Probation**

If respondent leaves California to reside or practice outside this state, or for any reason should respondent stop practicing chiropractic in California, respondent must notify the Board in writing of the dates of departure and return or the dates of non-practice within10 days of departure or return. Non-practice is defined as any period of time exceeding 30 days in which respondent is not engaging in the practice of chiropractic or any time the license is inactive or in forfeiture status. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, combined total or consecutive period of [one] years.

RATIONALE: Per legal, we cannot actively impose or enforce specific terms on Probationers while they are tolling, only reasonably can we enforce that they report any change of address per regulation and that they know about the "obey all laws" term in the probation order. The other additional language changed simply allows probation to be completed in a reasonable time by lessening the likelihood of lengthy probation and also encourages an effective active probation program. "Combined total" was added to avoid probationers tolling up to their limit, returning for one day in California to practice and then return to tolling status, and allow their tolling period to start once again.

8. **No Preceptorships or Supervision of Interns**

Respondent shall not supervise any chiropractic student (intern) participating in a preceptor program or any unlicensed chiropractic graduate and shall not perform any of the duties of a preceptor.

9. **Violation of Probation**

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

10. **Notification of Employment**

Within 10 days of a change in chiropractic employment -- either leaving or commencing chiropractic employment -- respondent shall so notify the Board in writing, including the name, address, phone number and license number of the new employer.

Chiropractic employment within the meaning of this provision shall include any full-time, part-time, independent contracting or temporary service as a chiropractor.

RATIONALE: Use of this additional language ensures that the new employment is specific to chiropractic and also includes independent contract work.

11. **Notice to Employers**

Respondent shall notify all present and prospective employers of the Accusation or Statement of Issues and dDecision and Order in case No. _____ ~~and the terms, conditions and restrictions imposed on respondent by the decision.~~

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new chiropractic employment, respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the Accusation or Statement of Issues and the Ddecision in case No. _____.

"Employment" within the meaning of this provision shall include any full-time, part-time or temporary service as a chiropractor.

RATIONALE: Use of this additional language ensures that the new employer has been notified of all aspects of the probation. It also clarifies that only chiropractic employment needs to be reported to the Board. Independent contract work is also captured as employment.

12. **Notice to Employees**

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in chiropractic operations are made aware of all the terms and conditions of probation, either by posting the Decision and Order, circulating the Decision and Order, ~~a notice of the conditions of the terms and conditions, circulating such notice~~, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout probation. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of all the terms and conditions of probation ~~by posting a notice, circulating a notice, or both~~.

"Employees" as used in this provision includes all full-time, part-time, temporary and independent contractors employed or hired at any time during probation.

Respondent shall, if requested, provide proof to the Board or its designee that all employees are aware of the decision in case No. _____ since its effective date.

RATIONALE: Paragraph flows better with the use of additional words for emphasis.

13. **License Surrender**

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days from the date of acceptance. Surrender of respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

Option #1
Respondent may not petition the Board for reinstatement of his/her surrendered license for ~~2~~ _____years from the acceptance date of surrender. If respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full within _____ days of the effective date of this decision. ~~at the time the petition is submitted to the Board.~~

Option #2
Respondent may not petition the Board for reinstatement of his/her surrendered license for _____ years from the acceptance date of surrender. If Respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full at the time the petition is submitted to the Board.

RATIONALE: This condition change permits the Board to determine the appropriate length of time the Respondent should wait to or can petition for reinstatement of license.

14. **Valid License Status**

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

15. **Maintenance of Valid License**

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

15. **Completion of Probation**

Upon successful completion of probation, respondent's license will be fully restored.

DISCIPLINARY ORDERS

PROBATION TERMS AND CONDITIONS

OPTIONAL CONDITIONS

Model Number

1. **Actual Suspension**

As part of probation, respondent is suspended from the practice of chiropractic for (Ex: 30 days) beginning the effective date of this decision. The suspension notice shall remain posted at respondent's primary practice and/or all satellite practice addresses during the entire period of actual suspension. Respondent shall prominently post all suspension notice(s) provided by the Board for these locations ensuring such notices are posted in a place which is both conspicuous and readable to the public, near the entrance to respondent's practice(s). ~~in a place conspicuous and readable to the public. The suspension notice shall remain posted during the entire period of actual suspension.~~

Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, member of the public, or other person as to the nature of and reason for the suspension.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in the chiropractic practice in which he or she holds an interest at the time this decision becomes effective.

Failure to post the suspension notice(s) as required by this Order may be regarded as a violation of probation. Failure to post the suspension notice(s) provided by the Board, will not apply to respondent's suspension time as designated in this Order and the suspension will remain in effect until there is successful compliance by respondent in completing the required number of days of suspension.

RATIONALE: This change includes suspension posting at both Satellite and primary practice addresses, near entrances. The added language covers chiropractors who practice at home. The word "both" is also included so there is no doubt where to put a posted suspension notice. It is assumed that probation conditions are still in effect even during respondent's suspension period.

2. **Drugs - Abstain From Use**

Respondent shall abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, unless prescribed by a medical practitioner ~~for a bona fide illness~~.

3. ~~**Drug Abuse Counseling/Detoxification**~~

~~Within 30 days from the effective date of this Decision, respondent shall propose to the Board, for prior approval, the name of one or more drug abuse rehabilitation programs and shall, within 30 days after notification of the Board's approval of such a program, enroll in that approved substance abuse rehabilitation program, and comply with all requirements of the program, including drug testing. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation. Failure to comply with the program requirements shall be considered a violation of probation. The costs for participation in the program shall be borne by the respondent. Respondent shall sign a Release of Information allowing the program to release to the Board all information the Board deems relevant. Probation shall be extended~~ automatically ~~until respondent successfully completes his/her rehabilitation program.~~

3. **Alcohol and Drug Abuse Treatment/Counseling**

Within 30 days from the effective date of this decision, respondent shall propose to the Board, for prior approval, the name of one or more inpatient or outpatient alcohol and drug abuse recovery programs which at a minimum is six (6) months in duration. Within 30 days after notification of the Board's approval of such program, respondent must enroll in the approved program. Failure to complete said program shall constitute a violation of probation. Subsequent to the completion of the program, respondent shall participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment, and/or attend Twelve Step meetings fo the equivalent as approved by the Board at least 3 times a week during the first years/months of probation. Respondent shall submit proof satisfactory to the Board of attendance in said programs. The costs for participation in the programs shall be borne by the respondent. Respondent shall sign a Release of Information allowing the programs to release to the Board all information the Board deems relevant.

RATIONALE: This condition is NEW. It replaces and combines the current and separate alcohol and drug abuse counseling/detoxification program term. The language addition is more specific to time frames required for treatment and allows the Board the option to specify the length of treatment.

4. **Alcohol - Abstain From Use**

Respondent shall abstain from the use of any alcoholic product or beverages.

RATIONALE: Adding "product" allows us to detect if testing results on a probationer included consumption of alcoholic beverages or products not limited to: Nyquil, mouth wash, or hand sanitizer.

~~5. **Alcohol Abuse Counseling/Detoxification**~~

~~Within 30 days from the effective date of this Decision, respondent shall propose to the Board, for prior approval, the name of one or more alcohol abuse rehabilitation programs and shall, within 30 days after notification of the Board's approval of such a program, enroll in that approved alcohol abuse rehabilitation program, and cooperate with all requirements of the program, including drug testing. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation. Failure to comply with the program requirements shall be considered a violation of probation. The costs for participation in the program shall be borne by the respondent. Respondent shall sign a Release of Information allowing the program to release to the Board all information the Board deems relevant. Probation shall be extended automatically until respondent successfully completes his/her rehabilitation program.~~

~~6. **Blood and/or Urine Testing**~~

~~Respondent shall immediately submit, with or without prior notice, to blood and/or urine testing, at respondent's expense, upon the request of the Board or its designee. The length and frequency of this testing requirement will be determined by the Board. Any confirmed positive finding will be considered a violation of probation.~~

RATIONAL: Replaced with NEW term "Drug and Alcohol Testing"

6. Drug and Alcohol Testing

Upon the request of the Board or its designee, respondent shall immediately submit, with or without prior notice, to observed blood, urine, hair, breath, saliva or any other mode of testing and location as determined by the Board, at respondent's expense. Respondent's failure to pay costs and timely submit for testing will constitute a violation of probation. Any confirmed positive finding will be considered a violation of this term, and any report setting forth such confirmed positive finding shall be received as admissible, direct evidence in any proceedings to revoke probation based on such finding. Any attempts by respondent to circumvent the requirements

of this term shall also be considered a violation of this term. This includes, but is not limited to, respondent's failure to submit a testable sample or his /her use of any device designated to fraudulently defeat drug tests. If the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary period. All terms and conditions of probation remain in effect during the period of suspension.

RATIONALE: This added language prohibits respondent from defaulting on his/her responsibility to pay for ongoing testing. Also, allows for sound frequently monitored/random substance testing program if we use additional industry specimen screening tests besides blood and urine. This is currently compatible with the DCA's contract for same services on probationer substance testing. As well, the probation monitor requesting random tests will be able to get testing feedback immediately if any probationer was caught being dishonest or adulterating the testing sample or its validity for the process.

~~7. **Take and Pass Law Examination**~~

~~Respondent shall take and pass a written or practical examination within the first two years of probation. If respondent is directed to take an examination currently required of new applicants for licensure as a chiropractor, the examination shall be taken on a regularly scheduled date. If respondent fails this examination, respondent must take and pass a re-examination. The respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. Failure to pass a required examination prior to the termination date of probation shall constitute a violation of probation and automatically extend the period of probation.~~

~~**Option #1:** If respondent fails the first examination, respondent shall cease the practice of chiropractic until the examination has been passed, as evidenced by the written notice to respondent from the Board.~~

7. ~~**Take and Pass the Law Exam**~~ **California Law and Professional Practice Examination (CLPPE)**

Respondent shall take and pass the California Law and Professional Practice Examination (CLPPE) within the first year of probation. If Respondent fails this examination, Respondent must take and pass a re-examination. ~~a written or practical examination within the first two years of probation. If respondent is directed to take an examination currently required of new applicants for licensure as a chiropractor, the examination shall be taken on a regularly scheduled date. If respondent fails this examination, respondent must take and pass a re-examination. The respondent shall pay the cost of the examination and any subsequent re-~~

~~examinations at the examination fee currently in place. Failure to pass a required examination prior to the termination date of probation shall constitute a violation of probation and automatically extend the period of probation.~~

Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. Failure to pass the CLPPE within the first year of probation shall constitute a violation of probation.

Option #1: If respondent fails the first examination, respondent shall cease the practice of chiropractic until the examination has been passed, as evidenced by the written notice to respondent from the Board.

Option #2: Respondent shall not practice chiropractic until respondent has passed the required examination and has been so notified by the Board in writing.

8. **Special Purposes Examination for Chiropractic (SPEC)**

Respondent shall take and pass the SPEC examination administered by the National Board of Chiropractic Examiners (NBCE) within the first year ~~two years~~ of probation. If respondent fails this examination, respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the SPEC examination after two attempts constitutes a violation of probation.

RATIONALE: This update allows for the appropriate deadline to be selected for the case, depending on the nature of it.

~~9. **Monitoring**~~

~~Within 30 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a plan of practice in which respondent's practice shall be monitored by another doctor of chiropractic who shall submit written reports to the Board on a quarterly basis. It shall be respondent's responsibility to assure that the required reports are filed in a timely fashion. The monitor shall be independent, with no prior professional or personal relationship with respondent. The monitoring shall be, as required by the Board, either: Continuous - 75% to 100% of a work week; Substantial At least 50% of a work week; Partial - At least 25% of a work week; or Daily Review Supervisor's review of probationer's daily activities within 24 hours.~~

~~If the monitor resigns or respondent changes employment respondent shall, within 15 days, submit the name of new monitor. If respondent changes employment, respondent shall have his~~

~~or her new monitor, within 15 days after employment commences, submit notification to the Board in writing stating they have read the decision in case number_____ and is familiar with the level of supervision as determined by the Board. Any costs for such monitoring shall be paid by respondent.~~

~~**Option #1**: Respondent is prohibited from engaging in solo practice.~~

~~**Option #2:** Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.~~

9. Practice Monitoring by Another Licensed Doctor of Chiropractic

Respondent's practice shall be monitored by another doctor of chiropractic. Any costs for such monitoring shall be paid by respondent. Within 45 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, the name and completed application, provided by the Board, of a licensed chiropractor in this state to monitor respondent's practice. The Practice Monitor must have an active California chiropractic license in good standing with the Board and with no prior or current disciplinary action. The Monitor shall be independent, with no prior professional or personal relationship with respondent and the Monitor shall not be in a familial relationship with or be an employee, partner or associate of respondent. The respondent's new/current employer may be considered to be the Monitor if he/she meets all criteria as set forth in this term. The Monitor must have at least 5 years of licensed chiropractic experience in California.

LEVELS OF MONITORNING

Option 1-Levels of Monitoring are described below and pre-determined for respondent to be at the _____ level in Case No: _____.

Maximum Level-The Monitor provides monitoring and/or supervision in the work environment at all times.

Intermediate Level-The Monitor provides monitoring and/or supervision in the work environment at least half of the hours respondent works.

Minimum Level-The Monitor provides monitoring and/or supervision in the work environment at least twice a week.

Infrequent Level-The Monitor provides monitoring and/or supervision in the work environment at least once a week.

Option 2-The specific monitoring level in Case No. _____ shall be determined by the Board or its designee within 30 days of the effective date of this decision.

It is respondent's responsibility to ensure their Monitor has received copies of the Accusation and Decision and Order in Case No: _____. The Monitor shall submit to the Board in writing that the/she has read and understands the respondent's Decision and Order in Case No: _____, as well as the level of monitoring required. The Monitor shall have face-to-face contact with the licensee in the work environment on a continuous basis as determined by the Board, but at least once per week. The Monitor shall review the licensee's work attendance and behavior. The Monitor shall interview other staff in the office regarding the licensee's behavior, if applicable.

The Monitor shall submit written reports to the Board, on a form designated by the Board, on a quarterly basis. Respondent must ensure that the required reports from the Monitor are submitted in a timely fashion. If the Monitor resigns, respondent shall immediately notify the Board and within 15 days of event, submit to the Board in writing the name and application of a new Monitor for pre-approval.

The respondent shall allow Monitor access to fiscal and patient records. Respondent shall notify all current and potential patients of this term of probation which will affect the confidentiality of their records. Such notification shall be signed by each patient if their treatment records will be reviewed.

NOTE: Based upon review of the Monitor reports, respondent's monitoring level may be increased or decreased at the discretion of the Board or its designee.

Option 3- Respondent is prohibited from engaging in solo practice.

Option 4-Respondent shall be prohibited from unilaterally signing insurance and workers' compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor pre-approved by the Board.

NOTE: Recommended in cases of insurance and workers' compensation insurance fraud.

RATIONALE: This term makes attempt to ensure that respondent's practice management is adequately monitored. Criteria for monitor have been incorporated here and on a new Monitor Application. Cases worthy of this level of monitoring may include those with violation for incompetence, negligence, patient injury, substance abuse or unprofessional conduct. A form designated by the Board will be used by the Monitor to report findings and observations to the Board. A Practice Monitor can also check for billing and fiscal inaccuracies against respondent's recordkeeping.

10. **Auditing of Billing Practices**

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed certified public accountant (CPA) in this state, and a plan by which such CPA would monitor respondent's billing practices. The CPA shall be independent, with no present or prior business, professional, or personal financial relationship with respondent. The CPA approved by the Board shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be respondent's responsibility to ensure that the required reports are filed in a timely fashion.

Respondent shall give the CPA access to respondent's fiscal records. Monitoring shall consist of at least 4 hours per quarter of review of respondent's fiscal records. After two quarters, if the CPA determines that less time is sufficient for compliance, the respondent may request Board approval of a reduction of the number of hours of review. If ever the CPA prepares a quarterly report to the Board which finds substantial errors or omissions in, or questionable billing practices, monitoring may be increased at the discretion of the Board and respondent shall comply therewith. All costs of monitoring shall be borne by respondent.

If at any time during the period of probation, the CPA quits or is otherwise unavailable to perform his/her monitoring duties, within 30 days of the same, respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed CPA in this state and a plan by which such CPA would monitor respondent's billing practices.

(This option was moved from number 9 above, as option 3 to here) **Option #1:** Within 45 days of the effective date of this decision and on a quarterly basis thereafter and at respondent's expense, respondent shall obtain a review of the books and records of respondent's chiropractic practice by a certified public accountant licensed in good standing in this state approved by the Board. Said certified public accountant shall review the books and records of respondent's chiropractic practice to determine whether respondent has delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of patients, clients or customers to him/her or his/her practice or by him/her. Within 10 days of the completion of each review, said certified public accountant shall complete and submit a written report of his/her review to the Board. Respondent shall be responsible for the completion and submission of each said report. Failure to comply with this condition shall be considered a violation of probation.

10. **Billing Monitor**

Within sixty (60) days of the effective date of this decision, Respondent shall submit the Board or its designee for its prior approval, the name along with Curriculum Vitae of a person to act as Respondent's monitor. The billing monitor can be one of the following:

- A licensed Chiropractor, who is licensed in good professional standing and licensed for at least five (5) years; or
- A Certified Professional Coder in good professional standing; or
- A Certified Medical/Healthcare Biller or Auditor in good professional standing, or
- A Certified Public Accountant in good professional standing; or
- A Professional Bookkeeper in good professional standing

For purposes of this section, good professional standing means: that the billing monitor cannot have his or her professional Chiropractic license or personal professional certification with any history of administrative disciplinary action or probation or with any prior civil or criminal action against them involving insurance fraud, or acts of moral turpitude or dishonesty.

All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. It is Respondent's responsibility to ensure their billing monitor has copies of the Accusation in this matter along with the Decision and Order for reference. Once the Board has approved a billing monitor, Respondent shall submit a plan or scope of review by which the billing monitor will provide monitoring of Respondent's billing practices. Respondent must have a continuous record of chiropractic treatment of patients, which shall include billing, accounting, and payment records, to be examined by the billing monitor. Pro bono treatment or trade for services will not be accepted. Failure to treat patients on a fee for service basis will be considered non-compliance with this term and Respondent's probation will be tolled until Respondent treats patients on a fee for service basis. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the billing monitor. The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Respondent shall give the monitor access to all of Respondent's chiropractic practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office or Respondent's place of employment. If any patient records will be reviewed by the 3rd party billing monitor related to required monitoring or audit activities, Respondent must notify his or her patients of this purpose and also ensure notified patients submit a signed authorization release of records in accordance with privacy law (HIPPA) for this purpose. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Option 1-Respondent shall be prohibited from unilaterally signing insurance and workers' compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor pre-approved by the Board.

RATIONALE: This term is new. This new term allows more options than only a CPA for monitoring purposes. The added language assists in not allowing Respondent to circumvent the Order and avoid the proof of rehabilitation that is required after violations such as insurance fraud, failure to ensure accurate billings, etc. Proper monitoring cannot take place if the practice is absent fee for service patients.

11. **Restitution for Consumers**

Within ~~1~~ _____years/months from the effective date of this decision, respondent shall pay to _____ the amount of $_____. If respondent fails to pay the restitution as directed by the Board and on the dates(s) determined by the Board, it shall be a violation of probation. Respondent shall provide proof to the Board of restitution. ~~Failure to pay the costs within the first year of probation is a violation of probation.~~

RATIONALE: Fraud or negligent action usually deems this term. Careful review is made to ensure that proper restitution is made to timely either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

12. **Psychiatric or Psychological Evaluation**

Within ~~30~~ 10 days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, respondent shall undergo, at his/her own expense, psychiatric evaluation by a ~~Board-appointed or~~ Board-approved psychiatrist or psychotherapist. Respondent shall sign a release which authorizes the evaluator to furnish the Board a current diagnosis and written report regarding the respondent's judgment and ability to function independently as a chiropractor with safety to public and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. It is respondent's responsibility to ensure their therapist has copies of the Accusation as well as the Decision and Order in this matter.

If the psychiatrist or psychotherapist recommends and the Board or its designee directs respondent to undergo psychotherapy, respondent shall, within 30 days of written notice of the need for psychotherapy, submit to the Board or its designee for its prior approval, the recommended program for ongoing psychotherapeutic treatment ~~care~~. Respondent shall undergo and continue psychotherapy, at respondent's own expense, until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly reports to the Board, or its designee. If recommended by the psychiatrist or psychotherapist and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the

treating psychotherapist recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

(Optional) Commencing on the effective date of this decision, respondent shall not engage in the practice of chiropractic until notified in writing by the Board or its designee that respondent is psychologically fit to practice chiropractic.

NOTE: Strongly recommended for those cases where evidence demonstrates that mental illness or disability was a contributing cause of the violation.

RATIONALE: We added that respondent is to give his/her therapist a copy of the Order and Accusation.

13. **Psychotherapy**

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, the name and qualifications of a psychotherapist or licensed mental health practitioner of respondent's choice. Should respondent, for any reason, cease treatment with the approved psychotherapist or licensed mental health practitioner, respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the Board for its prior approval. It is respondent's responsibility to ensure their therapist has copies of the Accusation and Decision and Order in this matter.

Upon approval of the psychotherapist or licensed mental health practitioner, respondent shall undergo and continue treatment, with that therapist and at respondent's expense, until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluations by a Board-appointed or Board-approved psychiatrist or psychotherapist.

If recommended by the psychotherapist or licensed mental health practitioner and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the treating psychotherapist or licensed mental health practitioner recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

NOTE: Appropriate for those cases where evidence demonstrates sexual misconduct or commission of an act punishable as a sexual crime. Also appropriate in cases where evidence demonstrates impairment (Ex; mental illness, alcohol and/or drug abuse)

RATIONALE: This additional comment could be helpful to assign this term, if appropriate or emphasis in certain cases. We also added that Respondent to give his/her therapist a copy of the Order and Accusation.

14. **Medical Evaluation**

Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation, at respondent's expense, ~~by a Board-appointed or~~ Board-approved physician who shall furnish a medical report to the Board or its designee.

If respondent is required by the Board or its designee to undergo medical treatment, respondent shall, within 30 days of written notice from the Board, submit to the Board for its prior approval, the name and qualifications of a physician of respondent's choice. Upon Board approval of the treating physician, respondent shall undergo and continue medical treatment, with that physician and at respondent's expense, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Should respondent, for any reason, cease treatment with the approved physician, respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement physician of respondent's choice to the Board for its prior approval.

If recommended by the physician and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the treating physician recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

(Optional) Upon the effective date of this decision, respondent shall not engage in the practice of chiropractic until notified in writing by the Board of its determination that respondent is medically fit to practice safely.

NOTE: Appropriate for those cases where the evidence demonstrates that the respondent has had a physical problem/disability which was a contributing cause of the violation(s) and which may affect the respondent's ability to practice.

15. Ethics and Boundaries Examination

Respondent shall take and pass an Ethics and Boundaries examination administered by either:

- A national testing organization such as The National Board of Chiropractic Examiners (NBCE) or its' testing designee; or
- An equivalent accredited educational service provider institution or agency program, such as Professional Boundaries, INC. which provides licensed health professionals with course curriculum or test plan which covers Ethics and Boundaries subject matter

The examination must be taken and successfully passed within the first year of probation. If respondent fails this examination, respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations set forth by the testing agency. Classroom attendance is specifically required. Online courses/programs will not be approved. Failure to pass the Ethics and Boundaries examination after two attempts constitutes a violation of probation.

16. **Education Course**

Within 60 (sixty) days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval, a program in (e.g. specify course subject matter) which shall not be lets than hours per year, for each year of probation. hours of the education may be obtained through distance learning. This program shall be in addition to the chiropractic continuing education requirements for re-licensure, and shall be obtained with all costs being paid by respondent. Respondent shall provide written proof of attendance in said course or courses as are approved by the Board. Failure to complete the annual hours of education, each year of probation, constitutes a violation of probation.

RATIONALE: Section enhanced to include distance learning.

17. **Community Service**

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a community service program in which respondent shall provide volunteer services on a regular basis with a non-profit ~~to a~~ community or charitable facility or agency for at least _____ hours per month for the first_____ months/years of probation. Such community service does not necessarily include chiropractic service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a monthly/quarterly basis.

Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of this decision shall no be accepted in fulfillment of this condition.

Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation

RATIONALE: Adding these comments is appropriate in those cases where the respondent will need to rehabilitate from wrongdoing after actually or potentially harming the public, consumer or a patient. Also, time frames to complete service can be set. Paragraph flows better with the use of additional words for emphasis.

18. **Restricted Practice**

Respondent's practice of chiropractic shall be restricted to [specify patient population and/or setting] for the first _____ years of probation. Within 30 days from the effective date of the decision, respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

NOTE: The restrictions shall be appropriate to the violation.

19. **Third Party ~~Presence - Sexual Transgressors~~ Chaperone**

During probation, respondent shall have a third party ~~present~~ chaperone present in the examination or treatment room while consulting, examining and/or treating ~~while examining and/or treating~~ (female/male/minor) patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its approval the name(s), photo identification and contact information of persons who will be the third party chaperone. The chaperone must be a health care professional, licensed or certified, by a healing arts Board or Bureau, within the California Department of Consumer Affairs. The

chaperone's license/certification shall at all times be valid and in good standing. The chaperone cannot have any prior or current disciplinary action against their license/certification. ~~of persons who will be the third party present and a plan describing the third party's duties.~~

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain: 1) patient name, address and telephone number; 2)date of service; 3) chaperone signature; 4) patient gender; and 5) patient signature. Respondent shall keep this login a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection, is a violation of probation.

The respondent shall execute a release authorizing the third party(ies) ~~present~~ chaperone to divulge any information that the Board or its designee may request on a periodic basis during the probation monitoring.

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

RATIONALE: This condition continues to allow the Board to monitor Respondent by use of a third party chaperone in those misconduct cases, which may include, but is not limited to, sexual misconduct. Chaperone must be in the room with the patient at all times.

20. **Notification to Patients**

Respondent shall notify all current and potential patients of his/her ~~the~~ probation requirements by posting a copy of the final Decision and Order in this matter and by giving a form designated by the Board, for each patient to sign. Respondent shall post a copy of the Decision within public view inside common areas within the practice which includes the front desk, the examination room(s) and patient reception room(s). Patient ~~especially any term or condition of probation which will affect their treatment or the confidentiality of their records. Such~~ notification shall be signed by each patient prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board, satisfactory evidence of compliance with this term of probation. ~~Terms of probation which require such notification include, but are not limited to, suspension of practice, supervised practice, and restricted practice.~~

RATIONALE: Similar to what is required by employee notice, we require posting of the Decision to alert patients and patients must sign a form. Posting of Decision would occur at front desk, in treatment/waiting rooms, etc.

21. **Criminal Probation/Parole Reports**

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after respondent receives a copy of such a report.

MEMORANDUM

TO:	BCE ENFORCEMENT COMMITTEE MEMBERS
FROM:	CHRISTINA BELL, COMPLIANCE ANALYST
SUBJECT:	SB 1441 INCORPORATION AND IMPLEMENTATION UPDATE
DATE:	MAY 6, 2015
CC:	ROBERT PULEO, EXECUTIVE OFFICER SPENCER WALKER, ATTORNEY III SANDRA WALKER, COMPLIANCE MANAGER

Summary Background for this Topic

SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) was drafted in response to public and internal concerns with the various healing arts boards diversion programs. Absent drug testing standards for relapsing, substance-abusing licenses, there had been inconsistent monitoring or non-oversight from programs. Consequently, the intent of SB 1441 was to extend the application of best practices and standards uniformly across all healing arts boards. SB 1441 established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA), which was tasked with developing uniform standards in sixteen specific areas for use in dealing with substance-abusing healing arts licensees. In April 2011, the DCA SACC published the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (hereinafter referred to as "Uniform Standards").

During the July 17, 2014 Board Meeting, this topic was discussed at length with the Board's prior counsel, Kristy Schieldge. She discussed a total of three options (or triggers) to define substance abusing licensees for the Uniform Standards: Option 1- Presumption, Option 2- Clinical Diagnostic and Option 3- Hearing. As a result of counsel's presentation and discussion, the Board Members at this meeting chose the Option 3-Hearing trigger because the Uniform Standards would only apply based upon evidence presented at hearing that the licensee has a substance abuse problem. Moreover, the Trigger 3 as a recommended selection also allows for Licensee fair notice and the Board's Executive Officer to plead substance abuse allegations and standards up front. Ms. Schieldge also recommends the placement of Standards as a separate component to the Disciplinary Guidelines.

The Board's Enforcement Committee (EC) continues to monitor the Uniform Standards and the Disciplinary Guidelines project assignments.

Board Counsel, Spencer Walker, recently informed staff of a current April 8, 2015 Attorney General (AG) Legal Opinion which addresses questions raised regarding SB 1441 implementation. The AG opinion concludes that the Uniform Standards need not be adopted as regulations under the Administrative Procedures Act but that individual Boards are free to

adopt regulations to incorporate the Standards if they so wish. As a result of this update, Mr. Walker will provide further explanation, opinion, and options during our May EC meeting.

The following related documents are enclosed for Committee review:

- The April 8, 2015 Legal Opinion from the Attorney General in response to questions from the Board of Pharmacy regarding SB 1441
- Uniform Standards Regarding Substance-Abusing Healing Arts Licensees; Senate Bill 1441 (Ridley-Thomas)
- Three (3) "Trigger" Options provided by counsel Kristy Schieldge at July 17, 2014 Public Board Meeting
- Public Session Board Meeting Minutes for July 17, 2014
- The April 5, 2012 memorandum which discusses uniform standards for substance-abusing licensees (SB 1441) from Doreathea Johnson, Deputy Director of Legal Affairs, Department of Consumer Affairs

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 13-202
of	:	April 8, 2015
KAMALA D. HARRIS Attorney General	:	
BRUCE M. SLAVIN SUSAN DUNCAN LEE Deputy Attorneys General	:	

VIRGINIA HEROLD, EXECUTIVE OFFICER FOR THE CALIFORNIA BOARD OF PHARMACY, has requested an opinion on the following questions:

1. Is the law that prescribes the development and issuance of uniform standards for healing arts boards to use in dealing with their "substance-abusing licensees" invalid either (a) for vagueness or (b) as an improper delegation of legislative authority to the committee charged with formulating the standards?

2. To be effective, must the uniform standards be adopted as regulations under the Administrative Procedure Act, and, if so, by what entities?

3. May individual healing arts boards adopt regulations defining the term "substance-abusing licensees" for purposes of determining which of their licensees are subject to the uniform standards?

4. Must individual healing arts boards use the uniform standards as written in all cases in which they are found to apply, and, if so, do the boards nonetheless retain discretion in applying the uniform standards to particular circumstances and in deciding individual cases?

CONCLUSIONS

1. The law that prescribes the development and issuance of uniform standards for healing arts boards to use in dealing with their "substance-abusing licensees" is not invalid either (a) for vagueness or (b) as an improper delegation of legislative authority to the committee charged with formulating the standards.

2. The uniform standards need not be adopted as regulations under the Administrative Procedure Act in order to be effective. Individual healing arts boards may, but are not required to, adopt regulations incorporating the uniform standards for the purpose of administering their own programs.

3. Individual healing arts boards may adopt regulations defining the term "substance-abusing licensees" for purposes of determining which of their licensees are subject to the uniform standards, so long as such regulations are consistent with the legislation directing the formulation and issuance of the uniform standards and reasonably necessary to effectuate the purposes of that legislation.

4. To the extent practicable, individual healing arts boards must use the uniform standards as written in all cases in which they are found to apply, but the boards retain discretion in applying the uniform standards to particular circumstances and in deciding individual cases.

ANALYSIS

In 2008, the Legislature enacted Senate Bill 1441 to address the increasing problem of substance abuse in the health-care professions,[1] where "the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient."[2] Finding that various health care licensing boards have inconsistent or nonexistent standards for dealing with substance-abusing professionals, the Legislature determined

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[1] Senate Bill 1441 added an article to the Business and Professions Code entitled Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. (Stats. 2008, ch. 548 (Sen. Bill No. 1441), § 3.)

[2] *Id.* at § 1(a).

that patients would be better protected if regulatory boards would agree to follow consistent standards and best practices in this area.[3]

To that end, new Business and Professions Code section 315 (section 315) created an entity within the Department of Consumer Affairs called the Substance Abuse Coordination Committee (Committee).[4] The Committee is chaired by the Director of the

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[3] Stats. 2008, ch. 548 (Sen. Bill No. 1441), § 1(g), (h).

[4] Section 315 states:

> (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Health Care Services. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.
>
> (b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).
>
> (c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:
>
> (1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.
>
> (2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
>
> (3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's

status and condition.

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

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

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

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

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

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

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

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

Department of Consumer Affairs and consists of the executive officers of the department's healing arts boards, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California, as well as a designee of the State Department of Health Care Services.[5]

Section 315 required the Committee to formulate standards on sixteen specific subjects for the healing arts boards to use in dealing with substance-abusing licensees, "whether or not a board chooses to have a formal diversion program."[6] The subjects include clinical evaluation of licensees for substance abuse, suspension of licensees from practice, communications between the licensing board and the licensee's employer, and the use of private-sector diversion programs.[7] In December 2009, the Committee adopted uniform standards for each of the sixteen subjects. The standards were published

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

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

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

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

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

[5] Bus. & Prof. Code, § 315, subd. (a).

[6] Bus. & Prof. Code, § 315, subd. (c).

[7] *See* Bus. & Prof. Code, § 315, subds. (c)(1)-(16).

in April 2010, and revised in April 2011.[8] In this opinion, we address several questions and concerns that have been raised regarding the uniform standards

Question 1

We begin with the threshold question whether section 315 is valid. It has been suggested that section 315 is too vague to be enforceable because it fails to define the phrase "substance-abusing licensees."[9] It has also been argued that the Legislature improperly delegated its authority by charging the Committee with developing standards instead of crafting them itself. We reject both of these propositions.

a. Vagueness

While "void-for-vagueness" challenges arise most often in the context of criminal statutes, the principle extends to other types of legislation as well.[10] In addressing a vagueness claim, we give the challenged statute "a reasonable and practical construction in accordance with the probable intent of the Legislature."[11] "Reasonable certainty" is all that is required; a statute will not be held void for vagueness if any reasonable, practical construction can be given to it, either on its own footing or by reference to other definable sources.[12]

Because section 315 itself does not define the term "substance-abusing licensees," (nor expressly require the Committee to do so), our task is to determine whether the term may be made reasonably certain by reference to other sources.[13] Where a statute or statutory scheme does not specify a definition for a given term or phrase, the general rule is to give the words "their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary."[14]

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[8] The uniform standards may be accessed from the Department of Consumer Affairs' public website, at http://www.dca.ca.gov/about_dca/sacc/uniform_standards.pdf.

[9] Bus. & Prof. Code, § 315, subds. (a), (c).

[10] *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 763-764.

[11] *County of Nevada v. MacMillen* (1974) 11 Cal.3d 662, 672-673.

[12] See *id.* at p. 673.

[13] *Id.* at pp. 672-673.

[14] *Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 30; see 95 Ops.Cal.Atty.Gen. 16, 19 (2012).

The term "substance-abusing" is hardly unique to section 315. Some form of the term has been used by the Legislature in many different statutes without express definition.[15] This is not surprising. The common definition of "substance abuse" is "excessive use of a drug (as alcohol, narcotics, or cocaine)" or "use of a drug without medical justification."[16] The concept of substance abuse is exceedingly familiar in society, and we see no reason why the commonly understood definition of this term may not be applied with reasonable certainty in the context of protecting patients by ensuring practitioner competency.[17]

Also, when the Legislature enacted section 315, there were already statutes pertaining to substance abuse by licensees of most healing arts boards. For example, existing law provides for diversionary programs as an alternative to traditional disciplinary action to address "unprofessional conduct relating to controlled substances or dangerous drugs" by licensed nurses,[18] and for recovery programs for pharmacists "whose competency may be impaired due to abuse of alcohol [or] drug use."[19] In addition, for most healing arts licensees, existing law provides that unprofessional conduct includes the use of a controlled or intoxicating substance in a manner impairing the licensee's ability to practice safely.

Indeed, in enacting section 315, the Legislature acknowledged the existing statutes addressing substance-abusing licensees, and made express findings that further legislation was necessary to address deficiencies in existing programs.[20] Despite the existence of

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[15] See e.g. Bus. & Prof. Code, § 8025.1 (certified shorthand reporter subject to suspension where "licensee is unable to perform the duties of a certified shorthand reporter due to the abuse of chemical substances or alcohol"); Ed. Code, § 44049 (school principal may report to parent or guardian any instance of "alcohol or controlled substance abuse" by student); Fam. Code, § 3200 (Judicial Council to develop standards for supervised visitation in cases of alleged "substance abuse"); Health & Saf. Code, § 11367.5 (immunity from prosecution for peace officer possessing controlled substance "while providing substance abuse training to law enforcement").

[16] Webster's 3d New Internat. Dict. (1993) p. 112.

[17] Cf. *In re Drake M.* (2012) 211 Cal.App.4th 754, 764-765 (interpreting "substance abuse" for purposes of removing child from custody of parent or guardian who puts child at risk through substance abuse).

[18] Bus. & Prof. Code, § 2762; see *id.* at § 2770.

[19] Bus. & Prof. Code, § 4360; see *id.* at § 4364 (Board of Pharmacy to establish criteria for program entry).

[20] See Stats. 2008, ch. 548 (Sen. Bill No. 1441), § 1(a), (b).

myriad healing-arts statutes that use this or similar terms,[21] the Legislature refrained from adopting any single definition. Given the prevalence of the problem, and the Legislature's intention to steer boards toward "best practices," we perceive not vagueness but flexibility in the use of the term "substance-abusing licensees."

Reading section 315 in the "context of the statutory framework as a whole in order to determine its scope and purpose," we conclude that it is not void for vagueness. Based on the ordinary meaning of the words "substance-abusing licensees" as those words are understood in common parlance and in other statutory contexts, we conclude that section 315 describes with reasonable certainty the class of individuals who are subject to the uniform standards prescribed by section 315.[22]

b. Delegation of Authority

We next consider whether, by requiring the Committee to develop uniform standards, instead of crafting them itself, the Legislature improperly delegated its authority to the Committee. We find no improper delegation.

In *Kugler v. Yocum*,[23] the California Supreme Court considered the validity of a city ordinance which decreed that the salaries of certain employees would be no less than the average of those of an adjoining city and county, and that future salaries would be set according to that formula. The Court held that the ordinance was not an unlawful

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[21] E.g., Bus. & Prof. Code, § 1681, subd. (b) (dentists); Bus. & Prof. Code, § 2239, subd. (a) (physicians); Bus. & Prof. Code, § 2533, subd. (c)(1) (speech language pathologists and audiologists); Bus. & Prof. Code, § 2570.29, subd. (b) (occupational therapists); Bus. & Prof. Code, § 2762, subd. (b) (nurses); Bus. & Prof. Code, § 2878.5, subd. (b) (vocational nurses); Bus. & Prof. Code, § 2960, subd. (b) (psychologists); Bus. & Prof. Code, § 3750.5, subd. (b) (respiratory therapists); Bus. & Prof. Code, § 4982, subd. (c) (marriage and family therapists); Bus. & Prof. Code, § 4989.54, subd. (c) (licensed educational psychologists); Bus. & Prof. Code, § 4992.3, subd. (c) (social workers).

[22] The agency requesting this opinion has raised a concern that a "given agency might, for example, define 'substance-abusing licensee' to be a licensee with *any* history of substance abuse, whereas another agency might require that a licensee exhibit signs of addiction . . . within the last 5 years, and a third agency might go so far as to require that the licensee have been in active use within the last 12 months." We do not believe that the possibility of such variations undercuts our conclusion that the term "substance-abusing licensee" is reasonably certain in this context.

[23] *Kugler v. Yocum* (1968) 69 Cal.2d 371.

delegation of the city's legislative authority.[24] The Court's reasoning started from the well established principle that "'[t]he power . . . to change a law of the state is necessarily legislative in character, and is vested exclusively in the legislature, and cannot be delegated by it . . . .'"[25] There are also, however, well established limits to that principle. For example, "legislative power may properly be delegated if channeled by a sufficient standard."[26]

The Court explained that the "essentials" of the legislative function are the determination and formulation of legislative policy.[27] "'Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others.'"[28] Once it declares a policy and establishes a primary standard, the legislature is free to delegate power to executive officers to "fill up the details" by making rules and regulations designed to carry the legislative purpose into effect.[29]

In enacting Senate Bill 1441, the Legislature made the fundamental policy determination that "[p]atients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees."[30] It then directed the Committee to address sixteen specific areas in formulating such standards. Generally, "standards for administrative application of a statute need not be expressly set forth; they may be implied by the statutory purpose."[31] Given the Legislature's clear statement of purpose and its articulation of specific areas in which the Committee was to formulate standards, we conclude that the Legislature's delegation of authority to the Committee was not an invalid delegation of the legislative function.[32]

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[24] *Id.* at p. 373.

[25] *Id.* at p. 375, quoting *Dougherty v. Austin* (1892) 94 Cal. 601, 606-607.

[26] *Id.* at pp. 375-376.

[27] *Id.* at p. 376.

[28] *Ibid.*, quoting *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 549.

[29] *Ibid.* By contrast, an unconstitutional delegation of powers was held to occur when the Legislature gave an administrative agency unfettered authority to make fundamental policy determinations. (*Clean Air Constituency v. Air Resources Bd.* (1974) 11 Cal.3d 801, 816-817.)

[30] Stats. 2008, ch. 548 (Sen. Bill No. 1441), § 1(h).

[31] *People v. Wright* (1982) 30 Cal.3d 705, 713.

[32] It is also important to note what powers the Legislature did *not* delegate to the

Question 2

Section 315 directs the Committee to formulate uniform standards for healing arts boards to use in dealing with substance-abusing licensees, and the Committee has done so. Question 2 here asks whether these standards must also be adopted as regulations under the Administrative Procedure Act (APA)[33] in order for them to become effective. We conclude that the standards need not be adopted as regulations under the APA, but that individual boards are free to adopt regulations incorporating or pertaining to those standards for the purpose of administering their own programs.

Under the APA, no state agency may issue, utilize or enforce a regulation unless the agency complies with the procedures established in the APA.[34] A "regulation" is "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."[35] To be valid and effective, a regulation must be "consistent and not in conflict with" the legislation to which it pertains and "reasonably necessary to effectuate" its purpose.[36] The APA sets forth a formal process by which regulations must be adopted. The process has been neatly summarized as follows:

> The agency must give the public notice of its proposed regulatory action (Gov. Code, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (Gov. Code, § 11346.2 (subds. (a), (b)); give interested parties an opportunity to comment on the

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Committee in this bill. The Committee was not charged with adopting regulations having the force of law; it was not charged with adjudicating cases involving individual licensees; and it was not charged with enforcing diversionary referrals or disciplinary actions involving individual licensees. Nor was the Committee established as an independent agency with any budget, staff, or ongoing programs to administer. Rather, it is a committee within the Department of Consumer Affairs, composed primarily of executive officers of healing arts boards, for the specific and limited purpose of "determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees." (Bus. & Prof. Code, § 315, subd. (a).)

[33] Gov. Code, tit. 2, div. 3, pt. 1, chs. 3.5, 4, 4.5, 5 (§ 11340 et seq.).

[34] Gov. Code, § 11340.5; see *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 333.

[35] Gov. Code, § 11342.600.

[36] Gov. Code, 11342.2; see *Woods v. Super. Ct.* (1981) 28 Cal.3d 668, 679.

proposed regulation (Gov. Code, § 11346.8); respond in writing to public comments (Gov. Code, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (Gov. Code, § 11347.3, subd. (b)), which reviews the regulation for consistency with the law, clarity, and necessity (Gov. Code, §§ 11349.1, 11349.3).[37]

In our view, the Committee is not an "agency" within the meaning of the APA. For purposes of the APA, a regulation is a rule adopted "by any *state agency*" to implement the law enforced or administered by the agency.[38] Government Code section 11000, subdivision (a), defines "state agency" to include "every state office, officer, department, division, bureau, board and commission." But the Committee is not an agency or authority that has responsibility for the enforcement or administration of any state policies or programs.[39] Rather, it is a *committee*—a group of selected officials brought together to perform a specific task—whose responsibilities are consummated when its assigned task is completed. Nor, in our view, do the uniform standards as formulated by the Committee qualify as "regulations" under the APA. The Committee's sole function is to formulate standards, not to implement, interpret, enforce, or administer them.[40] Therefore, we conclude that the Committee was not required to follow the APA process in order to formulate, publish, or amend the standards.

That leaves open the question whether an individual healing arts board may or must adopt the standards as regulations in compliance with APA procedures in order to implement the uniform standards in dealing with substance-abusing licensees. We believe that the boards may, but are not required to, adopt regulations incorporating the uniform standards. Neither the Committee, nor the Department of Consumer Affairs within which it was created, regulates the healing arts boards or their licensees.[41] That task falls to the individual healing arts boards themselves,[42] which are state agencies.

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[37] *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568.

[38] Gov. Code, § 11342.600 (emphasis added); see also Gov. Code, § 11342.520 (defining "agency" as used in the APA to mean any "state agency").

[39] While the Department of Consumer Affairs—within which the Committee was formed—is unquestionably a "state agency," it is not the entity responsible for formulating the uniform standards.

[40] *Cf.* Gov. Code, § 11342.600; see also Gov. Code, § 11342.5.

[41] See Cal. Code. Regs. tit. 16, Div. 38.

[42] See Cal. Code Regs. tit. 16, Divs. 4, 11, 13, 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 14, 15, 16, 17, 18, 20, 25.

Thus, if an individual healing arts board wishes to enact regulations governing its own programs—including drug diversion programs—it is up to that board to do so.[43] In fact, several healing arts boards have already promulgated regulations that expressly incorporate by reference the uniform standards.[44] Of course, if an individual board sought to adopt the uniform standards as its own regulations, it would be required to comply with the APA to do so.[45]

We conclude that the Committee need not comply with the Administrative Procedure Act in order to make the uniform standards effective. Individual healing arts boards may, but are not required to, adopt regulations incorporating the uniform standards for the purpose of administering their own programs.

Question 3

In Question 3, we are asked whether a healing arts board may adopt a regulation that defines the term "substance-abusing licensees" for purposes of determining which of the board's licensees are subject to the uniform standards. As discussed in our response to Question 2, the healing arts boards are state agencies with the power and responsibility to regulate their respective licensees. As state agencies, they may adopt regulations to implement, interpret, or make specific the laws that they administer and enforce.[46] Thus, if a healing arts board finds it necessary or advisable to adopt a regulation defining the term "substance-abusing licensees," it may do so. Again, if it does, it must comply with APA procedures.[47] Further, it must ensure that any such implementing or interpretive regulations are consistent with section 315 and reasonably necessary to effectuate its purposes.[48]

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[43] Each of the healing arts boards "exists as a separate unit" with the power to set standards. (Bus. & Prof. Code, § 108.)

[44] See e.g. Cal. Code Regs. tit. 16, §§ 1018-1018.01 (Dental Bd.); Cal. Code Regs. tit. 16, § 1138 (Dental Hygiene Com.); Cal. Code Regs. tit. 16, § 1575 (Bd. of Optometry); Cal. Code Regs. tit. 16, §§ 2524 & 2579.10 (Bd. of Vocational Nursing and Psychiatric Technicians); Cal. Code Regs. tit. 16, § 4147 (Bd. of Occupational Therapy).

[45] Gov. Code, § 11340.5; *Morning Star Co. v. State Bd. of Equalization*, *supra*, 38 Cal.4th at p. 333.

[46] See Gov. Code, § 11342.600.

[47] Gov. Code, § 11340.5.

[48] Gov. Code, 11342.2; see *Woods v. Super. Ct.*, *supra*, 28 Cal.3d at p. 679.

Question 4

Section 315 directs that the uniform standards must be "used" by every healing arts board "in dealing with substance-abusing licensees."[49] We are asked whether the healing arts boards must use the uniform standards as written, and "in all cases in which they are found to apply."

At the heart of this question is what the Legislature meant when it required the healing arts boards to "use" the uniform standards. As always, the statute's language is the best starting point for determining the Legislature's intent. "Use" is a broad term with many meanings, the most apt of which here include "to put into action or service" and "to carry out a purpose or action by means of."[50] To "use," then, is something less than to "adopt" or "enact." On the other hand, the word "use" is set in the context of a statute expressing the Legislature's findings that some healing arts boards must improve their performance with respect to substance-abusing licensees, and that "uniform standards" and "best practices" are the Legislature's chosen means to that end, thereby making the standards much more than an academic exercise. Boards are not to ignore, discard, or disregard them; they are to "use" them. The uniform standards are to be "put into action;" boards are to carry out their drug-diversion programs "by means of" them. Thus we believe that, while the uniform standards are neither de jure nor de facto regulations in themselves, boards should not depart from them without some substantial reason for doing so. The Legislature's purpose was to raise the standard of practice across all boards, and in some cases that may require a board to change its procedures in order to conform to best practices.

Nevertheless, we believe that individual boards retain reasonable discretion over how to apply the uniform standards to individual cases. Although the Legislature has revised many statutes pertaining to the diversion programs administered by the healing arts boards,[51] every board still retains its independent authority over the discipline of its licensees.[52] An individual has a constitutionally protected fundamental right to practice a profession, and "a statute can constitutionally prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice that profession."[53] Nothing in section 315 or the uniform standards undermines the

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[49] Bus. & Prof. Code, § 315, subd. (c).

[50] Webster's 3d New Internat. Dict. (1993) pp. 2523-2524.

[51] See Stats. 2008, ch. 548 (Sen. Bill No. 1441), §§ 4-26.

[52] E.g. Bus. & Prof. Code, § 108.

[53] *Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 788.

ability and responsibility of a healing-arts board to assess whether a licensee's substance abuse compromises his or her fitness or competence to practice the profession. Inherent in that authority, we believe, is the board's right to exercise reasonable discretion in applying the uniform standards to particular circumstances and in deciding individual cases.

We conclude that individual healing arts boards must use the uniform standards as written in all cases in which they are found to apply, to the extent that this is practicable, but that the boards retain discretion in applying the uniform standards to particular circumstances and in deciding individual cases.[54]

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[54] We have also been asked to provide a "detailed analysis of each standard," but we decline to do so. It is up to each board to determine questions such as the need to clarify or make more specific the uniform standards.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee

Brian J. Stiger, Director
April 2011

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

    - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
    - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
    - is approved by the board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The clinical diagnostic evaluation report shall:

    - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
    - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
    - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

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

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

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

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

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY
In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

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

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

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

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

OTHER DRUG STANDARDS

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

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

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

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

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

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

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

Collection of specimens shall be observed.

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

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

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

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

PETITIONS FOR REINSTATEMENT

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

OUTCOMES AND AMENDMENTS

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

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

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

Post Implementation Data- Three Years

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

Data Collection

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

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

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

Group Meeting Facilitator Qualifications and Requirements:

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

#6 SENATE BILL 1441 REQUIREMENT

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

#6 Uniform Standard

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

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

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

#7 Uniform Standard

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

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

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

    a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

    b) Interview other staff in the office regarding the licensee's behavior, if applicable.

    c) Review the licensee's work attendance.

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

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

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

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

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

#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

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

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.

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

   (a) Specimen Collectors:

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

   (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.

   (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.

   (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.

   (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.

   (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

(7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.

(8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

(9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

(1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;

(2) must be licensed or certified by the state or other nationally certified organization;

(3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;

(4) shall report any unexcused absence within 24 hours to the board, and,

(5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

(1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

(2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

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

(3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

(4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

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

   a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

   b) Interview other staff in the office regarding the licensee's behavior, if applicable.

   c) Review the licensee's work attendance.

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

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

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

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

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

(2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;

(3) Professional staff who are competent and experienced members of the clinical staff;

(4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;

(5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

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

(1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.

(2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.

(3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

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

#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.

3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

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

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

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Option 1 (Presumption) "Trigger" for When SB 1441 Uniform Standards Apply

Board of Chiropractic Examiners

Proposed Language

Section 384 of Division 4 of Title 16, Article 9 of the California Code of Regulations is amended to read:

Article 9.
Enforcement, ~~and~~ Discipline, and Uniform Standards for Substance-Abusing Licensees

Section 384. 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 board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" [revised ~~October 21, 2004~~ April 29, 2014] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a 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 384.1, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. 1xxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code~~.~~ (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

Add Section 384.1 to Division 4 of Title 16 of Article 9 of the California Code of Regulations to read:

§ 384.1. Uniform Standards for Substance-Abusing Licensees.

(a) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of

section 315 of the Code. If the licensee does not rebut that presumption, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders", new April 29, 2014, which are hereby incorporated by reference, 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 guidelines referenced in Section 384 in any order that the board determines would provide greater public protection.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. 1xxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code. (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

Option No. 2 (Clinical Diagnostic) "Trigger" for When SB 1441 Uniform Standards Apply

Board of Chiropractic Examiners

PROPOSED LANGUAGE

Section 384 Division 4 of Title 16, Article 9 of the California Code of Regulations is amended to read:

Article 9. Enforcement, ~~and~~ Discipline, and Uniform Standards for Substance-Abusing Licensees

Section 384. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled Disciplinary Guidelines and Model Disciplinary Orders" [revised ~~October 21, 2004~~ April 29, 2014] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

However, neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the uniform standards related to substance abuse listed in Section 384.1. If a licensee has not yet been identified as a substance-abusing licensee (for example, through stipulation) in a case involving drugs or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may, in the discretion of the board, be made contingent upon a clinical diagnostic evaluator's report that the individual is a substance-abusing licensee. The clinical diagnostic evaluator's report shall be submitted in its entirety to the board.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. 1xxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code~~.~~ (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

Add Section 384.1 to Division 4 of Title 16 of Article 9 of the California Code of Regulations to read:

§ 384. Uniform Standards for Substance-Abusing Licensees.

(a) If a licensee has been identified as a substance-abusing licensee as provided in Section 384, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders", new April 29, 2014, which are hereby incorporated by reference, 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 guidelines referenced in Section 1018 in any order that the board determines would provide greater public protection.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. lxxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

Option 3 "Trigger" (Hearing) for When SB 1441 Uniform Standards Apply

Board of Chiropractic Examiners

PROPOSED LANGUAGE

Section 384 in Division 4 of Title 16, Article 9 of the California Code of Regulations is amended to read:

Article 9. Enforcement, ~~and~~ Discipline, and Uniform Standards for Substance-Abusing Licensees

Section 384. 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 board shall consider the disciplinary guidelines entitled Disciplinary Guidelines and Model Disciplinary Orders" [revised ~~October 21, 2004~~ April 29, 2014] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a 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 384.1, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. 1xxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code~~.~~ (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

Add Section 384.1 to Division 4 of Title 16 of Article 9 of the California Code of Regulations to read:

§ 384.1. Uniform Standards for Substance-Abusing Licensees.

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees

with Standard Language for Probationary Orders," new April 29, 2014, which are hereby incorporated by reference, 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 guidelines referenced in Section 384 in any order that the board determines would provide greater public protection.

Note: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923 p. 1xxxviii)) and Business and Professions Code Sections 315, 315.2, and 315.4. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code~~,~~ (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii) and Business and Professions Code Sections 315, 315.2, and 315.4.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES

July 17, 2014
Life Chiropractic College West
25001 Industrial Blvd., Room 161
Hayward, CA 94545

Board Members Present
Sergio Azzolino D.C., Chair
Heather Dehn, D.C., Vice Chair
Dionne McClain, D.C.
John Roza, Jr., D.C.
Corey Lichtman, D.C.
Frank Ruffino

Staff Present
Robert Puleo, Executive Officer
Kristy Schieldge, Attorney III
Linda Shaw, Staff Services Manager
Sandra Walker, Staff Services Manager
Maria Martinez, Special Investigator
Dixie Van Allen, Associate Governmental Program Analyst
Valerie James, Management Services Technician

Call to Order
Dr. Azzolino called the meeting to order at 9:07 a.m.

Roll Call
Dr. Dehn called the roll. All members except Dr. Julie Elginer were present.

Pledge of Allegiance
Mr. Ruffino led the Pledge of Allegiance.

Chair's Report
Dr. Azzolino acknowledged and thanked Dr. Brian Kelly, President of Life Chiropractic College West and Dr. Kendra Holloway, D.C. for allowing the Board to meet at Life Chiropractic College West and reach out to the students on the functions and paramount responsibilities of the Board. Dr. Azzolino thanked Dr. Columbu and Dr. Lubkin for their services on the Board. He also acknowledged and thanked Board member for their dedication to the Board. He especially acknowledged Mr. Puleo for continuing to keep the inner workings of the Board functioning well. He also encouraged students and all licensees to stay connected with the Board.

Dr. Kelly came forward and acknowledged and thanked the Board. Dr. Kelly also stated that Dr. Gerald Clum, former president of Life West sends his regards. He indicated that classes are in session and students will be coming in and out of the Board meeting.

Dr. Kelly expressed concerns regarding the curriculum requirements in the Chiropractic Initiative Act, which have caused Chiropractic Education to remain static in California. Dr. Kelly noted that the outdated requirements in the act compel approved schools to use a 20th century model for delivering education. He further stated that sitting in class for 35 hours a week is not the way to deliver education in the 21st century. Dr. Kelly would like schools to have the flexibility to deliver chiropractic education more efficiently and cost effectively, thereby reducing the exorbitant level of debt currently incurred by Chiropractic Students.

Dr. Kelly also commented on the diversity of the chiropractic scope of practice throughout the US and the World. Mr. Ruffino asked whether Dr. Kelly had any insight to share with the Board regarding international accreditation. Dr. Kelly stated his interest in portability for chiropractors throughout the world.

Approval of Minutes
April 29, 2014 Board Meeting

DICSCUSSION
Ms. Schieldge requested corrections to the minutes made on pages 4 and 5. On page 4 in the middle of the page, the minutes state "AB 2025" it should read "AB 2028". On page 5 she recommended striking out the sentence and substituting it with: "She discussed the issue of problems with compliance with a 1996 federal law prohibiting states from conferring a professional license upon a person not lawfully residing in the U.S. unless state law expressly allows it. The bill fails to confer such express authority on the board or other boards in DCA, which creates a conflict with federal law."

Mr. Ruffino requested corrections on page 2 and page 4. On page 2 replace "Senate floor" with "Senate Committee room". On page 4 correct the spelling of "position."

MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES WITH THE CHANGES DISCUSSED
SECOND: MR. RUFFINO SECOND THE MOTION
VOTE: 6-0
MOTION: CARRIED

Executive Officer's Report
Mr. Puleo gave the Executive Officer Report. Topics were Administration, Budget, Licensing and Enforcement.

Mr. Puleo stated that the budget is sound, despite the judgment the Board recently paid in the Arbuckle case. At the next Board meeting representatives from the Department of Consumer Affairs, Budget office will present our 2014/15 budget and answer any questions. Mr. Puleo reported that AB 1615 (Gatto) which authorized the Board to pay the Arbuckle judgment, was signed by the Governor on July 9, 2014, and effective immediately.

Mr. Puleo summarized the Board's fiscal year licensing trends. Dr. Azzolino requested trends on enrollment and growth rate of students graduating from Chiropractic Colleges. He would also like the national trends to be compared to the average population of each state. Dr. Dehn suggested providing trend updates at each board meeting.

Mr. Puleo discussed enforcement statistics and explained that what students or licensees do in their personal lives may have an effect on their license or obtaining a license. Dr. Azzolino pointed out the number of complaints related to unprofessional conduct and gross negligence. Dr. Azzolino asked Mr. Puleo to explain the compliant process. Mr. Puleo provided a brief overview on the complaint process and outcomes.

Ratification of Approved License Applications

MOTION: DR. DEHN MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS
SECOND: DR. ROZA THE MOTION
VOTE: 6-0
MOTION CARRIED
The Board ratified the attached list of approved license applications incorporated herein (Attachment A).

Ratification of Approved Continuing Education Providers

MOTION: DR. DEHN MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS
SECOND: DR. ROZA SECONDED THE MOTION
VOTE: 6-0
MOTION CARRIED
The Board ratified the attached list of approved continuing education providers incorporated herein (Attachment B).

Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing
None

BCE Licensing, Continuing Education and Public Relations Committee Meetings Update
Dr. Dehn reported that the Committee's biggest task is to recognize international applicants. Ms. Schieldge summarized the tasks of the Committee regarding international applicants.

Dr. Dehn presented a handout titled "Top Ten Violations," Dr. Azzolino requested that the violations be presented in alphabetical order. Dr. Dehn agreed.

Dr. Dehn stated that in order to enforce the audit of continuing education courses, regulation changes will be needed.

The Committee is currently working on a letter to the Schools Insurance Authority, which addresses the Board's position on Chiropractors performing physical examinations for high school athletic programs.

Dr. Mike Liddell came forward with his concerns regarding restrictions on Chiropractors performing physical examinations for high school athletics programs. Dr. Liddell offered to provide the information he has gathered. Dr. Azzolino inquired as to the number from schools utilizing Chiropractors to perform physicals.

Dr. Kassie Donoghue representing the California Chiropractic Associations (CCA), came forward and commented that it is their top priority to research the number of schools that are utilizing Chiropractors to preform physicals. Dr. Dehn requested that Dr. Donoghue share any findings with the Board.

Dr. Azzolino stated that the Board needs to stay focused on what chiropractors are trained and qualified to do. Dr. Bill Meeker, President of Palmer Chiropractic West, came forward and commented that sports physicals are part of the school curriculum.

Government Affairs Committee Meeting Update
Mr. Ruffino provided an overview of the legislative bills and the Boards' positions. Ms. Schieldge commented that the Board took an oppose position on AB 2058 (Wilk) - Open Meetings. Mr. Ruffino requested a motion to approve the table of contents of the new Board Member binder. Ms. Schieldge recommended that the Board receive the full binder prior to voting. Mr. Ruffino tabled this item. Mr. Puleo reminded Board Members to respond to Dr. Elginer regarding mentoring new Board Members.

Ms. Van Allen provided a summary of AB 2143 (Williams)-Clinical Laboratories: chiropractors.

MOTION: MR. RUFFINO MOVED TO TAKE A SUPPORT POSITION ON AB 2143
SECOND: DR. DEHN SECONDED THE MOTION
VOTE: 6-0
DISCUSSION: NONE
MOTION CARRIED

BCE Enforcement Committee Meetings Update
Dr. Azzolino spoke regarding the purposed changes to the language in Section 317 -Failure to Refer. The Committee decided to leave the language as is.

Dr. Azzolino stated that the Committee was working on establishing a standard for maintaining or disposing of patient records when a Chiropractic office closes due to retirement, death or incapacity.

Dr. Azzolino commented on the statute of limitation for filing a consumer complaint. Mr. Puleo provided a brief overview of the process of complaints. The Committee determined it is unnecessary to establish a limitation due to the patient record retention regulation, which requires licensees to maintain patient records for a minimum of 5 years.

Discussion and Possible Action Regarding Options for Implementation of Uniform Standards for Substance Abusing Healing Arts Licensees" (SB 1441, Ridley-Thomas, Chapter 548, Statues of 2008)
Ms. Schieldge provided the history on SB 1441 and the options for implementation of uniform standards. Ms. Schieldge explained the three possible trigger language options on how to define substance abusing licensees. She recommended placing the Standards as separate documents from the Disciplinary Guidelines since they are different components. The Board has to implement the Standards exactly how it's written and the Guidelines are discretionary on a case by case bases.

Ms. Schieldge provided an explanation of Option 1 (Presumption) Trigger: if the conduct of the licensee is found to be a violation involving drugs and/or alcohol the licensee shall be presumed to be a substance abusing licensee. If the licensee does not rebut the presumption at the hearing, the terms and conditions of the Standard shall be used in any order rendered. The positive of this option is it's simple for the staff to administer based on the facts if alcohol and/or drugs are involved. The negative is the large pool of licensees that are not substance abusers, and this option may subject to the Board to legal challenges.

Option 2 (Clinical Diagnostic) Trigger: If a licensee admits to the having a substance abuse problem, the evidence is confirmed. If the licensee does not admit to a substance abuse problem, a clinical diagnostic evaluation will be ordered and the Standards may be made based on the clinical

diagnostic report. Other Boards prefer this option because it provides for an independent expert evaluation to determine if the licensee has a substance abuse problem. Where the evaluator's report proves facts to the Board of a substance abuse problem, the Board can apply the standards. The problem with this option is that the hearing will take place before the evaluation so when the decision is rendered, the licensee won't know whether the uniform standards will be applied within the disciplinary order.

Option 3 "Trigger" (Hearing): the Standards will only apply after the hearing. The Standards only apply once it is proven, based on evidence that the licensee has a substance abuse problem. Ms. Schieldge recommended Option 3 "Trigger", since it allows the Executive Officer to decide whether to plead this allegation and the standards up front and gives the licensee a fair notice of the direction the Board might take.

MOTION: DR. DEHN MOVED TO APPROVE OPTION 3 "TRIGGER" (HEARING) FOR WHEN SB 1441 UNIFORM STANDARDS APPLY
SECOND: DR. ROZA SECONDED THE MOTION
VOTE: 6-0
MOTION CARRIED

Assembly Member Bill Quirk of Hayward came forward and welcomed the Board to his Assembly district and formally thanked the Board and staff for their services. Mr. Ruffino spoke on Assembly Member Bill Quirk's accomplishments.

Consideration of and Possible Action Regarding Proposed Regulations to Implement Recommendations to Strengthen Enforcement Programs Pursuant to the Consumer Protection Enforcement Initiative (CPEI)
Mr. Puleo provided a brief overview of the Consumer Health Protection Enforcement Act [SB1111-(McLeod)] which resulted in the Board implementing selected provisions through the rulemaking process resulting in the Omnibus Consumer Protection Regulations.

Ms. Schieldge stated that the Enforcement Committee had a lengthy discussion regarding the proposed language. She stated that Dr. Azzolino suggested and the Enforcement Committee agreed that in Section 312 on page 3, there needs to be clarification after the sentence that begins, "The licensed doctor of chiropractic shall initially examine and prepare a written treatment plan for a patient prior to the provision of physiotherapy treatment. The unlicensed individual shall follow and provide only the treatment defined in the written plan". It was suggested adding the language "For the purposes of this section, a written treatment plan may be included in the Soap (S.O.A.P) notes; Subjective, Objective, Assessment Plan procedure.

Dr. Azzolino recommended striking out "initially examine and" from the second paragraph of Section 312 on page 3.

Ms. Schieldge recommended striking out section 317.2 on page 5 because it is duplicative of existing law, Business and Professions Code Section 143.5.

She also recommended changes to Section 384.1 on page 7. The forms need to include notices to the petitioners of their rights. Mr. Puleo also stated that corrections will need to be made to page 8, Section 384.1 (e), (f) and (g) to reflect the changes to the forms. Dr. Dehn would like clarification to question number 3a of the "Petition for Early Termination of Probation" form by adding "including current discipline."

Ms. Schieldge recommended striking out Sections 390.7 and 390.8. She explained the Initiative Act does not authorize the Board to limit its own discretion in determining whether to set a penalty in a particular case (i.e., impose revocation in every case regardless of the facts). She discussed the fact that the courts have found that it is an abuse of discretion for Boards to not exercise their discretion in setting a penalty when it is not limited by the Legislature.

Dr. Azzolino recommended referring the changes back to the Enforcement Committee for final review.

MOTION: MR. RUFFINO MOVED TO APPROVE THE CHANGES AND BRING REFER TO THE ENFORCEMENT COMMITTEE FOR REVIEW PRIOR TO PRESENTING TO THE FULL BOARD
SECOND: DR. MCCLAIN SECONDED THE MOTION
VOTE: 6-0
MOTION CARRIED

Proposed Regulations
A. Sponsored Free Health Care Event
Mr. Puleo reported that staff will be submitting the final rulemaking package to the Office of Administrative Law.

B. Licensure and Renewal – Military
Ms. Schieldge would like to receive feedback on the application forms which were revised to confirm with the Disclosure Act. Mr. Puleo recommended referring the revised application form to the Licensing Committee for review.

Public Comment for Items Not on the Agenda
No public came forward to provide comment.

Future Agenda Items
No future agenda items were brought forward

Hearings Re: Petition for Early Termination/Modification of Probation
Administrative Law Judge, Mary Margaret Anderson, presided over and Deputy Attorney General Rosailda Perez appeared on behalf of the people of the State of California in the following hearings:

A. Ward Henry, D.C. – DC 13550
B. Brett Stine, D.C.-27704

Closed Session
Following oral testimonies, the Board went into Closed Session for deliberation and determinations regarding petitioners.

Open Session
The Board went back into Open Session to adjourn the meeting.

Adjournment
Dr. Azzolino adjourned the meeting at 3:15 p.m.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	**April 5, 2012**
TO	**ALL HEALING ARTS BOARDS**
FROM	**DOREATHEA JOHNSON** **Deputy Director, Legal Affairs** **Department of Consumer Affairs**
SUBJECT	**Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)**

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.

Questions Presented

1. **Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?**

   Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.

2. **Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?**

   Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to "provide for the full implementation of the Uniform Standards." The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.

3. **Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?**

   The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General's opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to

the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether : (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

Attachments

cc: Denise Brown, DCA Director
Awet Kidane, DCA Chief Deputy Director
DCA Legal Affairs Attorneys

LEGISLATIVE
COUNSEL
BUREAU

October 27, 2011

Honorable Curren D. Price Jr.
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code[1] provides as follows:

> "315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

[1] All further section references are to the Business and Professions Code, unless otherwise referenced.

"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

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

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

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

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

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

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

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

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

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

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

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

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

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (a), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,[2] the State Board of Chiropractic Examiners, and the

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[2] The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.[3] Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

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[3] See http://www.dca.ca.gov/about_dca/sacc/index.shtml (as of September 20, 2011).

> "A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, supra, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.

Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (*Tidewater*, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

> "11340.9. This chapter does not apply to any of the following:
>
> "(a) An agency in the judicial or legislative branch of the state government.
>
> "(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.
>
> "(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.
>
> "(d) A regulation that relates only to the internal management of the state agency.
>
> "(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

"(1) Enable a law violator to avoid detection.

"(2) Facilitate disregard of requirements imposed by law.

"(3) Give clearly improper advantage to a person who is in an adverse position to the state.

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172 of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board 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." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

> "The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

> implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards 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, if a major violation is committed and while undergoing clinical diagnostic evaluation." (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.[4]

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[4] Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859, C.C.P.; *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism. *Kubo v. Agricultural Relations Bd.* (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.

Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Lisa M. Plummer
Deputy Legislative Counsel

LMP:syl

State of California

Memorandum

Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

To : Doreathea Johnson
Deputy Director & Chief Counsel
Department of Consumer Affairs
Legal Affairs Division

Date: February 29, 2012

Telephone: (916) 445-7480
FACSIMILE: (916) 324-8835
E-mail: Kathleen.Lynch@doj.ca.gov

From : Kathleen A. Lynch
Deputy Attorney General
Government Law Section
Office of the Attorney General – Sacramento

Subject : Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code, §§ 315 - 315.4)

Executive Summary

Issues

You asked us to review Legislative Counsel's letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

(1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and

(2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC's adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA's provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel's apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the

individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

Statutory Background

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to "formulate uniform and specific standards" in 16 identified areas "that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (*Id.* at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (*Ibid.*) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (*Id.* at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (*Ibid.*) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (*Ibid.*) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the

standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (*Ibid.*) Specifically, the author explains:

> SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California's (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.

(Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.)

In the view of its author, "[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." (*Ibid.*)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board 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." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (*Id.* § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLoud), this subsequent statute was necessary "because current law does not give boards the authority to order a cease practice." (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:

> Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards 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, if a major violation is committed and while undergoing clinical diagnostic evaluation. [¶] The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

Legal Analysis

1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA]." (*Id.* § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (*Id.* § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38

Cal.4th 324, 333, quoting *Tidewater Marine Western, Inc. et al. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

"The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Bodell Const. Co. v. Trustees of California State University* (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts "first examine the words of the statute itself. Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (*Ibid.* [citations omitted].) Courts "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Ibid.* [citation omitted].) "The legislative purpose will not be sacrificed to a literal construction of any part of the statute." (*Ibid.*)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (*Id.* at pp. 728-729.) In *Paleski*, plaintiff challenged an agency's criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (*Ibid.*) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (*Ibid.*) According to the court, the "necessary effect" of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (*Ibid.*)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts

licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 *et seq.*), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (*Id.* §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.[1]

1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co., supra*, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC's creation of the uniform standards does not implement,

[1] Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA's provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board's practices and its regulatory scheme and may include consideration of: (1) whether a board's statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered "penalties" and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.

interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.[2]

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. "Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board." (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards *were adopted by health care related boards to deal with practitioners with alcohol or drug problems.* (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)[3] Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

2. The healing arts boards must use the uniform standards to the extent that they apply.

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) ["uniform standards that will be used by healing arts boards"], subd. (b) ["uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses"].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with

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[2] The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)

[3] As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)

Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board 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." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

> Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards 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, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: ... "].) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also

believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	April 30, 2015
TO	Enforcement Committee Members
FROM	Spencer L. Walker Attorney III
SUBJECT	Possible Change to Government Code section 11522 that Would Authorize the Board to Assign Petitions for Reinstatement of License or Reduction of Penalty to an Administrative law Judge

Government Code section 11522 requires petitions for reinstatement or reduction of penalty to be heard by the board. However, Section 11522 does not apply to boards that have a statute which governs such petitions. The Dental Board of California is one of those boards.

Government Code section 11522 provides that "[a] person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

Although most boards within the Department of Consumer Affairs have the ability to seek a change to their statutes for the purpose of allowing them to assign petitions to an administrative law judge, the board, as an entity created by an initiative act, does not have the same ability.

If the board desires to assign petitions to an administrative law judge, Government Code section 11522 could be amended as follows:

> A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the

> agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes **or regulations** dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

Reference - Dental Board Statute: Business and Professions Code section 1686. Petition for Reinstatement or Modification of Penalty; Procedure; Contents; Considerations

A person whose license, certificate, or permit has been revoked or suspended, who has been placed on probation, or whose license, certificate, or permit was surrendered pursuant to a stipulated settlement as a condition to avoid a disciplinary administrative hearing, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(a) At least three years for reinstatement of a license revoked for unprofessional conduct or surrendered pursuant to a stipulated settlement as a condition to avoid an administrative disciplinary hearing.

(b) At least two years for early termination, or modification of a condition, of a probation of three years or more.

(c) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination, or modification of a condition, of a probation of less than three years.

The petition shall state any fact required by the board.

The petition may be heard by the board, or the board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code.

In considering reinstatement or modification or penalty, the board or the administrative law judge hearing the petition may consider (1) all activities of the petitioner since the disciplinary action was taken, (2) the offense for which the petitioner was disciplined, (3) the petitioner's activities during the time the license, certificate, or permit was in good standing, and (4) the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board or the administrative law judge as designated in Section 11371 of the Government Code finds necessary.

No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

Nothing in this section shall be deemed to alter Sections 822 and 823.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Petition for Reinstatement of Revoked License

Pursuant to Section 1000-10(c) of the Business and Professions Code (BPC) (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii), a petitioner whose license has been revoked or cancelled may not petition the board for reinstatement until two years has elapsed since the effective date of the Board's disciplinary action decision. A petitioner who is subject to Section 1003 of the Business and Professions Code may not petition the board for reinstatement until ten years has elapsed since the effective date of the decision.

All items of information in the application are mandatory. In addition, petitioners for reinstatement of a license must submit either the second copy of their completed Live Scan form (California residents) or fingerprint cards and a $49.00 fee (out-of-state residents) with this application. Failure to provide any of the requested information will deem this application incomplete.

Name: (Last, First, Middle)			Board Meeting Date Requested:	
Address of Record:		City:	State:	Zip:
Home Telephone:	Work Telephone:	E-mail (optional):	License Number:	Date Issued:

1) List all states where you have ever been licensed as a DC, including license number and status of each license:

2a) Have you ever had a DC license or other professional license or certificate disciplined by another state, another California board/bureau or any governmental agency? *(Includes surrender of license)* ☐Yes ☐No

b) Have you had an application for any professional license or certification denied? ☐ Yes ☐ No

If you answered yes to either question above, please provide an explanation:

3a) Have you been convicted or pled guilty or nolo contendere to ANY offense (include misdemeanor or felony) of any local, state, or federal law of any state, territory, foreign country, or U.S. federal jurisdiction subsequent to your Board disciplinary action? *This includes every citation, infraction, misdemeanor and/or felony, including traffic violations of $500 or more. NOTE: Convictions that were adjudicated in the juvenile court, dismissed per Penal Code section 1000.3, or convictions two years or older under California Health and Safety Code sections 11357(b), (c), (d), (e) or section 11360(b) should NOT be reported. Convictions that were later expunged from the records of the court or set aside pursuant to section 1203.4 of the California Penal Code or equivalent non-California law MUST be disclosed.*

b) Are you currently on court imposed probation or parole? ☐ Yes ☐ No

c) Are you currently subject to an order of registration as a sex offender pursuant to Section 290 of the Penal Code? ☐ Yes ☐ No

If you answered yes to any questions above, please provide an explanation and documentation of your criminal court documents (i.e. complaint, minute order, indictment, plea agreement, etc.):

T (916) 263-5355
F (916) 327-0039
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, California 95814
www.chiro.ca.gov

4) Summarize the nature of the act(s) causing the disciplinary action against your California DC license:

5) Explain fully why you feel your license should be reinstated:

6) Relative to the acts resulting in the discipline of your California DC license, what have you done to ensure that you are now safe to practice chiropractic? (Attach or submit documents to support your statements.)

7) List any education courses you have completed since the date of disciplinary action, including dates, location, type of course and number of hours/units: (Attach or submit documentation to support your statements.)

8) List all chiropractic materials you have studied during the last year.

9) List all continuing education courses you have completed since your license was disciplined. Attach copies of certificates.

9) Provide a chronological list of your employment history since the date of disciplinary action against your DC license. Include beginning and ending dates, name and address of employer, job title, description of duties, and reason(s) for leaving.

Petition Declaration/Signature

I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of the foregoing information contained in this petition, including any attachments.

Signature: _____ **Date:** _____

NOTICE REGARDING INFORMATION COLLECTION AND ACCESS

Information requested in the petition is mandatory and is authorized to be collected in accordance with sections 4 and 10 of the Chiropractic Initiative Act of California ("Act"), section 11522 of the Government Code and sections 305, 325, 326 and 365 of the California Code of Regulations. The information requested will be used to determine eligibility for reinstatement of a revoked license. Failure to provide all or any part of the requested information will result in the petition being rejected as incomplete.

Per California Civil Code Section 1798.17 (Information Practices Act), the Executive Officer of the Board is responsible for maintaining information in this petition. Each individual has the right to review the personal information maintained by the agency unless the records are exempt from disclosure. Requests for information may be addressed to the custodian of records at the following: Board of Chiropractic Examiners, 901 P Street, Suite 142A Sacramento, CA 95814, (916) 263-5355.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Petition for Early Termination of Probation

Petitions for early termination of probation will not be accepted until one year has passed from the effective date of the Board's decision or from the date of the denial of a similar petition. The decision on the petition will be made by the full Board in accordance with Section 11522 of the Government Code and may take into consideration the factors set forth in Section 384.1 of the Board's regulations (at Title 16, California Code of Regulations (CCR)).

Failure to provide any of the requested information will result in this application being rejected as incomplete. (See the "Notice Regarding Information Collection and Access" below for further information.)

Name: (Last, First, Middle)			Board Meeting Date Requested:	
Business Address:	City:		State:	Zip:
Home Telephone:	Work Telephone:	e-mail (optional):	License Number:	Date Issued:

1) Have you ever petitioned for early termination of probation? ☐ Yes ☐ No
If yes, please provide the date(s):

2) List all states where you have ever been licensed as a D.C., including license number and status of each license:

3a) Have you ever had a D.C. license or other professional license or certificate disciplined by another state, another California board/bureau or any governmental agency? *(Disciplinary action is defined as any revocation, suspension, probation, or reprimand of a professional license and includes surrender of license)* ☐ Yes ☐ No

b) Have you had an application for any professional license or certification denied? ☐ Yes ☐ No

If you answered yes to either question above, please provide an explanation (attach additional pages if needed):

4a) Have you been convicted or pled guilty or nolo contendere to ANY offense (include misdemeanor or felony) of any local, state or federal law of any state, territory, foreign country or U.S. federal jurisdiction subsequent to your Board disciplinary action? *This includes every citation, infraction, misdemeanor and and/or felony, including traffic violations. Traffic violations that resulted in fines of less than $500 and did not involve alcohol, dangerous drugs, or controlled substances need not be reported. NOTE: Convictions that were adjudicated in the juvenile court, dismissed per Penal Code section 1000.3, or convictions two years or older under California Health and Safety Code sections 11357(b), (c), (d), (e) or section 11360(b) should NOT be reported. Convictions that were later expunged from the records of the court or set aside pursuant to section 1203.4 of the California Penal Code or equivalent non-California law MUST be disclosed.*
☐ Yes ☐ No

b) Are you currently on court-imposed probation or parole? ☐ Yes ☐ No

c) Are you currently subject to an order of registration as a sex offender pursuant to Section 290 of the Penal Code?
☐ Yes ☐ No

If you answered yes to any questions above, please provide an explanation and documentation of your criminal court documents (i.e. complaint, minute order, indictment, plea agreement, etc.):

5) Summarize the nature of the act(s) causing the disciplinary action against your California D.C. license:

T (916) 263-5355
F (916) 327-0039
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

Board of Chiropractic Examiners
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Sacramento, California 95814
www.chiro.ca.gov

6) Explain fully why you feel your probation should be terminated early:

7) In addition to the terms of your probation, what other rehabilitative or corrective measures have you taken since your license was disciplined to support your petition for early termination of probation? List dates, measures taken or rehabilitation programs, and current status. You may include any community service or volunteer work. (Attach or submit documents to support your statements.)

8) List any education courses you have completed since the date of disciplinary action, including dates, location, type of course and number of hours/units: (Attach or submit documentation to support your statements.)

9) Provide a chronological list of your employment history since the date of disciplinary action against your D.C. license. Include beginning and ending dates, name and address of employer, job title, description of duties, and reason(s) for leaving, if any.

Petition Declaration/Signature

I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of the foregoing information contained in this petition, including any attachments.

Signature: _____ **Date:** _____

NOTICE REGARDING INFORMATION COLLECTION AND ACCESS

Information requested in this petition is mandatory and is authorized to be collected in accordance with sections 4 and 10 of the Chiropractic Initiative Act of California ("Act"), section 11522 of the Government Code and sections 304, 305, 325, 326 and 384.1 of Title 16 of the California Code of Regulations. The information requested will be used to determine eligibility for early termination of probation. Failure to provide all or any part of the requested information will result in the petition being rejected as incomplete. We make every effort to protect the personal information you provide us. The information you provide, however, may be disclosed in the following circumstances:

- In response to a Public Records Act request (Government Code Section 6250 and following), as allowed by the Information Practices Act (Civil Code Section 1798 and following);
- To another government agency as required by State or Federal law; or,
- In response to a court or administrative order, a subpoena, or a search warrant.

Per California Civil Code Section 1798.17 (Information Practices Act), the Executive Officer is responsible for maintaining information in the petition. Each individual has the right to review the personal information maintained by the agency unless the records are exempt from disclosure under Section 1798.40 of the Civil Code. Requests for information or access to your records may be addressed to the custodian of records at the following: Board of Chiropractic Examiners, 901 P Street, Suite 142A Sacramento, CA 95814, (916) 263-5355.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Petition for Reduction of Penalty

Petitions for reduction of the probation penalty will not be accepted until one year has passed from the effective date of the Board's decision or from the date of the denial of a similar petition. The decision on the petition will be made by the full Board in accordance with Section 11522 of the Government Code and may take into consideration the factors set forth in Section 384.1 of the Board's regulations (at Title 16, California Code of Regulations (CCR)).

All items of information in the application are mandatory. Failure to provide any of the requested information will result in this application being rejected as incomplete. (See the "Notice Regarding Information Collection and Access" below for further information.)

Name: (Last, First, Middle)			Board Meeting Date Requested:	
Business Address:		City:	State:	Zip:
Home Telephone:	Work Telephone:	E-mail (Optional)	License Number:	Date Issued:

1) Have you ever petitioned for reduction of penalty? ☐ Yes ☐ No
If yes, please provide the date(s):

2) List all states where you have ever been licensed as a D.C. Include the license number and status of each license:

3a) Have you ever had a D.C. license or other professional license or certificate disciplined by another state, another California board/bureau or any governmental agency? *(Disciplinary action is defined as any revocation, suspension, probation, or reprimand of a professional license and includes surrender of license.)* ☐Yes ☐No

b) Have you had an application for any professional license or certification denied? ☐ Yes ☐ No

If you answered yes to either question above, please provide an explanation (attach additional pages if needed):

4a) Have you been convicted or pled guilty or pled nolo contendere to ANY offense (include misdemeanor or felony) of any local, state, or federal law of any state, territory, foreign country, or U.S. federal jurisdiction subsequent to your Board disciplinary action? *This includes every citation, infraction, misdemeanor and/or felony, including traffic violations .Traffic violations that resulted in fines of less than $500 and did not involve alcohol, dangerous drugs, or controlled substances need not be reported. NOTE: Convictions that were adjudicated in the juvenile court, dismissed per Penal Code section 1000.3, or convictions two years or older under California Health and Safety Code sections 11357(b), (c), (d), (e) or section 11360(b) should NOT be reported. Convictions that were later expunged from the records of the court or set aside pursuant to section 1203.4 of the California Penal Code or equivalent non-California law MUST be disclosed.* ☐ Yes ☐ No

b) Are you currently on court-imposed probation or parole? ☐ Yes ☐ No

c) Are you currently subject to an order of registration as a sex offender pursuant to Section 290 of the Penal Code? ☐ Yes ☐ No

If you answered yes to any questions above, please provide an explanation and documentation of your criminal court documents (i.e. complaint, minute order, indictment, plea agreement, etc.):

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5) Summarize the nature of the act(s) causing the disciplinary action against your California D.C. license:

6) Explain fully why you feel your probation penalty should be reduced:

7) In addition to the terms of your probation, what other rehabilitative or corrective measures have you taken since your license was disciplined to support your petition for reduction of probation penalty? List dates, measures taken or rehabilitation programs, and current status. You may include any community service or volunteer work. (Attach or submit documents to support your statements.)

8) List any education courses you have completed since the date of disciplinary action, including dates, location, type of course and number of hours/units: (Attach or submit documentation to support your statements.)

9) Provide a chronological list of your employment history since the date of disciplinary action against your DC license. Include beginning and ending dates, name and address of employer, job title, description of duties, and reason(s) for leaving, if any.

Petition Declaration/Signature

I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of the foregoing information contained in this petition, including any attachments.

Signature: _____ **Date:** _____

NOTICE REGARDING INFORMATION COLLECTION AND ACCESS

Information requested in the petition is mandatory and is authorized to be collected in accordance with sections 4 and 10 of the Chiropractic Initiative Act of California ("Act"), section 11522 of the Government Code and sections 304, 305, 325, 326, and 384.1 of Title 16 of the California Code of Regulations. Failure to provide all or any part of the requested information will result in the petition being rejected as incomplete. The information requested will be used to determine eligibility for reduction of penalty. We make every effort to protect the personal information you provide us. The information you provide, however, may be disclosed in the following circumstances:

- In response to a Public Records Act request (Government Code Section 6250 and following), as allowed by the Information Practices Act (Civil Code Section 1798 and following);
- To another government agency as required by State or Federal law; or,
- In response to a court or administrative order, a subpoena, or a search warrant.

Per California Civil Code Section 1798.17 (Information Practices Act), the Executive Officer of the Board is responsible for maintaining information in this petition. Each individual has the right to review the personal information maintained by the agency unless the records are exempt from disclosure under Section 1798.40 of the Civil Code. Requests for information or access to your records may be addressed to the custodian of records at the following: Board of Chiropractic Examiners, 901 P Street, Suite 142A Sacramento, CA 95814, (916) 263-5355.