



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR



Board of Vocational Nursing and Psychiatric Technicians

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MEMORANDUM

DATE	May 8, 2023
TO	Board Members Board of Vocational Nursing and Psychiatric Technicians
FROM	Antoinette Wood Board of Vocational Nursing and Psychiatric Technicians, Enforcement Division Chief
SUBJECT	May 18, 2023: Agenda Item 4.B.I Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations sections 2524 and 2579.10 (Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees)

Issue

The Disciplinary Guidelines (Guidelines) for the Board of Vocational Nursing and Psychiatric Technicians (Board) were last updated on June 10, 2011. Since that time there have been changes to the Board’s laws and regulations, and changes in the administration of various penalties for violations requiring the Guidelines to be updated. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection.

Updating the Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. These judges will benefit from greater understanding of the various nuances of the Board’s enforcement provisions and will help improve the consistency of penalties for violations of the Vocational Nursing Practice Act (Business and Professions Code section 2840 and following) and the Psychiatric

Technicians Law (Business and Professions Code section 4500 and following) (“Practice Acts”), and their regulations.

Part of the process to amend and add regulations is review by the Office of Administrative Law (OAL) to ensure that the Board’s regulation meets standards set by law in the Administrative Procedure Act (“APA” – Gov. Code, §§ 11340 and following). These include whether the regulation is necessary, the Board has statutory authority to adopt, amend, or repeal a regulation, the text is clear and easily understood, the regulation is consistent with existing statutes or other provisions of law, the regulation provides reference to the statute or other provision of law that the agency implements, and the regulation is not duplicative of a state or federal statute or another regulation. (Gov. Code, §§ 11349, 11349.1, subd. (a).) Regulations Counsel recommends that the Committee consider these standards when reviewing this proposal.

Discussion

Title 16, Code of California Regulations, Sections 2524 and 2579.10 references the Guidelines for both Practice Acts. It requires the Board to utilize these guidelines “In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.).” The Guidelines are incorporated by reference as a regulation, and therefore any update to the Guidelines will require an update in regulations as required by law in the APA.

The full text of the Guidelines, with markups reflecting proposed changes to the text, is attached to this memo. Please be advised that changes to existing text or the Guidelines document itself are shown in underline for proposed additions and ~~strikethrough~~ for proposed deletions. Text that staff are proposing to retain, unaltered, is shown without underline or strikethrough.

Aside from non-substantive changes for word choice, consistency of language, ease of reading and formatting, the proposed updates to the Guidelines include the following:

- Amend the Title of the document and the proposed text throughout to reflect the title of the Substance Abuse Coordination Committee’s document so that the title would refer to “Uniform Standards Regarding Substance-Abusing Licensees” and update the standards consistent with recent changes made by the Substance Abuse Coordination Committee.
- Add a policy statement to the Introduction indicating that the Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a

violation with an explanation for what cost recovery includes and why cost recovery is an important public policy.

- Reflect changes to California law since the last version of the Guidelines were approved by the Board, including the adoption of Substantially Related Criteria and Rehabilitation Criteria as outlined in 16 CCR sections 2521, 2522, 2578 and 2579, respectively, and as required by Business and Profession Code (Code) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).
- Change the introductory language for the standard conditions of probation from items that will “generally appear” to items that “should appear in every case” to ensure consistency in implementation of probationary orders.
- Add new factors to be considered when determining whether revocation, suspension or probation should be imposed in a given disciplinary action
- Clarify all conditions with time-based deadlines, such as 30 calendar days within the effective date of the decision.
- Change the standard compliance (proposed as “cooperation and compliance”) condition to include requirements for timely responding to Board inquiries, that the licensee on probation submit to the Board the contact information for their criminal probation or parole officer, and inform their criminal probation or parole officer that they are being monitored by the Board. Also, makes explicit that failure to timely respond is a violation of probation.
- Change the submission of quarterly written reports standard condition to include that the licensee on probation will submit disclosures that include written disclosures regarding whether Respondent has complied with each term and condition of probation contained in this Decision (“complete report”); and, if applicable, (B) if Respondent discloses they are not in compliance with any term or condition, a written statement regarding why Respondent is not in compliance with any term or condition of probation. Revisions to this condition also makes specific the due dates for the quarterly reports and the allowable methods for delivering such reports. Incomplete written reports or reports submitted or postmarked after the listed reporting dates listed would be considered late and not in compliance with this condition.
- Add new reporting requirements to the standard notice of change in address provision to include reporting within 5 calendar days of the effective date of the Decision, Respondent's current physical address, mailing address(es), email address, and telephone number(s) to the Board or its designee.
- Change the standard notice of change in practice of residency, practice or licensure outside of the state (condition (would include title change to

refer to “tolling”) to ensure that the licensee on probation does not remain tolled for more than two years or it would be considered a violation of probation. Adds new requirement to this section that Respondent shall submit annually, within 30 calendar days of the date requested by the Board or its designee, a written document verifying Respondent's out-of-state residency, practice or licensure outside of California as specified. Would also specify that periods of residency or practice outside of California do not relieve Respondent of the responsibility to maintain a current and active license, and to comply with the terms and conditions of probation.

- Change the standard meeting with Board representatives condition to include proof of identity that includes a current state or federal government-issued photo identification (e.g., driver license, passport, or military identification) to the Board or its designee for examination upon request at any meeting.
- Changes the standard notification to employers condition to include notice to the employer of the name, title, telephone number and email address for the Board's staff person who is Respondent's probation monitor to ensure that the licensees on probation are informing their current employer as soon as they have been placed on probation.
- Change the employment requirement condition to allow licensees to work with more flexibility, by making the hours needed a 160-hour monthly requirement instead of a 20-hour weekly requirement.
- Change the standard completion of educational coursework condition to mandate that the licensee on probation take a law and ethics class, in addition to any classes deemed necessary to ensure consumer safety. Additional changes were included to ensure that the licensee on probation gave sufficient information to the Board to review and make a decision on whether or not the courses meet the standard for approval. Furthermore, a clarification was made to ensure that the licensee on probation had an understanding that any courses that had not been pre-approved by the Board would not be counted towards fulfillment of the condition.
- Change the standard condition related to maintenance of a current license to ensure that the license is also kept active, and that the licensee pays all fees prior to the license expiration date and that it shall be considered a violation of probation to fail to do so.
- Change the standard cost recovery requirements to align them with the law at Business and Professions Code section 125.3 and the recent cost recovery precedential decision by the Board, Semilla, Chelyn Cassale, Case Number 430-20219-000328, OAH Number 2020040801, December 1, 2021.

- Change the standard license surrender condition to include when and how the Board would accept surrender of a license on probation as specified, including considerations of circumstances when the Board would consider not accepting a surrender in the interests of consumer protection.
- Change the standard violation of probation condition to specify that probation may be automatically extended while a Petition to Revoke probation is pending and has not been acted upon by the Board, and that the original terms and conditions of probation still apply during that extension period.
- Change the optional examination by a physician condition to ensure that the Board is given a release to communicate effectively with the medical practitioner, and that the report contains sufficient information so that the Board can make an informed decision on whether or not to allow the licensee on probation to continue to practice.
- Change the optional psychiatric evaluation condition to ensure that the evaluator is properly licensed and within their scope of practice. Furthermore, changes were made to ensure that the report contains sufficient information so that the Board can make an informed decision on whether or not to allow the licensee on probation to continue to practice.
- Change the optional psychotherapy condition to ensure that the evaluator is properly licensed and within their scope of practice, and to allow for practitioners who can offer mental health counseling. This will allow the licensees on probation to have more options when choosing a practitioner. Furthermore, the requirement that the licensee on probation share their decision and order and accusation with the practitioner helps ensure that the practitioner has all the needed information about the licensee on probation to make an informed decision on their ability to practice with safety to the public.
- Change the optional rehabilitation program condition to include in-patient and out-patient options and include recovery programs. This will allow the licensee on probation to have more options when choosing a program.
- Change the optional addictive behavior support group condition to include recovery groups that are facilitated by a mental health professional. Furthermore, changes were made to allow the Board to work with the mental health professional to increase or decrease the attendance requirements, based on the needs of the licensee on probation.
- Change the optional abstain from controlled substances condition to include alcohol and remove the alcohol condition. Due to an increase in proposed decisions and orders not including these conditions, it was

determined it was best to combine them so that there are no further mistakes for consumer protection.

- Change the optional biological fluid condition to drug and alcohol testing. This will ensure that the Board has the flexibility in using other methods of collection so that licensees on probation have flexibility, and consumers are protected.
- Change the optional take and pass the licensure examination condition to ensure that they include information on the reinstatement of a license and the use of the new proposed model orders.
- Update the Violations and Recommended Disciplinary Actions matrix to include the noted updates above, where applicable, and remove any conditions that were duplicated.
- Add evidence in aggravation of penalty to ensure understanding of what the Board would consider aggravating factors in every case.
- Add evidence in mitigation of penalty to ensure understanding of what the Board would consider mitigating evidence.
- Add rehabilitation evidence to help applicants, petitioners and licensees understand the types of evidence that the Board will consider.
- Add model orders to ensure consistency in the implementation of the Board's probationary orders.

Action Requested

The Enforcement Committee recommended approval of the attached proposed regulatory text and Disciplinary Guidelines document at its meeting on May 2, 2023. The Board should consider whether they would support it as written or if there are suggested changes to the proposed text. After review, the staff requests that the Board consider one of the following motions:

Motion A: (The Board has no suggested changes for the proposed regulatory text.) Approve the proposed regulatory text and incorporated guidelines for Sections 2524 and 2579.10 and submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR sections 2524 and 2579.10.

Motion B: (The Board has suggested changes for the proposed regulatory text.) Approve the proposed regulatory text for Sections 2524 and 2579.10 and incorporated guidelines, with the following changes. (Describe the proposed changes to the proposed text). In addition, submit the approved text as amended to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR sections 2524 and 2579.10.

Attachments

- (1) Proposed Regulatory Text to Update Title 16, California Code of Regulations Sections 2524 and 2579.10.
- (2) Document incorporated by reference: "Disciplinary Guidelines and Uniform Standards ~~Related to~~ Regarding Substance-Abusing Licensees" (Rev. ~~June 2011~~ OAL insert effective date).
- (3) Substance Abuse Coordination Committee's Updated March 2019 version of the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees"
- (4) May 2, 2023 Enforcement Committee Meeting Agenda and Minutes

**TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS**

PROPOSED LANGUAGE

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

Amend Section 2524 of Division 25 of Title 16 of the California Code of Regulations as follows:

§ 2524. Disciplinary Guidelines and Uniform Standards ~~Related to~~ Regarding Substance-~~Abuse~~ing Licensees.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards ~~Related to~~Regarding Substance-~~Abuse~~ing Licensees” (Rev. ~~6/20/11~~OAL Insert Effective Date), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

(a) Subject to subsection (b), deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply.

(c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued 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 engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

Board of Voc Nursing & Psych Techs (BVNPT)	Proposed Language (VN)	Page 1 of 2
Sections Affected: 16 CCR §2524, 2579.10	Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees	BVNPT Revision Date: 05/18/2023

Amend Section 2579.10 of Division 25 of Title 16 of the California Code of Regulations as follows:

§ 2579.10. Disciplinary Guidelines and Uniform Standards ~~Related to~~ Regarding Substance-~~Abuse~~ing Licensees.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards ~~Related to~~ Regarding Substance-~~Abuse~~ing Licensees” (Rev. 6/20/11 OAL insert effective date), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

(a) Subject to subsection (b), deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply.

(c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued 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 engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Authority cited: Section 4504, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 4520 and 4521, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

Board of Voc Nursing & Psych Techs (BVNPT)	Proposed Language (VN)	Page 2 of 2
Sections Affected: 16 CCR §2524, 2579.10	Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees	BVNPT Revision Date: 05/18/2023

State of California
Department of Consumer Affairs
Board of Vocational Nursing
and Psychiatric Technicians

Note: The Board proposes to change font for existing text in this document from Calibri to Century Gothic

DISCIPLINARY GUIDELINES
AND
UNIFORM STANDARDS RELATED GARDING
SUBSTANCE-ABUSE ING LICENSEES

Revised ~~June 20, 2011~~ May 18, 2023
(Regulations Effective ~~December 29, 2012~~ OAL insert effective
date)



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TABLE OF CONTENTS

	Pages
<i>Introduction</i>	<i>i-ii</i>
<u>Uniform Standards Regarding Substance–Abusing Healing Arts Licensees</u>	<u>ii</u>
<i>Regulatory Authority</i>	<u>iii-iv</u>
<u>Criteria and Factors to be Considered</u>	<u>iv-v-vi</u>
<u>Summary Lists of Quick Reference - Standard and Optional Conditions of Probation</u>	<u>v-vii-viii</u>
<u>Summary Lists of Uniform Standards -- Conditions of Probation</u>	<u>vii-ix</u>
Disciplinary Guidelines:	
Standard Conditions of Probation (1-14)	1 - <u>611</u>
Optional Conditions of Probation (15-25<u>24</u>)	7-<u>12</u> - <u>1121</u>
Uniform Standards Related to Substance Abuse:	
Uniform Standards – Required Conditions of Probation (265-287)	12 <u>22</u> - <u>1324</u>
Uniform Standards – Optional Conditions of Probation (298-310)	<u>124</u> - <u>1526</u>
Violations & Recommended Disciplinary Actions	<u>126</u> – <u>2134</u>
<u>Evidence in Aggravation of Penalty</u>	<u>35</u>
<u>Evidence in Mitigation of Penalty</u>	<u>36</u>
<u>Rehabilitation Evidence</u>	<u>37-38</u>
<u>Model Orders</u>	<u>39-43</u>

INTRODUCTION

Business and Professions Code sections 2841.1 and 4501.1 mandate that protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

To facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known, the Board adopted these Disciplinary Guidelines and Uniform Standards Related to Regarding Substance Abuse in Licensees.

Disciplinary Guidelines

The Disciplinary Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

While recognizing the concept that administrative law judges must be free to exercise their discretion, the Board requests that the Disciplinary Guidelines be followed to the extent possible and that any departures be noted and explained in the Proposed Decision.

The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect Respondent's conduct had or could have had on the health, safety, and welfare of California consumers.

The Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a violation. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including expert consultant opinions and services. The Board seeks reimbursement of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct required investigation and prosecution, not upon the profession as a whole. Cost recovery payment serves an important rehabilitative function by making licensees who have been disciplined confront the impacts of their actions and deterring future misconduct thereby further promoting public protection.

Uniform Standards Related Regarding to Substance-Abusing Healing Arts Licensees

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs (Department) Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Rev. ~~4/20/11~~ March 2019). The Board's Uniform Standards not otherwise incorporated into the Standard Conditions are found in Conditions of Probation 25, 26, 27, 28, 29, and 30. The Uniform Standards apply when dealing with substance-abusing licensees.

If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee. If the licensee does not rebut that presumption, then Conditions of Probation 25, 26 and 27 shall be imposed unless the licensee establishes that, in ~~his or her~~ their particular case, appropriate public protection can be provided with modification or omission of a specific standard as a ~~term~~ condition of probation.

Conditions of Probation 28, 29, and 30 shall be considered where the licensee is found to be a substance abuser, and, if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

REGULATORY AUTHORITY

California Code of Regulations Title 16, Division 25

Section 2524 (Vocational Nurse) - & ~~Section 2579.10 (PT):~~

~~Disciplinary Guidelines and Uniform Standards Related to~~ Regarding Substance-
Abuse in Licensees.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards ~~Related to~~ Regarding Substance-Abuse in Licensees” (Rev. ~~6/20/11~~ OAL insert effective date), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all Disciplinary matters; The Uniform Standards apply to a substance abusing licensee.

- (a) *Subject to subsection (b), deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.*
- (b) *If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply.*
- (c) *Notwithstanding the Disciplinary Guidelines, any proposed decision issued 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 engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.*

Section 2579.10 (Psychiatric Technician):

Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall utilize the disciplinary guidelines entitled "Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees" (Rev. OAL insert effective date), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all Disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) Subject to subsection (b), deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply.
- (c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued 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 engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

CRITERIA AND FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- *Nature and severity of the act(s), offense(s), or crime(s) under consideration.*
- *Actual or potential harm to the public.*
- *Actual or potential harm to any patient.*
- *Overall length of licensure.*
- *Overall disciplinary record, including level of compliance with disciplinary order(s).*
- *Overall criminal actions taken by any federal, state or local agency or court.*
- *Prior warnings on record or prior remediation.*
- *Number and/or variety of current violations.*
- *Mitigating or aggravating evidence.*
- *In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.*
- *Time passed since the act(s) or offense(s) occurred.*
- *If applicable, evidence of proceedings to dismiss a conviction pursuant to PenalCode section 1203.4.*
- *Cooperation with the Board and other law enforcement or regulatory agencies.*
- *Other rehabilitation evidence.*
- *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the Respondent is being held to account for conduct committed by another, the Respondent had knowledge of or knowingly participated in such conduct.*

- Financial benefit to the Respondent from the misconduct.
- Other licenses held by the Respondent and license history of those licenses.
- Uniform Standards Regarding Substance-Abusing Healing Arts Respondents (see Business and Professions Code Section 315).
- No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

Substantially Related Criteria. The Board may deny, suspend, or revoke a license if the applicant or licensee has been convicted of a crime, professional misconduct, or act that is substantially related to the qualifications, functions, or duties of a vocational nurse or psychiatric technician based on the criteria specified in California Code of Regulations title 16 (CCR), sections 2521 or 2578, as applicable.

SUMMARY LISTS OF QUICK REFERENCE - STANDARD AND OPTIONAL CONDITIONS OF PROBATION

Standard Conditions of Probation (1 – 14):

The Standard Conditions of Probation (1-14) are those conditions of probation ~~which will generally~~ that should appear in all cases involving probation as standard terms and conditions.

1. Obey All Laws
2. Cooperation and Compliance with Probation Program
3. ~~Submit~~ Submission of Written Reports
4. Notification of Current and Change in Name, Address(es) and Telephone Number(s)-Change(s)
5. Notification of Residency, ~~or Practice,~~ or Licensure Outside of State
6. Meetings with Board Representative(s)
7. Notification to Employer(s)
8. Employment Requirements and Limitations
9. Supervision Requirements
10. Completion of Educational Course(s)
11. Maintenance of ~~Valid~~ Current and Active License
12. Cost Recovery Requirements
13. License Surrender
14. Violation of Probation

Optional Conditions of Probation (15 – 254):

The Optional Conditions of Probation (15-254) are those conditions of probation which address specific circumstances of the case.

- *If relevant to the violation, any of the Optional Conditions may be included in the probation requirements.*
- *If the offense involves substance abuse, including alcohol, Optional Conditions 19-22 are usually required (in addition to the Standard Conditions 1-14 and, if the licensee is found to be a substance-abuser, Uniform Standards Conditions ~~265-287~~). Optional Conditions 16-18, ~~232~~, and Conditions ~~298-310~~ are also recommended, if relevant.*
- *If Respondent's license has been or will have been expired for over four (4) years by the time a decision is rendered, Respondent shall be required to take and pass the licensure examination (Condition ~~243~~).*
- *If the case involves mental illness, Conditions 16-18 are recommended.*

15. *Suspension of License*
16. *~~Examination by a Physician~~ Physical Examination*
17. *Psychiatric/Psychological Evaluation*
18. *Psychotherapy or Mental Health Counseling*
19. *Rehabilitation Program*
20. *Addictive Behavior Support Groups/Recovery Groups*
21. *Abstain from Controlled Substances and Alcohol*
- ~~22. *Abstain from Use of Alcohol and Products Containing Alcohol*~~
- ~~23.~~22. *Submit Biological Fluid Samples to Drug and Alcohol Testing*
- ~~24.~~23. *Take and Pass Licensure Examination*
- ~~25.~~24. *Restrictions on Licensed Practice*

**SUMMARY LISTS OF
UNIFORM STANDARDS – CONDITIONS OF PROBATION**

Required Conditions of Probation (~~265~~ -- ~~287~~):

The following Uniform Standards -- Conditions of Probation shall be imposed as probation conditions in cases where Respondent is placed on probation due to substance abuse.

- ~~26~~.25. Submit to Drug Testing
- ~~27~~.26. Positive Drug Test
- ~~28~~.27. Major and Minor Violations

Optional Conditions of Probation (~~298~~ -- ~~310~~):

The following Uniform Standards -- Conditions of Probation shall be considered and, if the circumstances of the case warrant, shall be imposed as probation conditions.

- ~~29~~.28. Clinical Diagnostic Evaluation
- ~~30~~.29. Group Meetings with Qualified Facilitator
- ~~31~~.30. Worksite Monitor

DISCIPLINARY GUIDELINES

STANDARD CONDITIONS OF PROBATION [1-14]

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws at all times, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within 5 calendar days of occurrence. This provision applies during any period of suspension or any other period of non-practice, in state or out of state.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 calendar days of the effective date of the Decision, unless the Board determines that fingerprints were previously submitted by the Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of ~~himself/herself~~ the Respondent within 30 calendar days of the effective date of the Decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions. Respondent shall submit proof of satisfactory completion of any criminal probation or parole that ends after the effective date of the Board's Decision. Respondent shall submit certified copies of court documents related to the expungement of any conviction(s) if not previously submitted.

2. COOPERATION AND COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Respondent shall immediately respond, unless otherwise specified by another term or condition of probation in this Decision, to all requests for information and inquiries by the Board or its designee regarding

Respondent's compliance with any term or condition of probation. Failure to timely respond shall be considered a violation of probation.

If on criminal probation or parole, Respondent shall, within 15 calendar days of the effective date of the Decision, provide their probation or parole officer with notice of the Board's decision in this case, which shall include a copy of the Board's Accusation or Statement of Issues and Disciplinary Decision. The notice to Respondent's parole or probation officer shall also include providing the parole or probation monitor with the name, title, telephone number and email address for the Board's staff person who is Respondent's probation monitor. Respondent shall also provide the Board or its designee with the contact information (name, telephone number and physical address) for their assigned probation or parole officer within 15 calendar days of the effective date of the Decision.

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

3. SUBMITSSION OF WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports or declarations and verifications of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program, including: (A) written disclosures regarding whether Respondent has complied with each term and condition of probation contained in this Decision ("complete report"); and, if applicable, (B) if Respondent discloses they are not in compliance with any term or condition, a written statement regarding why Respondent is not in compliance with any term or condition of probation.

Complete reports are due quarterly and shall be submitted to the Board or its designee by mail, email, fax or in-person at the Board's offices in accordance with the following schedule for each calendar year of probation:

- A. Reporting period: January 1st through March 31st (Due no later than April 7th).
- B. Reporting period: April 1st through June 30th (Due no later than July 7th).
- C. Reporting period: July 1st through September 30th (Due no later

- than October 7th), and,
D. Reporting period: October 1st – December 31st (Due no later than January 7th).

Incomplete written reports or reports submitted or postmarked after the reporting dates listed above shall be considered late and not in compliance with this condition.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's Decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

4. NOTIFICATION OF CURRENT AND CHANGES TO NAME, ADDRESS(ES) AND TELEPHONE NUMBER CHANGE(S)

Within 5 calendar days of the effective date of the Decision, Respondent shall submit by mail, email, facsimile or in-person to the Board in writing Respondent's current physical address, mailing address(es), email address, and telephone number(s) to the Board or its designee.

Respondent shall notify the Board, or its designee, in writing, within 5 calendar days of the date of any change in name, physical address, mailing address(es), email address, or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY, ~~OR PRACTICE~~, OR LICENSURE OUTSIDE OF STATE (TOLLING)

Respondent shall notify the Board, in writing, within 5 days of the date of departure, if ~~he/she~~ Respondent leaves California to reside or practice in another state. Respondent's probation shall be tolled if Respondent leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period ~~he/she~~ Respondent resides or practices outside of California. Respondent shall provide written notice to the Board within 5 days of any change of residency or practice. Respondent shall not be relieved of the obligation to maintain an active and current license with the Board. It shall be a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of 2 years.

Respondent shall notify the Board or its designee of their return to California to reside or practice, in writing, within 5 calendar days of the date of, ~~upon his/her~~ the Respondent's return to California.

Respondent shall submit annually, within 30 calendar days of the date requested by the Board or its designee, a written document verifying Respondent's out-of-state residency, practice or licensure outside of California, to the Board or its designee by mail that includes a statement signed and dated by the Respondent that includes the following:

- A. Respondent's Full Legal Name,
- B. Respondent's Board License Number and, if applicable, Out-of-State License Number,
- C. Physical Address,
- D. Telephone Number,
- E. Email Address,
- F. Beginning Date of Residence/Practice Outside of California, and
- G. Ending Date of Residence/Practice Outside of California (if applicable).

Periods of residency or practice outside of California do not relieve Respondent of the responsibility to comply with the terms and conditions of probation.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person, or by telephone or video conference at meetings as directed by the Board or its designated representatives. Respondent shall provide proof of identity that includes a current state or federal government-issued photo identification (e.g., driver license, passport, or military identification) to the Board or its designee for examination upon request at any meeting.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify ~~his/her~~ Respondent's current or prospective health care employer of the probationary status of Respondent's license. ~~This a~~ Notification to the Respondent's current health care employer shall occur no later than the effective date of the Board's Decision. The Notification of the Respondent's shall notify any prospective health care employer of his/her probationary status with the Board shall occur prior to accepting such employment. At a minimum, this notification to the current or prospective employer shall be accomplished by providing the current employer or prospective employer with a copy of the Board's Accusation or Statement of Issues and Disciplinary Decision with the Accusation or Statement of Issues. The notification to Respondent's employer shall also include the name, title, telephone number and email address for the Board's staff person who is Respondent's probation monitor.

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with his/her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related

reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within 5 days of such an event.

Respondent shall notify the Board, in writing, within 5 days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in ~~his/her~~ their licensed capacity in the state of California. This practice shall consist of no less than 6 continuous months and of no less than ~~20~~ 160 hours per ~~week~~month.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board or its designee. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board or its designee.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the Board; or its designee.

10. COMPLETION OF EDUCATIONAL COURSE(S)

No later than the end of the first year of probation, Respondent, at ~~his/her~~ Respondent's own expense, shall enroll in, attend, and successfully complete Board-approved coursework substantially related

to the Respondent's violation(s) no later than the end of the first year of probation as set forth below.

The coursework shall be determined by the Board or its designee consistent with the requirements of this section and will consist of not less than 30 hours of coursework ("Board-approved coursework"). The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required to meet this condition ("assigned coursework"). The Board's notice to Respondent shall provide the following:

- (a) A description of the specific subject matter of the course(s) that must be completed in compliance with this condition of probation,
- (b) Specify that 30 coursework hours, at a minimum, must be completed,
- (c) Specify that the coursework must be taken from a Board-approved provider as provided in Title 16, California Code of Regulations sections 2540.2(b), 2592.2(b), 2540.3 and 2592.3, or other any provider deemed equivalent by the Board or its designee on a case-by-case basis; and,
- (d) Advise Respondent that they have 30 days from the date of this written notice to submit by mail, email or facsimile or in-person to the Board or its designee a written request for approval of proposed coursework that includes the following:

- (1) Name of the educational course provider;
- (2) Course outline, syllabus, or other document describing the proposed educational course(s);
- (3) A short, descriptive title of the educational course(s);
- (4) A statement of educational objectives;
- (5) Length of the educational course(s);
- (6) Sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured; and,
- (7) Instructional mode or methods.

Within 30 calendar days of the Board's written notification of assigned coursework as specified above, Respondent shall submit a written plan to comply with this requirement that includes all information and documents required by this section; such plan shall be submitted by mail, email, fax or in-person to the Board or its designee.

The Board or its designee shall approve all proposed plans that meet

the following criteria:

- (a) Respondent has submitted to the Board or its designee all information required by this section;
- (b) The course content is directly relevant to the subject matter of the violation(s) alleged in the Board's decision placing Respondent on probation and includes a law and ethics component; and,
- (c) The course is offered by an approved provider (as specified above). The Board or its designee may approve other course providers determined equivalent on a case-by-case basis.

The Board shall provide notice of approval of such plan prior as a condition precedent to Respondent's enrollment in any course of study. Upon Respondent's meeting the requirements for Board approval specified above, the Board shall immediately send notice of Board approval containing the following:

- (a) approval of the coursework plan,
- (b) the number of contact hours required to be completed, and,
- (c) the required completion date.

Any coursework taken by Respondent for which Respondent did not receive prior Board approval in accordance with this section shall not be counted towards fulfillment of this condition.

Upon successful completion of the Board-approved coursework, Respondent shall submit ~~"original"~~ completion certificate(s) to the Board or its designee within 30 calendar days of course completion.

11. MAINTENANCE OF ~~VALID~~ CURRENT AND ACTIVE LICENSE

Respondent shall, at all times, maintain an active and current license with the Board, including any period of suspension.

~~If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within 2 years from the effective date of the Board's Decision. Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied. Failure to pay all renewal fees prior to Respondent's license expiration date shall constitute a violation of probation. If the license is expired at the time the Board's decision becomes effective, the license must be renewed~~

within 30 days of the effective date of the Decision.

12. COST RECOVERY REQUIREMENTS

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$ _____ including during any period of tolling or suspension.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period, unless probation is extended pursuant to this term. ~~The filing of bankruptcy by Respondent shall not relieve Respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs.~~

Failure to make payments in accordance with any payment plan, formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

When Respondent's probation is tolled or Respondent is suspended, cost recovery shall be paid in full by the date that the probation would have been completed if the probation had not been tolled or suspended.

If Respondent has not complied with this condition 3 months prior to the end of the probationary period ~~during the probationary period~~, and Respondent presents sufficient documentation of his/her Respondent's good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any ~~Respondent~~ who has failed to pay all the costs as directed in a Decision.

13. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may seek approval from the Board to voluntarily surrender his/her Respondent's license to the Board by submitting by mail to the Board or its designee a written request to surrender their license. Respondent's written request to surrender their license shall include the following: their name, license number, case number, mailing address, and an explanation of the reason(s) why Respondent seeks to surrender their license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request or take any other action deemed appropriate and reasonable without further hearing under the circumstances for the protection of the public.

The Board will consider whether the request would compromise public protection under the following circumstances: when Respondent has (1) an unsatisfied cost recovery, fine, or restitution order, (2) an Accusation or Petition to Revoke Probation that has been served on Respondent alleging violations of this probation, or (3) an unresolved complaint or investigation pending with the Board. Respondent shall not be relieved of the requirements of their probation, unless the Board or its designee notifies respondent in writing that Respondent's request to surrender their license has been accepted.

Upon the date of the Board's written notice of the formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license during the probationary period shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

~~A licensee who surrenders his/her license~~ Respondent may petition the Board for reinstatement of the surrendered license no sooner than the following minimum periods from the effective date of the disciplinary Decision for the surrender:

- a. a. 3 years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- b. b. 1 year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If Respondent violates the conditions of ~~his/her~~ Respondent's probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of Respondent's license.

If during probation, an Accusation or Petition to Revoke Probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition to Revoke Probation has been acted upon by the Board. During the extension of the probationary period, all original terms and conditions of probation will continue to apply.

OPTIONAL CONDITIONS OF PROBATION [15-245]

15. SUSPENSION OF LICENSE

Respondent is suspended from practice as a vocational nurse or psychiatric technician for _____ month(s) (period not to exceed one year) beginning on the effective date of this Decision.

During suspension, all probation conditions are in full force and effect except those relating to actual practice. The period of suspension will not apply to the reduction of this probationary period. The probation shall be automatically extended for the same time period as the length of suspension

16. EXAMINATION BY A PHYSICIAN PHYSICAL EXAMINATION

Within 60 calendar days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of ~~his/her~~ Respondent's choice who meets minimum criteria established by the Board. The physician must hold a current, active and unrestricted ~~be~~ licensed in California and be Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine Respondent's ability to perform all professional duties with safety to self and to the public.

Respondent shall provide the examining physician with a copy of the Board's ~~Disciplinary Order~~ Decision with the applicable Accusation or Statement of Issues prior to the examination. The cost of such examination shall be paid by Respondent. Respondent shall sign a release authorizing the physician to communicate with the Board and to furnish the Board with a current diagnosis and a written report regarding the Respondent's ability to function independently as a [insert license type] with safety to self and to the public.

Within 30 calendar days from the date of the examination, Respondent shall cause the physician to submit to the Board, or its designee, a written medical report in a format acceptable to the Board. This report shall be submitted within 90 days of the effective date of the Decision.

If the examining physician finds that Respondent is not physically fit to practice, or can only practice with restrictions, the examining physician shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board, or its designee, shall notify Respondent in

writing of the examining physician's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as additional conditions of probation ; a violation of these additional conditions shall be considered a violation of probation.

Respondent shall comply with any order to cease or restrict ~~his/her~~ Respondent's practice until the Board or its designee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent in writing. Respondent shall document compliance in the manner required by the Board or its designee.

17. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION

Within 60 calendar days of the effective date of the Decision, Respondent shall submit a written request by mail, email, facsimile or in-person to the Board or its designee for Board approval of a psychiatrist or psychologist to perform an evaluation of Respondent's psychological condition ("evaluator"). The written request shall include the name and description of the qualifications of the proposed evaluator (license type, license number, and a written statement describing how they meet the applicable criteria for Board approval outlined in paragraphs 1-4 below).

The Board shall approve any evaluator who meets the following criteria:

1. Holds a current, active and unrestricted psychologist license issued by the California Board of Psychology or
2. Holds a current, active and unrestricted license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of California and is certified in psychiatry by the American Board of Psychiatry and Neurology; and,
3. Possesses at least 3 years' knowledge, training, and experience in conducting psychiatric or psychological evaluations; and,
4. Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the Respondent.

Within 15 days of the receipt of the completed written request containing all information required above, the Board shall notify Respondent in writing whether Respondent's request has been approved.

Within ~~60~~30 calendar days of the ~~effective~~ date of the ~~Decision~~ Board's written notice of approval of Respondent's proposed evaluator(s),

Respondent shall submit to a psychiatric/psychological evaluation ("evaluation"). The evaluation shall be performed by a psychiatrist or psychologist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California meeting the Board's requirements for approval specified above. This evaluation shall be for the purpose of determining Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Decision with the applicable Accusation or Statement of Issues prior to the evaluation. The cost of such evaluation shall be paid by Respondent. Respondent shall sign a release authorizing the evaluator to communicate with the Board and to furnish the Board with a current diagnosis and a written report regarding Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public as a [insert license type] ("Respondent's status and progress").

Respondent shall cause the evaluator to submit to the Board a written report concerning Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within ~~90~~ 30 days from the effective date of the Decision.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with any order to cease or restrict his/her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required or an additional evaluation is required, Respondent shall participate in a therapeutic program or submit to an additional evaluation at the Board's discretion. The cost of such therapy or evaluation shall be paid by Respondent.

18. PSYCHOTHERAPY OR MENTAL HEALTH COUNSELING

Within 60 calendar days of the effective date of the Decision, Respondent shall submit by mail, email, facsimile or in-person to the Board for prior approval or its designee, a written request for approval that contains:

- (a) the name of one or more proposed ~~therapists~~ mental health professionals that holds a current, active and unrestricted license in California; and,
- (b) a description of the qualifications of the proposed evaluator (license type, license number, and a written statement describing how they meet the criteria for Board approval outlined in paragraphs 1-3 below).

For the purposes of this Decision, "mental health professional" shall include a psychiatrist (physician and surgeon with Board certification as specified below), psychologist, licensed marriage and family therapist (LMFT), licensed clinical social worker (LCSW), or a licensed professional clinical counselor (LPCC). The Board shall approve any mental health professional who meets the following criteria:

1. Holds a current, active and unrestricted mental health professional license in California as a: (A) psychologist, (B) a physician and surgeon (from the Medical Board of California or the Osteopathic Medical Board of California and is certified in psychiatry by the American Board of Psychiatry and Neurology), (C) LMFT, (D) LCSW or (E) LPCC,
2. Possesses at least 3 years' knowledge, training, and experience in providing psychotherapy or counseling, and,
3. Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the Respondent.

Within 15 calendar days of the receipt of the completed written request containing all information required above, the Board shall notify Respondent in writing whether Respondent's request has been approved.

Within 30 calendar days from the date of the Board's notice of written approval of the mental health professional(s), Respondent shall participate in ongoing psychotherapy or mental health counseling (professional clinical counseling – "counseling" as used hereafter) with a California licensed or legally registered mental health professional who has been approved by the Board in accordance with this section.

Respondent shall provide the ~~therapist~~ mental health professional with a copy of the Board's ~~Disciplinary Order~~ Decision along with the applicable Accusation or Statement of Issues no later than the first therapy or counseling session. If Respondent completed a psychiatric or psychological evaluation as a condition of this probation, the Board or its designee shall provide the mental health professional conducting the therapeutic or counseling sessions with a copy of the psychiatric or psychological evaluation before the date of Respondent's first therapy or counseling session. Therapy or counseling sessions shall be at least once a week unless otherwise determined by the Board, in consultation with the mental health professional. Respondent shall continue in such therapy or counseling at the Board's discretion. The cost of such therapy or counseling shall be paid by the Respondent. Respondent shall cause the ~~therapist~~ mental health professional to submit to the Board a written report concerning Respondent's psychotherapy or counseling status and progress as well as such other information as may be requested by the Board. The initial ~~psychotherapy~~ mental health professional's report shall be submitted in a format acceptable to the Board within 90 days from the effective date of the Decision. Respondent shall cause the ~~therapist~~ mental health professional to submit quarterly written reports to the Board concerning Respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall also sign a release authorizing the mental health professional to communicate with the Board and to furnish the Board with a current diagnosis and a written report regarding Respondent's fitness to practice as a [insert license type], and progress in treatment ("Respondent's psychotherapy or counseling status and progress").

If the ~~therapist~~ mental health professional finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the ~~therapist~~ mental health professional shall notify the Board or its designee verbally within 24 hours and in writing within 5 working business days. The Board or its designee shall notify Respondent in writing of the ~~therapist's~~ mental health professional's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with any order to cease or restrict ~~his/her~~ Respondent's practice until the Board or its designee is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance with this condition in the manner required by the Board.

19. REHABILITATION PROGRAM

Within 30 calendar days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit written verification of successful completion of such treatment from the rehabilitation program, in a format acceptable to the Board or its designee within 30 calendar days of completion.

Components of the treatment contract shall be relevant to the violation~~(s)~~ and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol or other identified types of addictive behavior, use of work site monitors, participation in addictive behavior rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate in-patient or out-patient rehabilitation, recovery or monitoring programs. The cost for participation in ~~this~~these programs shall be paid by Respondent.

20. ADDICTIVE BEHAVIOR SUPPORT GROUPS/RECOVERY GROUPS

Within ~~five (5)~~30 calendar days of the effective date of the Decision, Respondent shall begin and continue attendance at an addictive behavior support group/recovery group (e.g. Twelve Step meetings or the equivalent, or a facilitated group with a mental health professional trained in alcohol or drug abuse treatment-Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, Al Anon, Gamblers Anonymous). Verified documentation of attendance shall be submitted by the Respondent with each written report as required by the Board.

Respondent shall continue attendance in such a group for the duration of probation; unless notified in writing by the Board or its designee that attendance is no longer needed.

Respondent shall attend support group/recovery group meetings no less than one time per week, unless determined otherwise by the Board or its designee in consultation with a physician and surgeon or mental health professional (a psychiatrist (physician and surgeon with Board certification in psychiatry by the American Board of Psychiatry and

Neurology), psychologist, licensed marriage and family therapist (LMFT), licensed clinical social worker (LCSW), or a licensed professional clinical counselor (LPCC)), and using the criteria specified below.

When determining the type and frequency of required addictive behavior support group meeting attendance (including lowering or increasing attendance requirements outside the once-a-week minimum), the Board or its designee shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has lapsed since substance use;
- The recommendation of a mental health professional;
- The scope and pattern of use;
- The licensee's treatment history; and,
- The nature, duration, and severity of substance abuse.

21. ABSTAIN FROM CONTROLLED SUBSTANCES AND ALCOHOL

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in ~~Business and Professions Code~~ Sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed, ordered, or recommended by a licensed practitioner for a bona fide illness. By the effective date of this decision, and thereafter within 15 days of the date of being prescribed or recommended a dangerous drug or controlled substance, Respondent shall provide documentation of lawfully prescribed, ordered, or recommended drugs. "Documentation" shall include a written copy of the prescription or medical marijuana recommendation to the Board or its designee by mail, email, facsimile or in-person at the Board's offices.

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol, including over the counter medications, foods containing alcohol, mouthwashes, "non-alcoholic" beers, and fermented beverages.

[Note: If this term is included in the probationary order, then Term No. 22 "Submit to Drug and Alcohol Testing" must also be included to ensure abstention occurs in compliance with this condition of probation.]

~~22. ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL~~

~~Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.~~

23.22. SUBMIT BIOLOGICAL FLUID SAMPLE TO DRUG AND ALCOHOL TESTING

Respondent shall immediately submit to biological fluid testing, random, observed, and directed drug and alcohol testing, including biological fluid or hair sample, breath alcohol, or any other mode of testing at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

Prior to or within 30 days of the effective date of the Decision, the Board or its designee shall provide written notice to Respondent regarding the name and telephone number of the Board's designated drug and alcohol testing provider ("testing provider") and direct Respondent to test in accordance with this section. Respondent shall make daily contact, including weekends and holidays, to the Board's testing provider to determine if Respondent must submit to testing that same day. Respondent shall submit Respondent's specimen (e.g., biological fluid or hair sample, or exhale breath for breath alcohol testing) on the same day that Respondent is notified that a test is required.

There will be no confidentiality in test results; positive test results will be immediately reported to the Board or its designee, and the Respondent's current employer.

[Note: If this term is included in the probationary order, then Term No. 21 "Abstain from Controlled Substances and Alcohol" must also be included to ensure the Board can establish that the Respondent ingested a prohibited substance (drugs or alcohol, if abstention is ordered) if a positive test result is obtained in compliance with this condition of probation.]

2423. TAKE AND PASS LICENSURE EXAMINATION

(Statement of Issues) — Note: If this condition is intended to precede issuance of the license, this language should be used with the “MODEL ORDER” entitled “Grant Application and Place Licensee on Probation After Completion of Conditions Precedent” below.

Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Reinstatement of License) – Note: If this condition is intended to precede reinstatement of the license, this language should be used with the “MODEL ORDER” entitled “Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent” below.

Prior to resuming practice, Respondent shall take and pass the licensure exam currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Current License)

Prior to resuming or continuing practice, Respondent shall take and pass the licensure examination currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

Respondent shall not resume practice until the date that written notice has been sent to Respondent by the Board or its designee indicating that Respondent has passed the licensure examination.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and notice has been mailed to Respondent by the Board.

2324. RESTRICTIONS ON LICENSED PRACTICE

Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in limited medical procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board or its designee.

**UNIFORM STANDARDS
FOR SUBSTANCE-ABUSING LICENSEES**

UNIFORM STANDARDS – REQUIRED CONDITIONS OF PROBATION [265 -- 287]

265. SUBMIT TO DRUG TESTING

Respondent shall immediately submit to random, observed and directed drug testing, at Respondent's cost, upon request by the Board or its designee. Respondent shall be subject to the frequency of testing specified and any exceptions to testing frequency specified in Standard 4 of the Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2011~~ March 2019 hereinafter referred to as "SACC Standard" individually) established by the Substance Abuse Coordination Committee. Respondent shall make daily contact as directed by the Board to determine if ~~he/she~~ Respondent must submit to drug testing. Respondent shall submit ~~his/her~~ Respondent's specimen on the same day that ~~he/she~~ Respondent is notified that a test is required. ~~All~~ Any ~~alternatives collection sites to the Respondent's drug testing requirements (including frequency)~~ due to vacation or travel outside of California absence must be approved by the Board prior to the vacation or ~~travel~~ absence.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation.

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 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 7 days of receipt of the specimen. The Board shall be notified of non-negative test results within 1 business day and shall be notified of negative test results within 7 business days.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer and worksite monitor, if any.

27-26. POSITIVE DRUG TEST

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation and the Board shall impose the consequences set forth in Major and Minor Violations.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject ~~his/her~~ Respondent's license to further disciplinary action.

28-27. MAJOR AND MINOR VIOLATIONS

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;
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 state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
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 Respondent commits a major violation, the Board shall order Respondent to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

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

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

If Respondent commits a minor violation, the Board shall determine

what action is appropriate.

**UNIFORM STANDARDS –
OPTIONAL CONDITIONS OF PROBATION [298 -- 310]**

29.28. CLINICAL DIAGNOSTIC EVALUATION

Within 30 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. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator's scope of practice must include the ability to conduct a clinical diagnostic evaluation. The evaluator must have a valid, unrestricted license, at least three years' experience in providing evaluations of health professionals with substance abuse disorders, and the evaluator must be approved by the Board. The evaluator shall not have a financial, personal, or business relationship with the licensee within the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the ~~licensee~~ Respondent has a substance abuse problem, is a threat to ~~himself/herself~~ the Respondent or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the ~~licensee's~~ Respondent's rehabilitation and safe practice. If the evaluator determines during the evaluation process that ~~a licensee~~ the Respondent is a threat to ~~himself/herself~~ the Respondent or others, the evaluator shall notify the Board within 24 hours of such a determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing at a minimum of 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board.

Respondent shall not return to practice until the Board determines that

~~he/she~~ Respondent is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what, if any work limitations will be placed on a license, the Board will consider the factors set forth in ~~SACC~~ the Substance Abuse Coordination Committee's (SACC) Standard No. 6. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a license is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in SACC Standard No. 11.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

30-29. GROUP MEETINGS WITH QUALIFIED FACILITATOR

Upon recommendation of the clinical evaluator and/or determination by the Board, Respondent shall participate in group support meetings led by a facilitator who meets the following qualifications and requirements:

The meeting facilitator must have a minimum of 3 years experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the State or other nationally certified organization(s).

The meeting facilitator must not have a financial, personal, or business relationship with Respondent within the last 5 years.

The meeting facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the dates and location of the meetings, Respondent's attendance, and Respondent's level of participation and progress.

The meeting facilitator shall report within 24 hours any unexcused absence to the Board.

31-30. WORKSITE MONITOR

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's

requirements and reporting responsibilities as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2011~~March 2019) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

Revised ~~6/20/11~~May 18, 2023; Effective ~~12/29/12~~OAL Insert effective date)

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
1. Unprofessional Conduct	2878(a)	4521(a)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> *Other Conditions	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
2. Incompetence and/or Gross Negligence	2878(a)(1)	4521(a)(1)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> *Other Conditions	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
3. Conviction of Practicing Medicine	2878(a)(2)	4521(a)(2)	Revocation	— <u>Revocation, Stayed 5 Years Probation Standard Conditions 1-14</u> *Restricted Practice 24	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> *Restricted Practice 24
4. False or Misleading Advertising	2878(a)(3)	4521(a)(3)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u>	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
5. Excessive Force, Mistreatment or Abuse of Any Patient	2878(a)(4)	4521(i)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> *Restricted Practice 24 *Other Conditions	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u> * Restricted Practice 24 *Other Conditions
6. Failure to Maintain Confidentiality of Patient Medical Information	2878(a)(5)	4521(k)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u>	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
7. Failure to Report Commission of Act Prohibited by Section	2878(a)(6)	4521(l)	Revocation	Revocation, <u>Stayed: 3 Years Standard Conditions 1-14</u>	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ AL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
8. Procuring a License by Fraud or Misrepresentation	2878(b)	4521(b)			Revocation
9. Assisting Wwith Criminal Abortion	2878(c)	4521(c)	Revocation	--- <u>Revocation, Stayed 5 years Probation Standard Conditions 1-14</u> *Other conditions	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14
10. Violating Terms of Licensing Chapter	2878(d)	4521(d)	Revocation	--- <u>Revocation, Stayed 5 years Probation Standard Conditions 1-14</u> *Other conditions	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
11. Making False Statement on Application for Initial License	2878(e)	4521(e)	Revocation or Denial of License	--- <u>Revocation, Stayed 5 years Probation Standard Conditions 1-14</u> *Other conditions	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
12. CONVICTION Substantially Related to Functions of License (Non-Drug Related)	2878(f)	4521(f)	Revocation or Denial of License	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24 *Other Conditions	Revocation, Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions
13. Impersonating or Acting as Proxy for Applicant on Exams	2878(g)	4521(g)	---	---	Revocation or Denial of License

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised June 20, 2011 May 18, 2023; Effective December 29, 2012 OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
14. Impersonating a Licensee or Permitting Others to Use License	2878(h)	4521 (h)	Revocation or Denial of License	— <u>Revocation, Stayed 5 Years Probation Standard Conditions 1-14</u> <u>*Other Conditions</u>	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> <u>*Other Conditions</u>
15. Assisting Physician to Violate Medical Practice Act	2878(i)	4521 (j)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> <u>*Restricted Practice 24</u>	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
16. Commission of Any Act Involving Dishonesty	2878(j)	4521 (n)	Revocation	Revocation, <u>Stayed: 3 Years Probation Standard Conditions 1-14</u> <u>*Restricted Practice 24</u> <u>*Other Conditions</u>	Revocation, <u>Stayed: 2 Years Probation Standard Conditions 1-14</u>
17. Sexual Misconduct Related to Practice	2878(k)	4521 (m)	Revocation	Revocation, <u>Stayed: 35 Years Probation Standard Conditions 1-14</u> <u>17 Mental Health Evaluation</u> <u>Therapeutic Sessions 18</u> <u>*Restricted Practice 24</u> <u>*Other Conditions</u>	Revocation, <u>Stayed: 3 2 Years Probation Standard Conditions 1-14</u> <u>Mental Health Evaluation 17</u> <u>*Other Conditions</u> <u>Revocation (Required by 16 C.C.R. §2524(c) [VN] and 16 C.C.R. §2579.10(c) [PT])</u>
18. Sexual Misconduct Related to Practice	2878(k)	4521 (m)	—	—	Revocation (Required by 16 C.C.R. §2524(c) [VN] and 16 C.C.R. §2579.10(c) [PT])

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<u>189</u>. Knowing Failure to Follow Infection Control Guidelines	2878(l)	4521(o)	Revocation	Revocation, Stayed : 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24	Revocation, Stayed : 2 Years Probation Standard Conditions 1-14
<u>2019</u>. Failure to Report Known Violations	2878.1	4521.2	Revocation	Revocation, Stayed : 3 Years Probation Standard Conditions 1-14	Revocation, Stayed : 2 Years Probation Standard Conditions 1-14
<u>210</u>. Illegal Possession, Prescribing, Self-Administration of Controlled Substances or Dangerous Drugs	2878.5(a)	4521(a)(4)	Revocation	Revocation, Stayed : 3 Years Probation Standard Conditions 1-14 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Drug Screens Submit to Drug testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Mental Health Evaluation 17 *Other Conditions	Revocation, Stayed : 2 Years Probation Standard Conditions 1-14 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Drug Screens Submit to Drug testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
221. Illegal Use of Drugs/Alcohol Posing Danger to Public & Impairs Ability to Practice	2878.5(b)	4521(a)(5)	Revocation	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician <u>Physical Examination</u> 16 <u>Addictive Behavior Support Groups</u> 20 Abstain from Drugs <u>Controlled Substances and Alcohol</u> 21 Abstain from Alcohol 22 Restricted Practice 24 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions	Revocation, Stayed: 2 Years Probation Standard Conditions 1-14 <u>Addictive Behavior Support Groups</u> 20 Abstain from Drugs <u>Controlled Substances and Alcohol</u> 21 Abstain from Alcohol 22 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<p>232. CONVICTION of Drug or Alcohol Related Crimes</p>	<p>2878.5(c)</p>	<p>4521(a)(6)</p>	<p>Revocation</p>	<p>Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 <u>Addictive Behavior</u> <u>Support Groups</u> 20 <u>Abstain from Drugs Controlled Substances and Alcohol</u> 21 <u>Abstain from Alcohol</u> 22 <u>Restricted Practice</u> 24 <u>Submit to Drug Screens Testing</u> 25 <u>Positive Drug Tests</u> 26 <u>Major/Minor Violations</u> 27 *Other Conditions</p>	<p>Revocation, Stayed: 2 Years Probation Standard Conditions 1-14 <u>Addictive Behavior</u> <u>Support Groups</u> 20 <u>Abstain from Drugs Controlled Substances and Alcohol</u> 21 <u>Abstain from Alcohol</u> 22 <u>Submit to Drug Screens Testing</u> 25 <u>Positive Drug Tests</u> 26 <u>Major/Minor Violations</u> 27 *Other Conditions</p>

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
243. Confinement or Committal for Addiction	2878.5(d)	4521(a)(7)	Revocation	Revocation, . Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician Physical Exam 16 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Psychiatric/Psychological Evaluation 17 *Psychotherapy 18 *Rehab Program 19 *Restricted Practice 24 *Diagnostic Evaluation 28 *Qualified Group Meetings 29 *Worksite Monitor 30 *Other Conditions Revocation, . Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician Physical Exam 16 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions	Revocation, . Stayed: 2 Years Probation Standard Conditions 1-14 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions Revocation, . Stayed: 2 Years Probation Standard Conditions 1-14 Addictive Behavior Support Groups 20 Abstain from Drugs Controlled Substances and Alcohol 21 Abstain from Alcohol 22 Submit to Drug Screens Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions

VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS

(Revised ~~June 20, 2011~~ May 18, 2023; Effective ~~December 29, 2012~~ OAL insert effective date)

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
254. Falsify, Make Incorrect, Inconsistent or Unintelligible Entries Pertaining to Drugs	2878.5(e)	4521(a)(8)	— Revocation	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Abstain from Controlled Substances and Alcohol 21 *Submit to Drug Testing 25 *Positive Drug Tests 26 *Major/Minor Violations 27 *Other Conditions	Revocation, Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions
265. Disciplinary Action by Another State, Agency or Licensing Board	2878.8	4521.6(a)	Revocation	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revocation, Stayed: 2 Years Probation Standard Conditions 1-14
276. Failure to Report Child, Elder or Dependent Adult Abuse (Unprofessional Conduct)	2878(a) CCR 16 2520.1 2520.2 2520.3	4521(a) CCR 16 2577.2 2577.3 2577.4	Revocation	Revocation, Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revocation, Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

Important Notes:

- Conditions of Probation 1 through 14 are standard conditions of probation. The Board requests these standard conditions of probation be imposed on all disciplinary cases resulting in probation.
- Conditions of Probation 15 through 24 are optional conditions of probation, which address specific circumstances of a case.
- Conditions of Probation 25 through 27 must be imposed as conditions of probation for all substance-abusing licensees.
- Conditions of Probation 28 through 30 must be considered for all substance-abusing licensees and, if the circumstances of the case warrant, shall be imposed as probation conditions.

If individual circumstances exist which justify omissions or deviations from these guidelines, the Board requests that this information be duly noted in the Proposed Decision issued by the Administrative Law Judge hearing the case. This will help the Board to better evaluate the Proposed Decision and to make an official Decision which accurately reflects the facts of each specific disciplinary matter.

* Other Conditions of Probation may be added based upon the underlying cause of discipline.

(Revised (May 18, 2023) Effective 12/29/12 [OAL insert effective date])

EVIDENCE IN AGGRAVATION OF PENALTY

The following are among aggravating circumstances to be considered by ALJs in providing for penalties in proposed decisions:

1. Respondent fails to take full responsibility for their actions.
2. Evidence that the violation was knowingly committed and/or was premeditated.

3. If the violation was committed against a vulnerable person, including, the developmentally delayed, those with cognitive impairments, elderly, children, an incarcerated person, or those whose physical limitations made the violation easier to commit.
4. If the violation was a physical or sexual assault against a vulnerable person, as specified above.
5. Respondent violated the rules and procedures of a secure detention facility, state hospital, prison, juvenile hall or jail, such as the smuggling of phones, drugs, or other prohibited items to persons in custody.
6. Respondent has a history of prior discipline, particularly where the prior discipline is for the same or similar type of conduct.
7. Respondent's actions resulted in financial damage to their patients or other consumers. The amount of loss may be an additional aggravating factor.
8. Violation of Board probation.
9. Commission of conduct constituting unlicensed activity after the surrender or revocation of the Respondent's license.
10. Evidence that the respondent has not cooperated with the Board's investigation.
11. Duration of violation(s).
12. Evidence that the Respondent knew or should have known that their actions could harm their patient or other consumers.

13. Evidence that the Respondent took advantage of their patient for personal gain, especially if the Respondent was able to take advantage due to the age, or, lack of sophistication, understanding or knowledge of the patient.

EVIDENCE IN MITIGATION OF PENALTY

The following are among mitigating circumstances that may be taken into account by ALJs in providing for penalties in proposed decisions:

1. Convincing evidence of rehabilitation consistent with criteria in CCR sections 2522 or 2579, as applicable.
2. Demonstration of remorse by the Respondent.
3. Demonstration of corrective action or plan to prevent recurrence.
4. Violation was corrected without monetary losses to consumers and/or restitution was made in full.
5. If the violation involved the conduct of multiple parties, the relative degree of culpability of the Respondent should be considered.

REHABILITATION EVIDENCE

The following are examples of types of evidence which the licensee/applicant (Respondent) may submit to the Board to demonstrate their rehabilitative efforts and competency and the Board will review the evidence submitted:

1. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the Respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person

worked with the Respondent. These statements or performance evaluations should include an acknowledgement of the allegations in the Accusation or Statement of Issues, to ensure that the evaluator has a clear understanding of the issues. Such reports must be signed under penalty of perjury.

2. Recent, dated, letters from counselors regarding the Respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation.
3. Recent, dated letters describing the Respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) from their sponsor.
4. Recent, dated, laboratory analyses or drug screen reports, confirming Respondent's abstention from drugs and alcohol.
5. Recent, dated, physical examination/ or assessment report(s) by a licensed physician, confirming the absence of any physical impairment that would prohibit the Respondent from practicing safely.
6. Recent, dated, letters from probation or parole officers regarding the Respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance.
7. Recent, dated, letters from persons familiar with Respondent in either a personal or professional capacity regarding their knowledge of: the Respondent's character; the respondent's rehabilitation, if any; the conduct of which the Respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury.
8. Recent, dated completion certificates for education courses related to the grounds for discipline or denial in the Accusation or Statement of Issues.

9. Any other information that Respondent would like to submit that shows Respondent has worked to correct any unprofessional conduct or deficiencies charged in the Accusation or Statement of Issues.

Any evidence submitted to the Board will be subject to verification by Board staff.

MODEL ORDERS

A. Licensee

Revocation of License

[Insert License Type] License No. _____, issued to respondent _____, is revoked.

Respondent shall relinquish and forward or deliver their license to practice [insert: vocational nursing or as a psychiatric technician] and wall certificate to the Board within ten (10) days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of their revoked license for [insert applicable time period of one year or three years as set forth in BPC sections 2878.7 (Vocational Nurses) or 4524 (Psychiatric Technicians)] from the effective date of this Decision.

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$ _____ within thirty (30) days of the effective date of this Decision.

Option: As a condition precedent to reinstatement of their revoked license, Respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$ _____. Said amount shall be paid in full prior to the reinstatement of their license unless otherwise ordered by the Board.

Revocation Stayed and Licensee Placed on Probation

[Insert license type here] License No. _____, issued to respondent _____, is revoked; however, the revocation is stayed and Respondent is placed on probation for _____ years on the following terms and conditions:

Public Repeval

[Insert license type here] License No. _____, issued to Respondent _____, is publicly reprovod. This reprovod constitutes disciplinary action by the Board and shall become a part of Respondent's license history with the Board.

Surrender of License in Lieu of Revocation

Respondent _____ surrenders [Insert license type here] License No. _____ as of the effective date of this Decision. Respondent shall relinquish and forward or deliver their license to practice [insert "vocational nursing" or "as a psychiatric technician" here] and wall certificate to the Board within ten (10) days of the effective date of this Decision.

The surrender of Respondent's license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This Decision constitutes disciplinary action by the Board and shall become a part of Respondent's license history with the Board.

B. Petition for Reinstatement

Grant Petition with No Restrictions on License

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's [insert license type here] license shall be fully restored.

Grant Petition and Place Licensee on Probation

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's [insert license type here] license shall be reinstated and immediately revoked; however, the revocation shall be stayed and the petitioner shall be placed on probation for a period of _____ years on the following terms and conditions:

Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's [Insert license type here] license shall be fully reinstated upon completion of the following conditions precedent (examples would be: paying restitution, cost reimbursement, completion of CE, physical examination, completion of rehabilitation program, take and pass licensure examination):

Upon completion of the conditions precedent above, and satisfaction of all statutory and regulatory requirements for issuance of a license, petitioner's [Insert license type here] license shall be reinstated and immediately revoked; however, the revocation shall be stayed, and petitioner shall be placed on probation for a period of _____ years on the following terms and conditions (list standard and applicable optional conditions of probation):

Deny Petition

The petition for reinstatement filed by petitioner _____ is hereby denied.

C. Petition to Revoke Probation

Revocation of Probation

[Insert license type here] License No. _____, issued to Respondent _____, is revoked. Petitioner is not eligible to apply for reinstatement for [[insert applicable time period of either one or three years as set forth in

BPC sections 2878.7 (Vocational Nurses) or 4524 (Psychiatric Technicians)]] from the effective date of this decision.

Extension of Probation

[Insert license type here] License No. _____, issued to Respondent _____, is revoked; however, the revocation is stayed, and Respondent is placed on probation for an additional _____ year(s) on the following terms and conditions:

D. Applicant

(In cases where a Statement of Issues has been filed)

Grant Application with No Restrictions on License

The application filed by Respondent _____ for initial licensure is hereby granted, and a [Insert license type here]'s license shall be issued to Respondent upon successful completion of all licensing requirements including payment of all fees.

Grant Application and Place Licensee on Probation

The application filed by Respondent _____ for initial licensure is hereby granted, and a [Insert license type here]'s license shall be issued to Respondent upon successful completion of all licensing requirements, including payment of all fees. However, the license shall be immediately revoked, the revocation shall be stayed, and Respondent shall be placed on probation for _____ years on the following terms and conditions:

Grant Application and Place Licensee on Probation After Completion of Conditions Precedent

The application filed by Respondent _____ for initial licensure is hereby granted, and a [Insert license type here]'s license shall be issued to Respondent upon the following conditions precedent (examples would be:

paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass licensure examination):

Upon completion of the conditions precedent above and successful completion of all licensing requirements, including payment of all fees, Respondent shall be issued a [Insert license type here]'s license. However, the license shall be immediately revoked, the revocation shall be stayed, and Respondent shall be placed on probation for _____ years on the following terms and conditions (list standard and applicable optional conditions of probation):

Deny Application

The application filed by Respondent _____ for initial licensure is hereby denied.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Dean Grafilo, Director
March 2019

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Table of Contents

Uniform Standard #1 4

Uniform Standard #2 6

Uniform Standard #3 7

Uniform Standard #4 8

Uniform Standard #5 12

Uniform Standard #6 13

Uniform Standard #7 14

Uniform Standard #8 16

Uniform Standard #9 17

Uniform Standard #10 18

Uniform Standard #11 20

Uniform Standard #12 21

Uniform Standard #13 22

Uniform Standard #14 26

Uniform Standard #15 27

Uniform Standard #16 28

#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

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

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

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

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

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

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

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

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

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

VI. LICENSED SUPERVISION DURING PRACTICE

A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the board.

OTHER DRUG STANDARDS

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

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

as well as, numerous different intervals of testing.

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

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

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

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

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

Collection of specimens shall be observed.

Prior to vacation or absence, any alternative to the licensee's drug testing requirements (including frequency) must be approved by the board.

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

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

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

PETITIONS FOR REINSTATEMENT

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

OUTCOMES AND AMENDMENTS

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

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two

years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

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

Data Collection

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

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

#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

#6 SENATE BILL 1441 REQUIREMENT

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

#6 Uniform Standard

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

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

#7 SENATE BILL 1441 REQUIREMENT

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

#7 Uniform Standard

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

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

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

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

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

#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

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

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

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

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

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

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

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

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

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

#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

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

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

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.



ENFORCEMENT COMMITTEE MEETING AGENDA

May 2, 2023

Via WebEx

**Time: 3PM-4PM
OR UNTIL COMPLETION OF BUSINESS**

1. Call to Order and Introduction of Committee Members
2. Roundtable with Enforcement Managers
 - a. Statistics Review
3. Consideration of Rulemaking to Amend Disciplinary Guidelines
 - a. Discussion and Possible Action to Recommend to the Board Initiation of a Rulemaking to Amend Title 16, California Code of Regulations sections 2524 and 2579.10
4. Legislative/Regulation Concepts
 - a. License Retirement
 - b. Reporting Requirements
5. Outreach
 - a. Substance Abuse in Nursing
 - i. Possible Action
 - b. Next PSA
 - i. Licensees and the Enforcement Process
 - ii. Probation- Licensee's role and responsibilities
6. Suggestions for Future Agenda Items
7. Schedule next Enforcement Committee Meeting
8. Adjournment

The mission of the California Board of Vocational Nursing and Psychiatric Technicians (Board) is to protect the public. Public protection is paramount to the Board and its highest priority in exercising its licensing, regulatory, and disciplinary functions. Towards this end, the Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing education requirements, standards of practice, and by educating consumers of their rights.

ENFORCEMENT COMMITTEE MEETING MINUTES

May 2, 2023

Via WebEx

Time: 3:00PM- 3:30PM

Board Members

Present Via

Teleconference:

Mr. Maxey, Public Member, Chair
Ms. Moore, Licensee Member

Staff Present

Via Teleconference:

Ms. Yamaguchi, Executive Officer
Mr. Mark Ito, Assistant Executive Officer
Ms. Wood, Enforcement Division Chief
Mr. Swenson, DCA Legal Counsel
Ms. Schieldge, DCA Regulations Counsel
Ms. Higashi, Supervising Special Investigator
Mr. Prouty, Discipline Unit Enforcement Manager
Ms. Archibald, Intake and Enhanced Enforcement
Manager

1. Call to Order and Introduction of Committee Members – Mr. Maxey called to order at 3:00 p.m.
2. Roundtable with Enforcement Managers (3:02-3:08)
 - a. Statistics Review
 - **Ms. Wood** provided stats and updates for Intake and Enhanced Screening
 - **Ms. Wood** provided stats and updates for Licensing Application, Complaint & Review
 - **Ms. Wood** provided stats and updates for the Special Investigation Unit
 - **Mr. Prouty** provided stats and updates for Discipline Unit
 - **Ms. Wood** provided stats and updates for Probation Unit
 - **Ms. Wood** provided stats and updates for Enforcement Division
 - **Ms. Wood** provided information on division staffing
 - **Ms. Wood** provided information on the Petitioner Hearings

3. Consideration of Rulemaking to Amend Disciplinary Guidelines
 - a. Discussion and Possible Action to Recommend to the Board Initiation of a Rulemaking to Amend Title 16, California Code of Regulations sections 2524 and 2579.10

Ms. Schieldge provided information about the disciplinary guidelines update, including going over the proposed text, the memo to the Board, and the overview of changes proposed to the Guidelines as set forth in the memo. These changes included information that the Disciplinary Guidelines had not been updated since 2011, and there had been changes to the law and regulations since 2011. **Ms. Schieldge** provided information that there had been other changes such as the criteria for the consideration of evidence in aggravation, rehabilitation and mitigation. **Ms. Schieldge** also discussed the necessity of adding Model Orders to the Guidelines to help ensure consistent and accurate implementation of the penalties ordered by the Board (e.g., to avoid a situation where the Board intends to order a condition precedent that a Respondent take and pass the licensing examination before a license issues, but the order is mistakenly written so that the license issues before successful completion of the examination).

Mr. Maxey asked if the Committee members could move the Disciplinary Guidelines to the full Board, and still be able to have discussion/make suggestions for changes.

Ms. Schieldge stated that the Committee members could do this, but that they would need to do it at the Board meeting.

Mr. Maxey stated he had no objections to this and asked if we needed a motion.

Ms. Schieldge stated that staff recommend if no changes are made to move "Motion A" as set forth in memo to the Committee.

Ms. Moore moved Motion A, which states:
Recommend to the full Board approval of the proposed regulatory text and incorporated guidelines for Sections 2524 and 2579.10 and submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR sections 2524 and 2579.10.

Mr. Maxey agreed and the Committee moved this proposal to the Board.

4. Legislative/Regulation Concepts (3:08-3:20)

a. License Retirement

Ms. Wood requested authority from the enforcement committee to begin looking at retiring licenses. Currently licensees do not have the option to update their license status as retired upon retirement. Therefore, the retired licensees wait for the license to become delinquent and cancelled. This will also give options to licensees with cognitive impairment to retire their licenses. In addition, retirement status will deter license frauds.

Mr. Maxey asked Ms. Moore if she had any concerns

Ms. Moore stated she did not and made a motion

Mr. Maxey accepted and permission was granted to allow the Enforcement Division to conduct research

b. Reporting Requirements

Ms. Wood also requested for approval to move forward on reporting requirements. We would like to review reporting requirements and to make changes. Nurses and facilities should report abuse in a timely manner. Currently, they report abuse after someone is served with an accusation. We would like to move through sooner.

Mr. Maxey asked Ms. Moore if she had any concerns

Ms. Moore stated she did not and made a motion

Mr. Maxey accepted and permission was granted to allow the Enforcement Division to conduct research

5. Outreach (3:20-3:25)

a. Substance Abuse in Nursing

i. Possible Action

Ms. Wood explained the goal of the PSA and asked for approval for the PSA script submitted to the committee. This approval would allow the Division to begin working on the PSA and recruiting Board members to participate in the PSA.

Mr. Maxey stated that this was very important work, and that reaching out to our licensees and the public would be very helpful.

Mr. Maxey stated that he supported the PSA, and that the support of the other Board members was also very important.

Ms. Moore made a motion

Mr. Maxey accepted, and permission was granted.

b. Next PSA

i. Licensees and the Enforcement Process

ii. Probation- Licensee's role and responsibilities

Ms. Wood discussed both potential PSA's and stated that depending on incoming complaint trends or other issues noted, these may change. It is important that we are flexible so that we can address issues as they arise. The Committee will be approving the scripts and kept in the loop should any changes be proposed.

Mr. Maxey stated that he appreciates the work of the Division, and that he felt that the PSA's were an important piece of the outreach work the Division is completing.

Ms. Moore agreed.

6. Suggestions for Future Agenda Items (28:21)

Mr. Maxey asked if Ms. Moore had any suggestions.

Ms. Moore stated as a new member, she did not have any at this time.

7. Schedule next Enforcement Committee Meeting August 1, 2023 at 3:00PM until completion.

8. Adjournment (34:00) – Mr. Maxey adjourned the meeting at 3:30PM

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