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STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

BOARD OF PSYCHOLOGY

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

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California Board of Psychology

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

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Board of Psychology

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

Article 7. Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ 1395.2. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines," (December 2010) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards are required mandatory consequences that apply to substance abusing applicants or licensees. Deviation from the Disciplinary Guidelines and orders, including the standard terms of probation is appropriate where the Board of Psychology 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. 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.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

I. INTRODUCTION

The Board of Psychology of the California Department of Consumer Affairs (hereinafter "the Board") is a consumer protection agency with the ~~primary mission~~ priority of protecting consumers of psychological services from ~~potentially harmful practices~~ unsafe, incompetent, or negligent practitioners in exercising its licensing, regulatory, and disciplinary functions. In keeping with its mandate to protect this particularly vulnerable population, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Psychology Licensing Law. This document, designed for use by administrative law judges, attorneys, psychologists, registered psychologists, psychology assistants, and others involved in the disciplinary process, and ultimately the Board, may be revised from time to time.

For purposes of this document, the term "license" includes a psychology assistant registration and registered psychologist registration. The terms and conditions of probation are divided into two general categories:

(1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
(2) Optional Conditions are those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the ~~The~~ Board recognizes that an ~~rare~~ individual case may necessitate a departure from these guidelines for disciplinary orders. However, in such a ~~rare~~ case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact," which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken.

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

~~**BOARD INFORMATION**~~

~~Board of Psychology Contact Information:~~

~~Board of Psychology~~
~~2005 Evergreen Street, Suite 1400~~
~~Sacramento, CA 95815-3831~~
~~(916) 263-2699 / FAX (916) 263-2697~~
~~www.psychboard.ca.gov~~

~~Staff with Authority to Negotiate Settlements:~~

~~Robert Kahane, Executive Officer (916) 263-2699~~

~~Jeffrey Thomas, Assistant Executive Officer (916) 263-2699~~

~~Gina Bayless, Enforcement Coordinator (916) 263-0321~~

A. UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public. Whether individual conditions are ordered, however, is within the discretion of the Board.

Clinical Diagnostic Evaluations: **[Uniform Standard #1]**

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall be approved by the Board, and unless permitted by the Board or its designee, shall be a California-licensed psychologist or physician and surgeon. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report: **[Uniform Standard #1, 6]**

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a

threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have had a financial, personal, business or other relationship with the licensee. ~~within the last five (5) 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 or 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.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

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

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

Facilitated Group Support Meetings: **[Uniform Standard #5]**
If the board requires a licensee to participate in facilitated group support meetings, either because it is the decision of the Board or it is within the discretion of the Board staff when determining the nature of group support meetings, the following shall apply:
1. When determining the frequency of required facilitated 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.

2. Group Meeting Facilitator Qualifications and Requirements:
a. 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.
b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee. ~~in the last five (5) years.~~
c. 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.
d. The facilitator shall report any unexcused absence within 24 hours.

Work Site Monitor Requirements: **[Uniform Standard # 7]**

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

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

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

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

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

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 as frequent a basis as determined by the Board, but 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 and behavior.

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

Any suspected substance abuse must be orally 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 oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite 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.

Major and Minor Violations: **[Uniform Standard # 9, 10]**

If a licensee commits a major violation, the Board shall automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;

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.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused ~~attendance~~ absence from ~~at~~ required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

DRUG TESTING STANDARDS [Uniform Standard #4, 8, 9,]

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice of psychology, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly alcohol or drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 50 times per year, and at any time as directed by the board.

2. Alcohol or drug testing may be required on any day, including weekends and holidays.

3. Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.

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

6. 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.

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

8. 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.

9. Collection of specimens shall be observed.

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

11. 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 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.

B. DISCIPLINARY GUIDELINES

II. GENERAL CONSIDERATIONS

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

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior record of discipline or citations.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.

6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Pursuant to section 2960.1 of the Code (set out below in the Penalty Guidelines), any proposed decision or decision that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

Pursuant to section 2964.3 of the Code, any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.

III. PENALTY GUIDELINES

~~The following is an attempt to provide information regarding the range of offenses under the Psychology Licensing Law and the California Code of Regulations and the appropriate penalty for each offense.~~ The general bases for discipline are listed by statute number in the Business & Professions Code. An accusation, statement of issues, or other charging document may also allege violations of other related statutes or regulations. The bases are followed by the Board-determined penalty, including the names and numbers for the optional terms and conditions. The standard terms of probation as stated shall be included in all decisions and orders. ~~Each penalty listed is followed in parenthesis by a number which corresponds with a number under the chapter "Terms and Conditions of Probation." Legal "enacted" dates follow the definition of some of the most frequently used disciplinary subdivisions. Examples are given for illustrative purposes, but no attempt is made to catalog all possible offenses.~~ Except as provided in the Uniform Standards Related to Substance Abuse, the ~~The~~ Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations that take into account unique circumstances.

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

Business and Professions Code § 2960

2960 GENERAL UNPROFESSIONAL CONDUCT ~~– Enacted 3/30/94~~

MAXIMUM : ~~Unprofessional conduct involving inappropriate behavior resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration.

MINIMUM: ~~Unprofessional conduct involving inappropriate behavior resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, Depending upon the circumstances, up to 5 year probation, psychological evaluation and/or therapy if appropriate (2) and (7), California Psychology Supplemental Examination (CPSE) (8), and standard terms and conditions (15-~~29~~30~~29~~30)

2960(a) CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE PRACTICE OF PSYCHOLOGY ~~- Enacted 1/1/67 for convictions involving moral turpitude. Amended 1/1/76 for convictions substantially related to the practice of psychology.~~

MAXIMUM: ~~Conviction of a crime of violence against a person or property or economic crime resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Conviction of other crime resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, billing monitor (if financial crime) (4), therapy (7), CPSE (8), restitution (if appropriate) (9), ~~community service (14),~~ and standard terms and conditions (15-~~29~~30).

2960(b) USE OF CONTROLLED SUBSTANCE OR ALCOHOL IN A DANGEROUS MANNER

MAXIMUM: ~~Abuse of alcohol or a controlled substance resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Abuse of alcohol or a controlled substance to the extent that ability to safely render psychological services is impaired.~~

~~Penalty:~~ Revocation stayed, 5 year probation, physical examination (if appropriate) (3), practice monitor (4), psychological evaluation and ongoing therapy (if appropriate) (2) and (7), clinical diagnostic evaluation (10), participation in an alcohol/drug abuse treatment program (~~10~~11) and ~~continuing therapy with a psychologist trained in substance abuse treatment~~ ongoing support group (~~11~~12), abstain from all non-prescribed, controlled drugs and alcohol/biological fluid and specimen testing (~~12~~13), and standard terms and conditions (15-~~29~~30).

2960(c) FRAUDULENTLY OR NEGLECTFULLY MISREPRESENTING THE TYPE OR STATUS OF LICENSE OR REGISTRATION ACTUALLY HELD

MAXIMUM: ~~Misrepresentation of status resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Misrepresentation of status resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, ~~community service (14),~~ and standard terms and conditions (15-~~29~~30).

2960(d) IMPERSONATING ANOTHER PERSON HOLDING A PSYCHOLOGY LICENSE OR ALLOWING ANOTHER PERSON TO USE HIS OR HER LICENSE OR REGISTRATION

MAXIMUM: ~~Impersonation or use resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Impersonation or use resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, psychological evaluation (2), CPSE (8), ~~community service (14),~~ and standard terms and conditions (15-~~29~~30).

2960(e) PROCURING A LICENSE BY FRAUD OR DECEPTION

Penalty: Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

2960(f) ACCEPTING REMUNERATION OR PAYING FOR REFERRALS TO OTHER PROFESSIONALS ~~- Enacted 1/1/68 (formerly subdivision(e))~~

MAXIMUM: ~~Accepting substantial remuneration or paying for referrals resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation, denial of license or registration ~~application~~.

MINIMUM: ~~Accepting remuneration in isolated instances resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, billing monitor (4), CPSE (8), and standard terms and conditions (15-~~29~~30).

2960(g) VIOLATING SECTION 17500 OF THE BUSINESS AND PROFESSIONS CODE REGARDING ADVERTISING

Repeated infractions of statute regarding advertising.

Penalty: Revocation stayed, 5 year probation, ~~community service (14)~~ and standard terms and conditions (15-~~29~~30).

2960(h) VIOLATION OF CONFIDENTIALITY - ~~Enacted 1/1/68 (formerly subdivision (g))~~

MAXIMUM: ~~Unlawfully divulging information resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation, denial of license or registration ~~application~~.

MINIMUM: ~~Unlawfully divulging information resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, practice monitor (4), CPSE (8), and standard terms and conditions (15-~~29~~30).

2960(i) VIOLATION OF RULES OF PROFESSIONAL CONDUCT ~~(FOR EXAMPLE, VIOLATION OF SECTION 1396.1, INTERPERSONAL RELATIONSHIP) - Enacted 1/1/68 (formerly subdivision (h))~~

~~See 2960~~

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, Depending upon the circumstances, up to 5 year probation, psychological evaluation and/or therapy if appropriate (2) and (7), California Psychology Supplemental Examination (CPSE) (8), and standard terms and conditions (15-30).

2960(j) GROSS NEGLIGENCE IN THE PRACTICE OF PSYCHOLOGY ~~- Enacted 1/1/68 (formerly subdivision (i))~~

MAXIMUM: ~~Gross negligence resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Gross negligence resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, psychological evaluation prior to resumption of practice (condition precedent) (2), practice monitor/billing monitor (4), patient population restriction (if appropriate) (6), therapy (7), CPSE (8), and standard terms and conditions (15-~~29~~30).

2960(k) VIOLATING ANY PROVISION OF THIS CHAPTER OR REGULATIONS DULY ADOPTED THEREUNDER ~~- Enacted 1/1/68 (formerly subdivision (j))~~

~~No guidelines.~~ Refer to underlying statute or regulation.

2960(l) AIDING OR ABETTING UNLICENSED PRACTICE

MAXIMUM: ~~Multiple instances of aiding or abetting unlicensed practice, which results in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Isolated instance of aiding or abetting unlicensed practice resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, CPSE (8), and standard terms and conditions (15-~~29~~30).

2960(m) DISCIPLINARY ACTION BY ANOTHER STATE AGAINST A LICENSE OR REGISTRATION

In evaluating the appropriate penalty, identify the comparable California statute(s) and corresponding penalty(s).

2960(n) DISHONEST, CORRUPT OR FRAUDULENT ACT ~~- Enacted 1/1/80~~

MAXIMUM: ~~Dishonest or fraudulent act resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Dishonest or fraudulent act resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, psychological evaluation and ongoing therapy if appropriate (2), billing monitor (4), CPSE (8), full restitution (9), ~~community service (14)~~ and standard terms and conditions (15-~~29~~30).

2960(o); 726 ANY ACT OF SEXUAL ABUSE, OR SEXUAL RELATIONS WITH A PATIENT OR FORMER PATIENT WITHIN TWO YEARS FOLLOWING TERMINATION OF THERAPY, OR SEXUAL MISCONDUCT THAT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF A PSYCHOLOGIST OR

PSYCHOLOGICAL ASSISTANT OR REGISTERED PSYCHOLOGIST.

When a finding of sexual misconduct occurs, revocation or surrender of license/registration and/or denial of ~~application for~~ license or registration MUST be the penalty ordered by the Administrative Law Judge. **NO MINIMUM PENALTY.**

NOTE: Business and Professions Code Section 2960.1 states: "Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any acts of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."

2960(p) FUNCTIONING OUTSIDE FIELD(S) OF COMPETENCE – ~~Enacted 1/1/83 (Renumbered 1/1/93. Formerly subdivision (o))~~

MAXIMUM: ~~Functioning outside field(s) of competence resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Functioning outside field(s) of competence resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, 5 year probation, practice monitor (4), patient population restriction (6), CPSE (8), and standard terms and conditions (15-~~29~~30).

2960(q) WILLFUL FAILURE TO VERIFY AN APPLICANT'S SUPERVISED EXPERIENCE ~~(Renumbered 1/1/93. Formerly subdivision (p))~~

Penalty: Revocation stayed, 5 year probation and standard terms and conditions (15-~~29~~30).

2960(r) REPEATED NEGLIGENT ACTS ~~- Enacted 3/30/94~~

MAXIMUM: ~~Repeated negligent acts resulting in substantial harm to patient(s).~~

~~Penalty:~~ Revocation; denial of license or registration ~~application~~.

MINIMUM: ~~Repeated negligent acts resulting in minimal or no harm to patient(s).~~

~~Penalty:~~ Revocation stayed, depending on the circumstances, up to 5 year probation, psychological evaluation prior to resumption of practice (condition precedent) (2), practice monitor (4), CPSE (8), and standard terms and conditions (15-~~29~~30).

TERMS AND CONDITIONS OF PROBATION

Terms and conditions of probation are divided into two categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions,** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-14) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (15-~~29~~30).

IV. OPTIONAL TERMS AND CONDITIONS

Listed below are optional conditions of probation that the Board would expect to be included in any Proposed Decision or Stipulation as appropriate.

1. Actual Suspension

As part of probation, respondent is suspended from the practice of psychology for _____ days beginning with the effective date of this Decision. During the suspension, any probation period is tolled and will not commence again until the suspension is completed.

RATIONALE: A suspension longer than 6 months is not effective, and a violation or violations warranting a longer suspension should result in revocation, not stayed.

2. Psychological Evaluation

Within 90 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 psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall sign a release that authorizes the evaluator to furnish the Board a current DSM IV diagnosis and a written report regarding the respondent's ~~judgement~~ judgment and/or ability to function independently as a psychologist with safety to the public, and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. The evaluation should not be disclosed to anyone not authorized by the board or by court order.

If the Board concludes from the results of the evaluation that respondent is unable to practice independently and safely, upon written notice from the Board respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice. The term of probation shall be extended by ~~During~~ this ~~suspension~~ period of time that he or she was ordered to cease practice~~, probation will be tolled and will not commence again until the suspension is completed~~.

If not otherwise ordered herein, if ongoing psychotherapy is recommended in the psychological evaluation, the Board will notify respondent in writing to submit to such therapy and to select a psychotherapist for approval by the Board or its designee within 30 days of such notification. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal or other relationship with respondent; (3) not be the same person as respondent's practice or billing monitor. Frequency of psychotherapy shall be determined upon recommendation of the treating psychotherapist with approval by the Board or its designee~~; however, psychotherapy shall, at a minimum, consist of one one-hour session per week~~. Respondent shall continue psychotherapy until released by the approved psychologist and approved by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board any information the Board or its designee deems appropriate, including quarterly reports of respondent's therapeutic progress. Respondent shall furnish a copy of this Decision to the therapist. If the therapist determines that the respondent cannot continue to independently render psychological services, with safety to the public, he/she shall notify the Board immediately.

Respondent shall pay all costs associated with the psychological evaluation and ongoing psychotherapy. Failure to pay costs will be considered a violation of the probation order.

(Option of Evaluation as a **-Condition Precedent)**
In some cases, the psychological evaluation may be imposed as either a condition precedent to the stay of revocation, or to the issuance or reinstatement of a license, so that the respondent or petitioner is not entitled to begin or continue practice until found to be safe to do so. In such cases, the following language shall be used as the first sentence of the first paragraph of this term:

As a condition precedent to the [stay of revocation] [issuance [re-issuance] of the a (Insert appropriate license [/registration] type), within 90 days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board of Psychology (Board) or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist.

In addition, the following language shall also be used as the first sentence of the second paragraph of this term:

If the Board concludes from the results of the evaluation that [respondent] [petitioner] is unable to practice independently and safely, upon written notice from the Board [respondent shall, in accordance with professional standards, appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice] [respondent or petitioner shall not be issued or re-issued a license until a Board-appointed evaluator determines that respondent or petitioner is safe to practice].

RATIONALE: Psychological evaluations shall be utilized when an offense calls into question the ~~judgement~~ judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, respondent shall be barred from rendering psychological services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the Board has accepted and approved the evaluation.

3. Physical Examination

Within 90 days of the effective date of this Decision, respondent shall undergo a physical examination by a licensed physician and surgeon licensed in California and approved by the Board. Respondent shall sign a release authorizing the physician to furnish the Board a report that shall provide an assessment of respondent's physical condition and capability to safely provide psychological services to the public. If the evaluating physician and surgeon determines that respondent's physical condition prevents safe practice, or that he or she can only practice with restrictions, the physician shall notify the Board, in writing, within five (5) working days.

The Board shall notify respondent in writing of the physician and surgeon's determination of unfitness to practice, and shall order the respondent to cease practice or place restrictions on respondent's practice. ~~respondent~~ Respondent shall comply with any order to cease practice or restriction of his or her practice, and shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days. Respondent ~~and~~ shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice, and the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. ~~During this suspension period,~~ The term of probation ~~will~~ shall be ~~tolled~~ extended by the period of time

during which respondent is ordered to cease practice ~~and will not commence again until the suspension is completed~~. If the evaluating physician determines it to be necessary, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the Board on a quarterly basis or as otherwise determined by the Board or its designee.

It shall be the respondent's responsibility to assure that the required quarterly progress reports are filed by the treating physician in a timely manner. Respondent shall pay all costs of such examination(s). Failure to pay these costs shall be considered a violation of probation.

RATIONALE: This condition permits the Board to require the probationer to obtain appropriate treatment for physical problems/disabilities that could affect safe practice of psychology. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.

4. Practice Monitor/Billing Monitor

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a psychologist who has agreed to serve as a practice monitor/billing monitor. The monitor shall (1) be a California-licensed psychologist with a clear and current license; (2) have no prior business, professional, personal or other relationship with respondent; and (3) not be the same person as respondent's therapist. The monitor's education and experience shall be in the same field of practice as that of the respondent.

Once approved, the monitor shall submit to the Board or its designee a plan by which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per week of individual face to face meetings and shall continue during the entire probationary period unless modified or terminated by the Board or its designee. The respondent shall provide the monitor with a copy of this Decision and access to respondent's fiscal and/or patient records. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request. It shall be respondent's responsibility to assure that the monitor submits written reports to the Board or its

designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential patients of any term or condition of probation that will affect their therapy or the confidentiality of their records (such as this condition, which requires a practice monitor/billing monitor). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, respondent shall notify the Board within 10 days and get approval from the Board for a new monitor within 30 days. If no new monitor is approved within 30 days, respondent shall not practice until a new monitor has been approved by the Board or its designee. ~~During this period of non-practice,~~ The term of probation ~~will be tolled and will not commence again until the period of non-practice is completed~~ shall be extended by the period of time during which respondent is ordered to cease practice. Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.

RATIONALE: Monitoring shall be utilized when respondent's ability to function independently is in doubt or when fiscal improprieties have occurred, as a result of a deficiency in knowledge or skills, or as a result of questionable ~~judgement~~ judgment.

5. Notification to Employer [uniform standard #3]

When currently employed, applying for employment or negotiating a contract, or contracted to provide psychological services, respondent ~~Respondent~~ shall provide to each ~~of his or her~~ employers, supervisor, or contractor, or prospective employer or contractor where respondent is providing or would provide psychological services, a copy of this Decision and the Accusation or Statement of Issues before ~~commencing~~ accepting or continuing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board

in writing of the facility or facilities at which the person is providing psychological services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor, or contractor.

RATIONALE: The condition provides the Board with a mechanism for ensuring that the employer providing psychological services or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

6. Restriction of Patient Population

Respondent's practice shall be limited restricted to exclude patients who are _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation.

RATIONALE: In cases wherein some factor of the patient population at large (e.g. age, gender, practice setting) may put a patient at risk if in therapy with the respondent, language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

7. Psychotherapy

Within 90 days of the effective date of this Decision, a therapist shall be selected by the respondent for approval by the Board. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal, or other relationship with respondent; and (3) not be the same person as respondent's monitor. Respondent shall furnish a copy of this Decision to the therapist. Psychotherapy shall, at a minimum, consist of one hour per week over a period of 52 consecutive weeks after which it may continue or terminate upon the written recommendation of the therapist with written approval by the Board or its designee. The

Board or its designee may order a ~~re-~~ psychological evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board or its designee any information the Board deems appropriate, including quarterly reports of respondent's therapeutic progress. It shall be respondent's responsibility to assure that the required quarterly reports are filed by the therapist in a timely manner. If the therapist notifies the Board that the therapist believes the respondent cannot continue to safely render psychological services, upon notification from the Board respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is again safe to practice. ~~During this period of non-practice,~~ The term of probation shall be ~~tolled and will not commence again until the period of non-practice is completed~~ extended by the period of time during which respondent is ordered to cease practice.

If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of psychology without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the ~~period~~ term of probation shall be extended until the Board or its designee determines that the respondent is mentally fit to resume the practice of psychology without restrictions.

Cost of psychotherapy is to be paid by the respondent.

RATIONALE: The need for psychotherapy may be determined pursuant to a psychological evaluation or as evident from the facts of the case. The frequency of psychotherapy shall be related to the offense involved and the extent to which the offense calls into question the ~~judgement~~ judgment, motivation, and emotional and/or mental condition of the respondent.

8. Examination(s)

California Psychology Supplemental Examination (CPSE) Term MUST INCLUDE Either Option 1 or Option 2:

Option 1 (Condition Subsequent)

Respondent shall take the CPSE within 90 days of the effective date of the decision. If respondent fails such examination, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until the re-examination has been successfully passed, as evidenced by written notice to respondent from the Board or its designee. ~~During this period of non-practice,~~ The term of probation shall be ~~tolled and will not commence again until the suspension is completed~~ extended by the period of time during which respondent is ordered to cease practice. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination. Respondent shall pay the established examination fee(s). Reexamination after a failure must be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

Option 2 (Condition Precedent)

Respondent ~~shall not~~ is ordered to cease the practice of psychology until respondent has taken and passed the CPSE. ~~During this period of non-practice,~~ The term of probation shall be ~~is tolled and will not commence again until the suspension is completed~~ extended by the period of time during which respondent is ordered to cease practice. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination(s). Respondent shall pay the established examination fee(s). Reexamination after a failure must be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

RATIONALE: In cases involving evidence of serious deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to take and pass the CPSE during the course of the probation period. In some instances, it may be appropriate ~~for~~ to order that practice ~~to~~ be ~~suspended~~ ceased until the examination ~~is~~ has been taken and passed (condition precedent).

9. Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the Board or its designee of restitution in the amount of $_____ paid to _____. Failure to pay

restitution shall be considered a violation of probation. Restitution is to be paid regardless of the tolling of probation.

RATIONALE: In offenses involving economic exploitation, restitution is a necessary term of probation. For example, restitution would be a standard term in any case involving Medi-Cal or other insurance fraud. The amount of restitution shall be at a minimum the amount of money that was fraudulently obtained by the licensee. Evidence relating to the amount of restitution would have to be introduced at the Administrative hearing.

10. Clinical Diagnostic Evaluation [Uniform Standards #s 1&2]

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of psychology, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of psychology for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent shall not practice psychology until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

RATIONALE: This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

~~10.~~11. Alcohol and/or Drug Abuse Treatment Program [uniform standard #6]

~~Effective~~ Within thirty (30) days from the effective date of this Decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program ~~(a minimum of six (6) months duration)~~ or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent. All costs associated with the program shall be paid by respondent.

However, if respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

RATIONALE: This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

~~11.~~12. Ongoing ~~Treatment~~ Support Group Program [uniform standard #5]

~~Respondent shall participate in on-going treatment and/or out-patient 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 or the equivalent as approved by the Board or its designee at least once a week during the entire period of probation. Respondent shall provide documentation of attendance at Twelve Step meetings or the equivalent on a quarterly basis to the Board or its designee. All expenses associated with the treatment shall be paid by respondent.~~

Respondent shall begin and continue attendance at a support/recovery group (e.g., Twelve Step meetings or the equivalent, or a facilitated group with a psychologist trained in alcohol and drug abuse treatment) as ordered by the Board or its designee. When determining the type and frequency of required support 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.

Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

a. 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.

b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.

c. 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.

d. The facilitator shall report any unexcused absence within 24 hours.

RATIONALE: Alcohol and/or other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by respondent has impaired respondent's ability to safely provide psychological services ~~to patients~~. This condition must be accompanied by condition ~~#12~~13.

~~12.~~13. Abstain from Drugs and Alcohol and Submit to Tests and Samples [uniform standard #4]

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs requiring a prescription unless respondent provides the Board or its designee with documentation from ~~the treating physician and surgeon~~ the prescribing health professional that the prescription was legitimately issued and is a necessary part of the treatment of respondent.

Respondent shall abstain completely from the ~~use~~ intake of alcohol~~ic beverages~~.

Respondent shall undergo random~~,~~ and directed biological fluid or specimen testing as determined by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and a minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. Any confirmed positive finding will be considered a violation of probation. Respondent shall pay all costs associated with such testing. ~~The length of time and frequency of this testing condition will be determined by the Board or its designee.~~ If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to immediately cease any practice of psychology, and may not practice unless and until notified by the Board. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to alcohol and/or drug testing. Respondent shall submit to his or her alcohol and/or drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Drugs - Exception for Personal Illness

Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a physician and surgeon. Respondent shall provide the Board or its designee with written documentation from the treating physician and surgeon who prescribed medication(s). The documentation shall identify the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

RATIONALE: **This condition provides documentation that the probationer is substance or chemical free. It also provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances.**

~~13.~~14. **Educational Review**

Respondent shall submit to an educational review concerning the circumstances that resulted in this administrative action. The educational review shall be conducted by a board-appointed expert familiar with the case. Educational reviews are informational only and intended to benefit respondent's practice. Respondent shall pay all costs associated with this educational review.

RATIONALE: In cases involving evidence of deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to submit to an educational review during the course of the probation period.

~~**14. Community Service - Free Services**~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval a community service program in which respondent shall provide free psychological services on a regular basis to community, charitable facility, governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code for at least _____ hours a month for the first _____ months of probation.~~

~~**NOTE: In addition to other terms of probation, community service work may be required for relatively minor offenses that do not involve deficiencies in knowledge, skills or judgement. Community service may be appropriately combined with restitution or other conditions as a term of probation.**~~

V. STANDARD TERMS AND CONDITIONS

(To be included in all Proposed Decisions and Stipulations)

15. Coursework

Respondent shall take and successfully complete not less than _____ __ hours each year of probation in the following area(s) _____ __. Coursework must be pre-approved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by an approved continuing education provider. Classroom attendance is specifically required; correspondence or home study coursework shall not count toward meeting this requirement. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by the respondent.

16. Ethics Course

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. This course must be in addition to any continuing education courses that may be required for license renewal. The cost associated with the law and ethics course shall be paid by the respondent.

17. Investigation/Enforcement Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $_____ within the first year of probation. Such costs shall be payable to the Board of Psychology and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. However, full payment of any and all costs required by this condition must be received by the board no later than six (6) months prior to the scheduled termination of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

18. Probation Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (June 30). Failure to pay such costs shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay probation monitoring costs.

~~**Authority: Business and Professions Code Section 2964.6 (effective 1/1/95).**~~

19. Obey All Laws

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

20. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation. Quarterly reports attesting to non-practice status are to be submitted if probation is tolled.

Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

21. Probation Compliance

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned Board of Psychology probation monitor. Respondent shall contact the assigned probation monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) complainants associated with the case; (2) Board members or members of its staff; or (3) persons serving the Board as expert evaluators.

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be communicated in writing to the Board or its designee within 15 calendar days.

22. Interview with Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

23. Changes of Employment

Respondent shall notify the Board in writing, through the assigned probation monitor, of any and all changes of employment, location, and address within 30 days of such change.

24. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State ~~or~~ for any reason ~~should respondent stop practicing psychology in California~~, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return ~~or the dates of non-practice within~~ to California. ~~Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. During periods of non-practice, the probationary period is tolled and respondent's license or registration shall be placed on inactive status. The probationary period will not commence again until respondent activates his or her license and resumes practicing psychology in the state of California. However, the Board may require respondent to complete certain terms of probation that are not associated with active practice and respondent will be required to pay cost recovery and restitution as~~

~~ordered.~~ All provisions of probation other than the quarterly report requirements, restitution, cost recovery, and continuing education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the term of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of psychology while residing in California, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of cessation of practice and expected return to practice. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. All provisions of probation shall remain in effect, and the term of probation shall be extended for the period of time respondent was not engaged in the practice of psychology as required by other employment requirements of this order.

25. Employment and Supervision of Trainees

If respondent is licensed as a psychologist, he/she shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during the course of this probation. Any such supervisorial relationship in existence on the effective date of this probation shall be terminated by respondent and/or the Board.

26. Future Registration or Licensure

If respondent is registered as a psychological assistant or registered psychologist and subsequently obtains other psychological assistant or registered psychologist registrations or becomes licensed as a psychologist during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future registrations or licensure shall not be approved, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

27. Request for Modification [Uniform Standard #s 11, 12]

"Request" as used in this condition is a request made to the Board's designee, and not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board staff pursuant to the Uniform Standards:
a. Demonstrated sustained compliance with current recovery program.
b. 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.
c. Negative alcohol and 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.

~~27.~~28. Violation of Probation

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, 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~~ term of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

~~28.~~29. Completion of Probation

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

~~29.~~30. 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 request the voluntary surrender of his or her license or registration. The Board of Psychology or its designee reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within 15 calendar days, deliver respondent's pocket and/or wall certificate to the Board or its designee and respondent shall no longer practice psychology. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a psychology license or registration, the application

shall be treated as a petition for reinstatement of a revoked license or registration.

VI. STANDARD TERMS AND CONDITIONS

(To be included in ALL Stipulations for Surrender or Revocation)

~~30.~~31. Reinstatement and Investigation/Enforcement Cost Recovery

Respondent may not petition for reinstatement of a revoked or surrendered license/registration for three years from the effective date of this Decision. If the Board grants future reinstatement, respondent agrees to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of $_____ payable to the Board upon the effective date of such reinstatement Decision.

~~31.~~32. Relinquish License

Respondent shall relinquish his/her wall and pocket certificate of licensure or registration to the Board or its designee once this Decision becomes effective and upon request.

~~ACCUSATIONS~~

~~Effective January 1, 1993, the Board received authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that cost recovery be included in the pleading and made part of ALL Accusations. Effective January 1, 1995, Business and Professions Code Section 2964.6 gives the Board the authority to recover probation monitoring costs. The Board requests that probation monitoring cost recovery be included in the pleading and made part of ALL Accusations.~~

~~STATEMENTS OF ISSUES~~

~~The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee or registrant would be cause for license or registration discipline.~~

~~STIPULATED SETTLEMENTS~~

~~The Board will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to a settlement with the Board, the Board would prefer that respondent admit to one or more of the principle violations set forth in the Accusation. In stipulated revocations or surrenders, the Board expects language that would cause respondents to admit to all charges upon filing future Petitions for Reinstatement. The Deputy Attorney General must accompany all proposed Stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.~~

VI. PROPOSED DECISIONS

A. The Board requests that Proposed Decisions include the following:

~~A. Names and addresses of all parties to the action.~~

~~B.~~ a. Specific code section(s) violated with the definition of the code(s) in the Determination of Issues.

~~C.~~ b. Clear description of the acts or omissions which caused the violation.

~~D.~~ c. Respondent's explanation of the violation(s) in the Findings of Fact if he/she was present at the hearing.

~~E.~~ d. Description of all evidence of mitigation, rehabilitation and aggravation presented at the hearing.

~~F.~~ e. Explanation of any deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the order first list any combination of the Optional Terms and Conditions (1-13) as they may pertain to the particular case followed by **all** of the Standard Terms and Conditions (14-~~29~~30).

If the respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default decision to revoke licensure or deny application.

B. Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License

Disciplining of a License/Registration:

"IT IS HEREBY ORDERED that psychologist's license No. [#] issued to respondent Dr. [name], Ph.D., is REVOKED. However, the order of revocation is STAYED and the license is placed on probation for [#] years subject to the following terms and conditions:"

Applicant Placed on Probation:

"IT IS HEREBY ORDERED that the application for licensure as a psychologist of respondent [name], Ph.D. is GRANTED, and upon successful completion of all licensing requirements a license shall be issued, provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the application is ordered denied, and a new application for licensure will be required. Upon issuance, however, said license shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the license is placed on probation for [#] years subject to the following terms and conditions:"

Reinstatement of a License:

"The petition of [name], Ph.D., for reinstatement of licensure is hereby GRANTED. Psychologist license number [#] shall be reinstated provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the petition is ordered denied, and a new petition for reinstatement will be required. Upon issuance, however, the license shall be immediately revoked. However, the order of revocation shall be STAYED, and petitioner's license shall be placed on probation for a period of [#] years subject to the terms and following conditions:"

VII. REHABILITATION CRITERIA FOR REINSTATEMENT/PENALTY RELIEF HEARINGS

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Denials and Reinstatements in California Code of Regulations, Title 16, section 1395; and (2) the evidence presented by the petitioner of his/her rehabilitation. The Board will not retry the original revocation or probation case.

The Board will consider, pursuant to Section 1395, the following criteria of rehabilitation:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) of crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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

A. Why the penalty should be modified or why the license should be reinstated.

B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.

C. Continuing education pertaining to the offense and its effect on the practice of psychology.

D. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.

E. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.

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

Finally, the Board requests that the above criteria and evidence be evaluated in light of this statement of what should be presented to demonstrate rehabilitation:
Rehabilitation is a process. It is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation for why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice psychology. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.

In the Petition Decision, the Board requests a summary of the offense and the specific codes violated that resulted in the revocation, surrender or probation of the license.

If the Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches that demonstrate rehabilitation. Petitioners for reinstatement must wait three years from the effective date of their revocation decisions or one year from the last petition for reinstatement decisions before filing for reinstatement.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such inaction shall result in a default decision to deny reinstatement of the license or registration or reduction of penalty.

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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 2010

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Kim Madsen
Board of Behavioral Sciences

Robert Puleo
Board of Chiropratic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

Mona Maggio
Board of Optometry

Donald Krpan, D.O.
Osteopathic Medical Board/Naturopathic Medicine

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

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Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board

Annemarie Del Mugnaio
Speech-Language Pathology & Audiology Board

Susan Geranen
Veterinary Medical Board

Teresa Bello-Jones
Board of Vocational Nursing & Psychiatric Technicians

Staff Working Group

Susan Lancara, DCA, Legislative & Policy Review
LaVonne Powell, DCA Legal Counsel
Laura Edison Freedman, DCA Legal Counsel
Katherine Demos, DCA, Legislative & Policy Review
Kristine Brothers, Acupuncture Board
Kim Madsen, Board of Behavioral Sciences
April Alameda. Board of Chiropractic Examiners
Richard DeCuir, Dental Board of California
Kimberly Kirchmeyer, Medical Board of CA
Jeff Hanson, Board of Occupational Therapy
Margie McGavin, Board of Optometry
Felisa Scott, Osteopathic Medical Board
Anne Sodergren, Board of Pharmacy
Glenn Mitchell, Physician Assistant Committee
Debi Mitchell, Physical Therapy Board of CA
Carol Stanford, Board of Registered Nursing
Liane Freels, Respiratory Care Board
Amy Edelen, Veterinary Medical Board
Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians

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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 drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

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

3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.

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

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

6. 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.

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

8. 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.

9. Collection of specimens shall be observed.

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

11. 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.

#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 in the last five (5) years.

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 or be another health care professional if no monitor with like practice is available.

3. The worksite monitor 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) year.

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

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

   Specimen Collectors:

   a) 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.

   b) 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.

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

   d) 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.

   e) 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.

   f) 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.

g) 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.

h) 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.

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

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

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

c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;

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

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

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:

   a) 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.

   b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.

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

d) 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.

<u>Treatment Providers</u>

1. Treatment facility staff and services must have:

   a) Licensure and/or accreditation by appropriate regulatory agencies;

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

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

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

e) Means to provide treatment/progress documentation to the provider.

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

   a) 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.

   b) 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.

   c) 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.