

Agenda Item #11.



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: May 4, 2010

TO: Board Members

FROM: Karen Newquist
Enforcement Program Manager

SUBJECT: Uniform Standards Regarding Substance-Abusing Healing Arts Licensees and Possible Regulatory Action to Implement Standards.

Senate Bill (SB) 1441 (Chapter 548, Statutes of 2008) established a Substance Abuse Coordination Committee (SACC) tasked to develop uniform standards for substance-abusing healing arts licensees. The SACC was required to establish these standards by January 1, 2010 in each of the following areas:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.
2. Specific requirements for the temporary removal of the licensee from practice in order to enable the licensee to undergo the clinical diagnostic evaluation described in #1 above and any treatment recommended by the evaluator and approved by the board and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedure to be followed when a licensee is confirmed to have ingested a banned substance.

10. Specific consequences for major and minor violations. In particular, the SACC 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 the licensee commits a major violation, in which case it is revived and the license is surrendered.
11. Criteria that a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a board uses a private-sector vendor that provides diversion services, standards regarding requirements for vendors.
14. If a board uses a private-sector vendor that provides diversion services, the extent to which the licensee participation in that program shall be kept confidential from the public.
15. If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance.
16. Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

The SACC was comprised of the Executive Officers (EO) of all healing arts boards, the Director of the Department of Consumer Affairs (DCA) and the State Medical Director of the Department of Drug and Alcohol Programs. The Board’s EO was a member of the SACC and attended several meetings throughout the year. Additionally, a work group was established to assist the SACC. Marilyn Kimble, Probation Monitor, participated as a member of the work group and also attended several group and SACC meetings throughout the year.

On November 16, 2009, the SACC adopted sixteen uniform standards for consideration by all healing arts boards (See Attachment A).

On February 17, 2010, SB 1111 was introduced by Senator Negrete McLeod and sponsored by DCA. The bill included legislative provisions needed to implement the uniform standards requiring legislation. However, SB 1111 failed to make it out of the Senate Business, Professions and Economic Development Committee.

During the February 18, 2010 Board Meeting, DCA Director Brian Stiger reiterated his request that the Board implement those standards that do not require legislation or regulatory changes.

Accordingly, Board staff is working on proposed amendments to the Vocational Nursing and Psychiatric Technician regulations regarding its Disciplinary Guidelines (see Attachment B – Draft Working Copy of the Proposed Regulatory Language). The proposal will also include general clean up language for other sections within the Disciplinary Guidelines. In the meantime, the Board was advised that DCA established another committee to review the uniform standards relating to the frequency of biological fluid testing. According to DCA, the specific meeting dates have not yet been established for that committee meeting.

Enclosures:

- Attachment A DCA Report on the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (dated December 2009)
- Attachment B Draft Proposed Regulatory Language for Disciplinary Guidelines and Uniform Standards

(5/4/2010)