

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.1

DATE: June 4, 2015

ACTION REQUESTED: Information Only: Complaint Intake and Investigations Update

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

PROGRAM UPDATES

COMPLAINT INTAKE:

Staff

We have a vacancy for one Limited Term Office Assistant (OA).

Program

Complaint intake continues to work new complaints, ensuring cases are moving to investigations in a timely manner and that aging cases are worked as a priority.

We have one analyst that is working with the Department of Consumer Affairs (Department) BreEZe team and is involved in the Reports User Group, as well as the Enforcement User Group.

The new Controlled Substance Utilization Review & Evaluation System (CURES) will be launching in July 2015. We have been working closely with the Department's Executive team, the Department of Justice (DOJ) and the new vendor.

INVESTIGATIONS:

Staff

Southern California

- We have two (2) vacancies for Special Investigator. Interviews were conducted this week.
- We will be losing our Retired Annuitant Investigator as of June 30, 2015.

Northern California

- We have one Special Investigator out on leave through the end of the year.

Program

Division of Investigation (DOI) has begun the quarterly Managers' Enforcement Consortium and we had our first meeting on April 30, 2015. This is a group of enforcement managers from across the different disciplines that come together to discuss processes, procedures, how to create efficiencies as well as possible barriers that each of us face in processing our cases.

We continue to assign cases based on the Department’s Consumer Protection Enforcement Initiative (CPEI). There are approximately 25 BRN cases over one year old that are still open and there are approximately 32 DOI cases over one year old that are still open.

Investigative staff continues to attend Task Force meetings and develop working relationships with allied agencies.

Statistics

BRN Investigations	Nov 2014	Dec 2014	Jan 2015	Feb 2015	Mar 2015	Apr 2015
Total cases assigned	290	303	333	329	337	344
Total cases unassigned (pending)	104	144	134	170	152	162
Average days to case completion	221	218	232	201	212	215
Average cost per case	\$2,641	\$3,400	\$3,753	\$2,909	\$2,779	\$3,180
Cases closed	34	35	43	36	56	57
Division of Investigations	Nov 2014	Dec 2014	Jan 2015	Feb 2015	Mar 2015	Apr 2015
Total cases assigned	321	346	346	331	316	298
Total cases unassigned (pending)	77	45	26	20	33	38
Average days to case completion	288	263	211	270	299	271
Average cost per case	\$5,279	\$5,547	\$4,422	\$5,365	\$6,185	\$5,124
Cases closed	42	46	37	38	36	54

Investigators are focused on clearing all aging cases.

NEXT STEP:

Continue to review and adjust internal processes and work with DCA to create reports to monitor statistics for improvement in case processing time frames. Follow directions given by committee and/or board.

FISCAL IMPACT, IF ANY:

None at this time. Updates will be provided at each DDC meeting for review and possible action.

PERSON TO CONTACT:

Shannon Silberling, Chief
Complaint Intake and Investigations
(916) 515-5265

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.2

DATE: June 4, 2015

ACTION REQUESTED: Information Only: Discipline, Probation, and Diversion Unit Update

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

PROGRAM UPDATE

Staff

The Probation Unit has one Probation Monitor out on an extended medical leave. She will be returning on June 1, 2015 which will give this unit a full staff.

The Discipline Unit has filled the Staff Services Analyst vacancy with an internal promotion of an Office Technician from the discipline unit.

The vacant Associate Governmental Program Analyst position for the Diversion Unit has been filled with an internal candidate from the Discipline Unit.

Program – Discipline

The Discipline Unit is working with the Attorney General’s office to complete our cases in a timely manner and streamline our processes for efficiency.

Below reflects FY2015 (July 1, 2014 – May 22, 2015) decision statistics:

Decisions Adopted	1, 405
Pleadings served	909
Petitions to Revoke Probation served	100
Surrenders signed by E. O.	275

Statistics - Discipline

The BRN continues to work with the DCA BreEZe team to verify the accuracy of the performance measures statistics, formally the E19 report.

A new report with the performance measures, E-0249 was developed and deployed at the end of May 2015. We are reviewing the data to verify accuracy and hope to provide the data at the next meeting.

Program – Probation

The case load per probation monitor is approximately 146.

Statistics – Probation

Below are the statistics for the Probation program from July 1, 2014 to May 21, 2015.

Probation Data	Numbers	% of Active
Male	270	26%
Female	763	74%
Chemical Dependency	441	43%
Practice Case	248	24%
Mental Health	3	0%
Conviction (Alcohol/Drug = 109)	341	33%
Advanced Certificates	104	10%
Southern California	560	54%
Northern California	458	45%
Tolled at the AG	15	1%
Pending with AG/Board	124	12%
License Revoked YTD	26	2%
License Surrendered YTD	84	8%
Terminated YTD	23	2%
Successfully completed YTD	96	9%
Active in-state probationers	1,033	
Completed/Revoked/Terminated/ Surrendered YTD	229	
Tolled Probationers	281	
Active and Tolled Probationers	1,314	

Program -Diversion

FirstLab will be hosting a complimentary event on May 29, 2015, titled, “Recovery Management Services Symposium.” This Symposium will provide attendees with an opportunity to learn from Medical Professionals, Laboratory and Pharmacology Authorities, Treatment and Recovery Experts, Data Management Specialists and others who are finding success in battling this epidemic. Diversion Evaluation Committee members have been invited to attend.

At the request of Katherine Hughes from SEIU, the Diversion Program contractor Maximus conducted a training session at the Annual Legislative Conference held at the Citizens Hotel in Sacramento on May 5, 2015. The training was titled, Finding our way back: The BRN Diversion Program offers intervention, referrals to treatment services, case management and monitoring for RNs who are dealing with Substance Use Disorders or Mental Illness, allowing them to return to safe practice. There were 110 attendees and the training was well received.

The Learning Objectives are:

1. Identify the signs, symptoms and progression of the disease of Substance Use Disorders
2. Identify the roles that family members and coworkers play in the lives of individuals with Substance Use Disorders
3. Understand the history, mission, structure and components of the BRN Diversion Program in California
4. Describe the signs of diversion of medications in the healthcare setting
5. Describe the role of the worksite monitor when a Diversion Nurse returns to work

Diversion Evaluation Committees (DEC)

There are currently three physician member vacancies at this time. One vacancy is in Ontario (DEC 9) and one in Oakland (DEC 13). The third vacancy in San Jose (DEC 7) will be filled upon approval of new appointees.

There are currently nine RN member vacancies at this time. Two in the Bay Area (DEC 2), one in Orange County (DEC 4) two in Fresno (DEC 5), one in North Coast Emeryville (DEC 11), one in Oakland (DEC 13) one in San Jose (DEC 7) and one in Sacramento (DEC 1). Vacancies on DEC 5, 11 and 13 will be filled upon approval of new appointees.

There is currently one vacant public member in Los Angeles (DEC 3). Interviews are being conducted to fill this vacancy.

Statistics – Diversion

The Statistical Summary Report for February 1, 2015 through March 31, 2015 is after this update. As of March 31, 2015, there were 1,960 successful completions.

NEXT STEP:

Follow directions given by committee and/or board.

FISCAL IMPACT, IF ANY:

AG's budget line item will be closely monitored for Discipline and Probation. Updates will be provided at each DDC meeting for review and possible action.

PERSON TO CONTACT:

Beth Scott, Chief of Discipline, Probation, and
Discipline and Diversion
(916) 574-8187

**BOARD OF REGISTERED NURSING
DIVERSION PROGRAM
STATISTICAL SUMMARY
February 1, 2015 - March 31, 2015**

	REPORTING PERIOD	YEAR TO DATE (FY)	PROGRAM TO DATE
INTAKES COMPLETED	19	99	4,956
INTAKE INFORMATION			
Female	13	71	3,877
Male	6	28	1,052
Unknown	0	0	27
Average Age	43-59		
Most Common Worksite	Unemployed		
Most Common Specialty	Med Surg/ER		
Most Common Substance Abused	Alcohol		
PRESENTING PROBLEM AT INTAKE			
Substance Abuse (only)	10	58	3,134
Mental Illness (only)	0	3	160
Dual Diagnosis	8	34	1,586
Undetermined	1	4	76
REFERRAL TYPE*			
Board	13	72	3,628
Self	6	27	1,328
*May change after Intake			
ETHNICITY (IF KNOWN) AT INTAKE			
American Indian/Alaska Native	2	2	38
Asian/Asian Indian	0	1	113
African American	0	1	159
Hispanic	2	6	209
Native Hawaiian/Pacific Islander	0	2	25
Caucasian	15	83	4,072
Other	0	4	74
Not Reported	0	0	266
CLOSURES			
Successful Completion	16	67	1,960
Failure to Derive Benefit	0	1	121
Failure to Comply	4	9	969
Moved to Another State	0	0	52
Not Accepted by DEC	0	3	58
Voluntary Withdrawal Post-DEC	0	7	330
Voluntary Withdrawal Pre-DEC	5	21	507
Participant Withdrawn-Failure to sign con	0	1	1
Closed Public Risk	4	15	314
No Longer Eligible	0	0	16
Clinically Inappropriate	2	4	29
Client Expired	0	1	40
Sent to Board Pre-DEC	0	0	1
TOTAL CLOSURES	31	129	4,398
NUMBER OF PARTICIPANTS: 431 (as of March 31, 2015)			

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee Meeting
Agenda Item Summary

AGENDA ITEM: 9.2.1
DATE: June 4, 2015

ACTION REQUESTED: Diversion Evaluation Committee Members

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use disorders and/or mental health.

NEW APPOINTMENTS

Below are the names of the candidates who are being recommended for appointment to the Diversion Evaluation Committees (DEC). If appointed, their terms will begin on July 1, 2015 and expire June 30, 2019.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>#</u>
Tracy Finuf	RN	North Coast Emeryville	11
Barbara Henson	RN	Fresno	5
Nancy Bito	RN	Oakland	13
Robert Watrous	Physician	San Jose	7
Dannika Schauer	RN	Bay Area	2
Denise Giusti-Bradford	Public	Burbank	8

REAPPOINTMENTS

Below are the names of the candidates who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). If appointed, their terms will begin on July 1, 2015 and expire June 30, 2019.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>#</u>
Mason Turner	Physician	Fresno	5
John Harsany Jr.	Physician	San Diego	10
George Warner	Public	Palm Springs	6
Linda Quimby-McInnes	Public	Folsom	12
Jolie Gordon-Browar	RN	Fresno	5
Jacqueline Perry	RN	Palm Springs	6
Fran Goodman	RN	San Jose	7
Cynthia Grauvogl	RN	San Diego	10
Tonia Jones	RN	Santa Ana	14

Below are the names of the candidates who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). If extended, their terms will begin on July 1, 2015 and expire June 30, 2017.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>#</u>
Stephen Miller	Public	North Coast Emeryville	11
Patricia Butler	RN	Folsom	12
Marshall Alameida	RN	Folsom	12

TRANSFERS

Below are the names of the DEC members that transferred DEC assignments.

<u>NAME</u>	<u>TITLE</u>	<u>FROM DEC #</u>	<u>TO DEC #</u>
Marilyn Dray	RN	Oakland #13	Sacramento #1
William Frantz	RN	Folsom #12	Sacramento #1
Gaye Wilson	RN	North Coast #11	Folsom #12
Pamela Moore	RN	San Jose #7	Fresno #5
Mary Kropf	RN	Emeryville #2	Oakland #13
Jeremy Martinez	Physician	Ontario #9	Los Angeles #3
Scott Bertrand	RN	Orange County #4	Ontario #9

RESIGNATIONS

Below are the names of the DEC members who have resigned.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>#</u>
Gordon Ogden	RN	Fresno	5
Richard Jaco	RN	Sacramento	1
Scott Reiter	Physician	Los Angeles	3
Mary Hegarty	RN	Fresno	5
Sharon Fritz	RN	Ontario	9
Brooke Kilpatric	RN	Bay Area	2
Cathy Horowitz	RN	Sacramento	1
Donna Bishop	RN	Sacramento	1
Edward Olivas III	Public	Los Angeles	3

NEXT STEP:

Continue recruiting efforts.

FISCAL IMPACT, IF ANY:

As a result of strategic transfers, the Board will have an annual approximate cost savings of \$2,250 in travel reimbursement claims.

PERSON TO CONTACT:

Beth Scott
Chief of Discipline, Probation, and Diversion
(916) 574-8187

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.3

DATE: June 4, 2015

ACTION REQUESTED: Update: “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” – Business and Professions Code, Section 315

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

As directed by the Board at its November 2013 meeting, staff conducted a comparative analysis of the Uniform Standards, Diversion Program, and Probation Program, including the potential fiscal impact. Staff met with Legal Counsel to discuss a number of issues related to Uniform Standards, including the specific recommendations from Doreathea Johnson, Deputy Director, DCA Legal Affairs. Legal Counsel advised the Board continue with the regulatory process, although the Attorney General’s Office has not rendered its opinion relative to the Uniform Standards. The Board will be notified if changes are necessary as a result of the opinion.

Staff submitted a report of its findings to the Committee at its March 2014 meeting.

The Medical Board of California has promulgated regulations implementing the Uniform Standards. A comparison was made and is provided for the committee’s consideration at the May 2014 meeting.

Staff will continue to facilitate discussion of each standard in conjunction with the attachments.

The committee reviewed the following standards:

Standard #1 - Clinical Diagnostic Evaluations	Are the BRN evaluations considered “clinical diagnostic evaluations?”
Standard #2 - Temporary Removal of Licensee from Practice due to Clinical Diagnostic Evaluation	Public Comment made by ANA/C who opposes testing two times per week.
Standard #3 - Ability to Communicate with Licensee’s Employer	No issues identified.
Standard #4 - Standards for Required Testing	* Concerns with number of tests for Diversion Program participants when they are not working and have no income.

- * Cost of testing is \$62.50 plus collection fee. Total of \$10,000 to test each year.
- * Mandatory testing each week takes away board's discretion and ability to conduct "random" testing.
- * Public comment made by ANA/C and SEIU relative to opposition of this uniform standard.

Standard #5 - Standards for Required Group Meeting Attendance

No issues identified.

Standard #6 - Standards for Type of Treatment

How many additional staff would BRN need with appropriate training in chemical dependency and/or mental health?

Standard #7 - Standards for Worksite Monitoring

No issues identified.

Standard #8 - Procedures when a licensee tests positive for a banned substance

Standard to immediately cease practice for positive drug test for any banned substance does not allow for due process rights of licensee. No parameter set stating what a positive test result is. Incidental exposure to hand sanitizers can result in a low level positive and the licensee will be ordered to cease practice.

Standard #9 - Procedures to follow when a licensee is confirmed to have ingested a banned substance

Public comment by ANA/C that there should be verification of use of a banned substance before removing a RN from work.

Standard #10 - Consequences for major and minor violations

No issues identified.

Standard #11 - Criteria for a licensee to meet in order to petition to return to full-time practice

No issues identified.

Standard #12 - Criteria for a licensee to meet in order to petition for an unrestricted license

Public comment by SEIU that is in favor of the way BRN currently handles this process.

NEXT STEP:

Review each standard and make a recommendation to the board. Follow directions given by committee and/or board.

FISCAL IMPACT, IF ANY:

None at this time

PERSONS TO CONTACT:

Stacie Berumen
Assistant Executive Officer
(916) 574-7600

Ronnie Whitaker
Legislative and Regulatory Analyst
(916) 574-7600

**Board of Registered Nursing – Diversion/Discipline Committee
Uniform Standards Comparison**

DRAFT 9-2-14

B&P Code Section 315(c)(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#1: Specifies the qualifications for the practitioner conducting the clinical diagnostic evaluation, method for conducting the evaluation, content of the evaluation report, timeframe for submission of the report, relationship prohibitions between licensee and evaluator, and action to be taken if the evaluator determines that the licensee is a threat to himself, herself, or others. The evaluator must be Board approved.</p>	<p>Conforms to the Standard, except for minor differences, which are being addressed in the new contract and/or the 2014 Request for Proposal (RFP).</p>	<p>The Disciplinary Guidelines do not have a “clinical diagnostic evaluation” condition. However, the Probation Program is in conformance with several of the Standard requirements based on Conditions 14, Physical Examination, and 18, Mental Health Examination, and Board policies and procedures.</p> <p>The Board preapproves the examiner based on the criteria set forth in Uniform Standard #1.</p> <p>Areas of differences are: 1) The evaluator, not the Board, determines the treatment plan. (Found in Uniform Standard #6) 2) The evaluator must notify the Board “immediately,” if the RN is unable to practice safely and the RN is directed to cease practice immediately; the case is transmitted to the Attorney General’s Office.</p>	<p>1) The Standard is conditional, reading in pertinent part: “If a healing arts board orders a licensee... to undergo a clinical diagnosis evaluation...” (Emphasis added.) All “substance abusing licensees” would not have to have the evaluation; the Board could identify the criteria that would trigger the clinical diagnostic evaluation. Additionally, the Board may elect to define “substance-abusing licensees” and other categories for licensees who are on probation for drug-related offenses. These might include “history of substance abuse in sustained recovery” and “conviction of driving under the influence.” The Board would determine the probationary conditions to be imposed for the other categories. The Standards are geared to licensees who are not in recovery or in the early stages, which is the licensee population in the Diversion Program. To be placed on probation, the registered nurse is required to provide evidence of sustained recovery and the grounds for the probation usually occurred 18 months or more prior to the probation.</p> <p>2) The Board is creating a list of evaluators to which it can assign probationers; establishment and maintenance of such a list is a major undertaking. Options for conforming to</p>	<ul style="list-style-type: none"> • Cost to the Board – Additional staff to review and approve evaluators prior to evaluations. Then create and maintain list of clinical evaluators. • Cost to RN – cost of clinical diagnostic evaluation.

**Board of Registered Nursing – Diversion/Discipline Committee
Uniform Standards Comparison**

		<p>The Standard requires notification within 24 hours, if the evaluator determines that the RN is a threat to himself, herself, or others. This exceeds the standard.</p> <p>3) The evaluator’s written report is due within 45 days of the effective date of the Board decision, with a possible one-time extension up to 45 days. The Standard requirement is no later than 10 days from date the evaluator is assigned and a 30 day extension may be given. The Conditions require the RN to cease practice, if a report is not received; the Standard requires the RN to cease practice, during the evaluation phase. This does not meet the standard.</p>	<p>the Standard include A) requiring the RN to submit the evaluator’s credential prior to the evaluation for Board approval and “assignment”, and B) use the Diversion Program contractor’s evaluators list to either assign or have the RN select an evaluator.</p> <p>3) To conform to the Standard, the Disciplinary Guidelines can be amended to address the four areas of nonconformance as well as to include the Standard requirements that are currently specified in Board policies, e.g., relationship requirements, evaluator qualifications, etc.</p>	
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B&P Code Section 315(c)(2) Specific requirements for the temporary removal of a licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation 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.

UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#2: Requires the board to order the licensee to cease practice until the clinical diagnostic evaluation report is reviewed by diversion/probation staff. The licensee must test</p>	<p>B&P Code, Section 315.4(d) exempts the BRN Diversion Program from the cease practice requirement specified in the Uniform Standards when the Board orders the licensee to undergo a clinical</p>	<p>Does not comply with the Standard. The RN is not required to cease practice during the evaluation period or to test at least 2 times per week. Disciplinary Guidelines Conditions 14 and 18</p>	<p>Although not required, the Diversion Program not only conforms to but exceeds the cease practice requirement; the RN is usually not working for the first 6 to 9 months in the Program. As an additional safeguard, the RN must place his/her license in inactive status until the cease practice is rescinded and</p>	<ul style="list-style-type: none"> • Cost to the Board – additional NEC for Probation Program • Cost to licensee – loss of wages during cease practice – undetermined. Average

**Board of Registered Nursing – Diversion/Discipline Committee
Uniform Standards Comparison**

<p>randomly at least two times per week during this time and the cease practice continues until the licensee has at least 30 days of negative drug screens. The Diversion or Probation Manager determines if the licensee is safe to return to practice, using specified criteria.</p>	<p>diagnostic evaluation.</p>	<p>specify that the evaluator, not the Program Manager, makes the determination related to safety to practice. Condition 7 specifies that the licensee must obtain prior approval from the Board before commencing or continuing any employment.</p>	<p>the RN is approved to return to work. The RN is not required to test twice per week for at least 30 days of negative screens, during the clinical diagnostic evaluation. The frequency of testing during the cease practice is 24 – 36 times per year. Arguably, based on statutory construction, 315.4(d) may also exempt licensees in the Diversion Program from the drug testing requirement.</p> <p>B&P Code Section 315.4(a) specifies that the board <i>may</i> adopt regulations related to the cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315; thus making adoption of regulations for Standards 2 and 10 permissive. However, the Legislative Counsel opinion, Attorney General Office unofficial opinion, and the DCA Legal Counsel Opinion have advised that the legislative intent in enacting the statute was not to make adoption of the standards discretionary. The argument was raised by the Medical Board of California (MBC) in its 2012 Sunset Review Report. DCA staff response referenced the three opinions and recommended the MBC fully implement the Uniform Standards as required by SB1441.</p>	<p>RN annual income in 2012 was \$89,940 (BRN 2012 Survey of RNs)</p> <ul style="list-style-type: none"> • Cost to licensee for drug testing – approximately \$800; \$100/test x 8 tests)
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B&P Code Section 315(c)(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.

UNIFORM STANDARD	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION &	FISCAL IMPLICATIONS
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**Board of Registered Nursing – Diversion/Discipline Committee
Uniform Standards Comparison**

SUMMARY			ISSUES	
#3: Requires the licensee to provide specified information related to employers and supervisors and to give written consent authorizing the board, employers, and supervisors to communicate.	Conforms to Standard.	Conforms to Standard.	None	None
B&P Code Section 315(c)(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.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
#4: Establishes two levels of testing: Level 1 (Year 1) 52 – 104 tests per year; Level 2 (Years 2 -5) 36 – 104 tests per year. After year 5, testing is 1 time per month if there have been no positive tests in the previous 5 consecutive years of probation or diversion. The board may increase frequency for any reason. Testing frequency exceptions are: 1) licensee has participated in treatment or monitoring program that required testing, 2) violation was outside of employment, 3) not employed in healthcare field, 4) licensee is on tolled	Conforms to the Standard <i>except</i> for drug frequency testing requirements. The Program has more stringent requirement during the first 6 to 9 months when the RN is not working. The RN is required to test a minimum of 24 to 36 times per year; the Standard sets the minimum at 12 tests per year, if the RN is not working. However, the Standard requires the RN to do Level 1 testing for 60 days prior to returning to work and for a full year upon returning to work in healthcare. The Diversion Program does not require Level 1 testing upon return	The contract with the drug testing contractor specifies notification within 48-72 hours; however, results are usually returned within 1 day. The drug testing contractor substantially meets the specified testing standards. The Probation and Diversion Programs use the same lab. However, the Program does not conform to the drug testing frequency requirements. Condition 17 requires the RN to participate in a random drug screen program, but does not specify the frequency of testing. The probation monitor	The Probation Program Manager compiles the program’s statistical data in Excel, and uses it to generate the reports submitted to the Board; however, the data is limited. The drug testing contractor provides the historical information/data specified in the Standard on an individual basis for every RN participating in the drug testing program, and the information is maintained in the RN’s probation file. However, the contract does not require the contractor to provide aggregate data or cumulative statistical report(s). The drug testing contractor would be able to provide all the post-implementation data, on an individual basis, for each RN participating in the drug testing program except for: effective date of the Board’s decision, the general range of testing; dates removed or suspended from practice;	Cost to Board – <ul style="list-style-type: none"> • Increased cost of adjudicating complaints • Increased staff cost for monitoring and data input • Cost of obtaining aggregate data and reports from drug testing contractor • Cost of modifying BreZE Cost to Licensee – <ul style="list-style-type: none"> • Minimum \$2,200/year due to increase of minimum number of tests from 30 to 52 @ \$100/test. • Loss of wages as a result of voluntary license

**Board of Registered Nursing – Diversion/Discipline Committee
Uniform Standards Comparison**

<p>status, and 5) substance abuse disorder is not diagnosed. The Standard also specifies drug testing standards and requires collection of specified data for 2 years prior to implementation, if available, and for 3 years post-implementation.</p>	<p>to work. The DEC determines the frequency of testing based on the totality of its assessment of the participant and consistent with the industry drug testing standards, but usually not less than 24 times/year.</p>	<p>increases the frequency of testing as dictated by circumstances in each case. The RN is not required to do Level 1 testing for 60 days prior to returning to practice or for a full year upon returning to practice, even if the Level 1 testing requirement has not been met.</p> <p>The ability of the Board to conform to the pre and post-implementation data report requirements of the Standard are unknown.</p>	<p>and final outcome of the probation. The latter information, in addition to the other contractor provided information, is maintained in the RN's probationer file. As with the pre-implementation data, the contractor does not provide aggregate data.</p> <p>The feasibility of obtaining the pre and post-implementation data from the Board's previous computer systems and/or BreZE to generate the required reports is being explored; but it is unknown what the systems will be able to generate. Staff is working with the Department to determine the most effective and efficient way(s) to obtain the data from DCA-systems and will also explore the availability of data from drug testing contractor. Because the required reports pertain to program evaluation, the data collection portion of the Standard does not have to be adopted into regulation.</p> <p>The drug testing frequency has been a major issue since its initial proposal by the Substance Abuse Coordination Committee (SACC). The high frequency of testing is not consistent with industry standards, as was testified to at SACC meetings, nor is it substantiated by preliminary findings of the Respiratory Care Board. In its 2012 Sunset Review Report, the Respiratory Care Board reported the following:</p> <p>"... the number of tests ordered has more than doubled and positive test</p>	<p>surrenders due to cost of complying with probation conditions.</p>
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Uniform Standards Comparison**

			<p>results nearly doubled. However, closer examination of this data reveals that <u>the number of probationers who tested positive remained unchanged from FY 2009-10 to FY 2011-12.</u> In fact, review of the data showed the number of probationers who actually tested positive for a banned substance, eliminating those probationers with valid (and legitimate prescriptions) actually fell from the five in FY 2009-10 to four in FY 2011-12.</p> <p>While the data does not take into consideration earlier detection, it does appear to present signs that more frequent testing is <i>not</i> conducive to more probationers testing positive. It is possible, that because the Respiratory Care Board does not generally place chronic substance users/abusers on probation and generally revokes or denies licensure to these individuals, that more frequent testing will not show desired results for this Board. However, the Board acknowledges that it is far too early to make any conclusions until further data is gathered.”</p> <p>The Respiratory Care Board also reported that of its 100 probationers in FY 11/12, six voluntarily surrendered their license. Four of these surrenders were a direct result of the increase in testing to 36 – 104 times per year in July 2011. The licensees stated that they could not afford all the costs associated with probation, specifically citing the costs of drug testing that could be as</p>	
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			<p>much as \$3,500 to \$7,000 the first year of probation.</p> <p>The Board should also anticipate an increase in the number of RNs voluntarily surrendering their licenses as a result of increased costs associated with the probation program, including the increased drug testing. Additionally, there may be a decrease in the number of stipulated agreements, as licensees request hearings to contest the charges or to modify the Uniform Standard requirements. Clearly, this will have a fiscal impact, but more importantly, it will increase the length of time it takes to bring complaints to resolution and protect consumers.</p> <p>Conformance with the increased drug testing will result in increased staff workload due to: increased reports from the contractor, which must be reviewed, acted upon, and filed; increased data entry into Excel and BreZE; and increased frequency in changes to drug testing schedule for the licensees.</p>	
<p>B&P Code Section 315(c)(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.</p>				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#5: Specifies the criteria that the board must consider when determining the frequency of group meetings and sets forth the qualifications and requirements for the</p>	<p>Conforms to standard.</p>	<p>Conforms to standard.</p>	<p>The Board requirements for nurse support groups (NSG) and NSG facilitators exceed the Standard. The NSG must be approved by the Board and there are currently 44 approved NSGs located geographically throughout the state. The Board has policies and</p>	<p>None.</p>

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meeting facilitator.			procedures detailing: 1) the NSG approval process, which includes completion of an application and an interview with the facilitator; 2) facilitator/co-facilitator criteria; 3) role and responsibilities for NSGs and facilitators; 4) procedural requirements addressing confidentiality, reports, accessibility to participants, and fees; and 5) handling of complaints regarding NSGs.	
B&P Code Section 315(c)(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
Specifies the criteria to be used in determining type of treatment, including evaluator’s recommendation from the clinical diagnostic evaluation in Standard #1, scope of substance abuse, licensee’s treatment history, and documented length of sobriety.	Conforms to the Standard.	Partial conformance. The Standard specifies that the Board makes the determination regarding the type of treatment. The Disciplinary Guidelines specify that the healthcare professional conducting the evaluation makes the determination.	Treatment determinations must be made by appropriately licensed healthcare professionals. Options to address this issue include amending the probation condition(s) to include all the Standard criteria as factors to be considered by the evaluator in determining the type of treatment and 1) deem the evaluator to be an agent of the Board and implement his or her treatment plan, or 2) have board staff review the healthcare provider’s recommendation and either approve the recommendation or communicate with the evaluator if there are issues/concerns.	Increased cost associated with board staff review and approval of treatment recommendations.
B&P Code Section 315(c)(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.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
#7: Sets forth worksite monitor (WSM) criteria, including prohibited financial,	Conforms to the standard.	Substantial compliance. Three requirements are not met: 1) the supervisor/WSM are	The higher standards set by the probation conditions should not be eliminated.	None.

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<p>personal, or familial relationships between the WSM and the licensee; WSM’s scope of practice; licensure status, i.e., active and unrestricted, and no discipline within the last 5years.</p>		<p>encouraged to but are not legally required to report suspected substance abuse, either verbally or in writing, to the Board; 2) the supervisor and WSMs must have no current discipline, rather than the required 5 years; and 3) the probationer is required to complete and sign a consent form allowing the Board to communicate with the employer, but the supervisor is not required to complete a consent form. The relationship prohibition is discussed with the supervisor at time of the job approval, but is not specified in the probation conditions.</p> <p>The Probationary Conditions and Program requirements exceed the Standard in several ways, including: 1) requiring RN to practice for at least 6 months, 2) setting employment limitations, and 3) specifying the supervision/monitoring requirements with minimum being in person contact between probationer and WSM twice during the shift.</p>		
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B&P Code Section 315(c)(8) Procedures to be followed when a licensee tests positive for a banned substance.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#8: When a licensee tests positive for a banned substance, the board shall order the licensee to cease practice, and, if working, the licensee must leave work, and the board shall notify the employer and WSM. If the positive is confirmed, Standard 9 is implemented. If positive is not confirmed, the cease practice is lifted. When determining if a test is positive, the board should, as applicable: 1) consult the specimen collector and the laboratory; 2) communicate with licensee and/or any other physician who is treating the licensee; and 3) communicate with any treatment provider, including group facilitator/s.</p>	<p>Although B&P Code Sections 315.2(d) and 315.4(d) exempt the Diversion Program from the cease practice requirement, the Program conforms to the Standard, except, if it is a confirmed positive, the RN is permitted to return to work after two negative tests and not the month of “continuous drug testing” specified in Standard 10. (Standard 9 is cited in this Standard, and Standard 9 requires conformance with Standard 10.)</p>	<p>Not in conformance with the Standard in that the cease practice is not immediate. Based on advice from Legal Counsel, the RN is notified and given 5 days to provide an explanation. If the positive is confirmed and the probationer does not respond or the explanation is not acceptable, the RN is told to cease practice and the case is referred to the Attorney General’s (AG’s) Office for filing of an accusation and or a petition to revoke the license.</p>	<p>B&P Code Section 315.2(a) authorizes the Board to order an RN who tests positive for any substance prohibited under the terms of the RN’s probation to cease practice; the Standard is consistent with the statute. As a result of legal challenges to the immediate cease practice order and based on Legal Counsel advice, the Board’s procedure is to notify the RN of the positive and instructs him or her to provide a written explanation within 5 days. Adoption of the Standard as written, without notice and an opportunity to be heard, may be a violation of the licensee’s right to due process, and as such does not conform to the Administrative Procedure Act Consistency Standard. Government Code, Section 11349(d) defines “consistency” as “...harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” Currently, the mandate is only to adopt regulations related to the probationers.</p> <p>The Probation Program is more stringent as it relates to positive tests for prohibited substances and failure to participate in a drug testing program. Condition 17 specifies that a confirmed positive for a prohibited drug may result in suspension from practice as well as referral to the Attorney General’s Office for filing of an accusation or a petition to revoke the probation. Board policy is</p>	<p>See Standard 10</p> <p>If implemented as written, the RN may be subject to unwarranted loss of income.</p>

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			<p>to suspend the RN from practice and the RN is not permitted to return to work until there is a final decision on the AG’s filing. The Condition also specifies that the Board may suspend the RN’s practice for failure to participate in the drug testing program.</p> <p>As previously stated, B&P Code Section 315.4(a) specifies that the board <i>may</i> adopt regulations related to the cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315; thus making adoption of regulations for Standards 2 and 10 permissive. This Standard cites Standard 9, which defines ingestion as major violation as specified in Standard 9 and the licensee is subject to the consequences specified in Standard 10. The intertwining of Standards 8, 9, and 10 raises the question if the Board must adopt regulations related to the cease practice requirements specified/referenced in any of the three Standards since the adoption of regulations is at the Board’s discretion. However, as stated in the Standard 2 discussion, the Legislative Counsel opinion, Attorney General Office unofficial opinion, and the DCA Legal Counsel Opinion have advised that the legislative intent in enacting the statute was not to make adoption of the standards discretionary.</p>	
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B&P Code Section 315(c)(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

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UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#9: 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.</p>	<p>B&P Code Section 315.4(d) exempts the Diversion Program from the cease practice requirement for major violations. However, as stated in response to Standard 8, the participant is ordered to cease practice and to have two consecutive negative drug tests, instead of the minimum month of continuous drug testing required in the Standard, prior to return to work.</p>	<p>The Disciplinary Guidelines do not categorize violations as major or minor. Upon confirmation of ingestion of a banned substance, the RN, if practicing, is instructed to cease practice, and the case is referred to the Attorney General’s Office for filing of an accusation or petition to revoke probation. The RN is not permitted to return to work. The licensee is not ordered to undergo a new clinical diagnostic evaluation or to drug test as required in Standard 10.</p>	<p>The probationary condition is more stringent than Uniform Standard 10. Increased testing is not warranted since the RN is not permitted to return to work.</p> <p>B&P Code Section 315.4(d) makes adoption of regulations related to the cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315 permissive. However, the Legislative Counsel opinion, Attorney General Office unofficial opinion, and the DCA Legal Counsel Opinion have advised that the legislative intent in enacting the statute was not to make adoption of the standards discretionary. (See Standard 2 and 8.)</p>	<p>See Standard 10</p>
<p>B&P Code Section 315(c)(10) 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. (Note: The Uniform Standard does not address the “deferred prosecution” language. The language would have to be included in the Board’s decision placing the licensee on probation. The Standard is not applicable to the Diversion Program.)</p>				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#10: Lists actions that would constitute a major violation, e.g., failure to complete a board-ordered program, multiple minor violations, treating patients while under the influence of</p>	<p>Conforms to the applicable requirements of the Standard. (B&P Code, Section 315.2(d) exempts the Program from requiring a licensee to cease practice if he or she tests positive for a</p>	<p>Substantial conformance. The Disciplinary Guidelines do not use the major and minor violation designations. Actions specified as a major violation would result in referral to the Attorney</p>	<p>The Disciplinary Guidelines are more stringent in that they do not permit an RN to return to work, until a decision has been rendered on the petition to revoke or the filing of an accusation. However with two exceptions, i.e., cease practice for confirmed ingestion of a prohibited substances and failure to</p>	<ul style="list-style-type: none"> • Cost to Board associated with increased staff/staff time to change drug testing frequency, notify probationer and contractor of frequency,

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<p>drugs/alcohol, testing positive and confirmation for substance abuse, failure to obtain biological testing for substance abuse, etc. The consequences for a major violation include 1) a cease practice order, with requirement to undergo a clinical diagnostic evaluation and licensee must test negative for at least a month of continuous drug testing before being allowed to return to work; 2) termination of contract/agreement; and 3) referral for disciplinary action. The Standard also identifies actions that would constitute a minor violation, e.g., untimely receipt of required documents, unexcused non-attendance at group meetings, failure to contact a monitor, etc., as well as the consequences for such violations.</p>	<p>prohibited substance and Section, 315.4(d) exempts the Program from requiring a participant to cease practice for a major violation.)</p>	<p>General’s Office; however, a cease practice or suspension of practice order does not go into effect immediately, unless authorized by statute or a probationary condition. The minor violations would, at a minimum, result in a violation letter listing the violation(s), any corrective action that the licensee must take, and the consequences of any further violation(s).</p> <p>The registered nurse is ordered to cease practice if he or she tests positive for a prohibited substance and fails to provide an acceptable explanation within 5 days or if he or she violates a condition of probation that includes a cease practice order. The RN is not ordered to undergo a clinical diagnostic evaluation or to tests as required; however, the RN is also not permitted to return to work until a decision is reached on the Attorney General’s Office filing. The consequences for minor violations vary, but do not include removal from practice, issuance of a</p>	<p>submit physical or mental health evaluation, the RN is permitted to continue to work until the filing of petition to revoke probation or an accusation after committing any of the other major violations. Amending the Guidelines to make the cease practice effective immediately upon notification of the violation and a period to respond would strengthen the Probation Program.</p> <p>As a consequence of a major violation, the licensee is required to “test negative for at least a month of continuous drug testing before being allowed to return to work.” The term “continuous drug testing” is vague and lacks clarity.</p> <p>B&P Code Section 315.4(d) makes adoption of regulations related to the cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315 permissive. However, the Legislative Counsel opinion, Attorney General Office unofficial opinion, and the DCA Legal Counsel Opinion have advised that the legislative intent in enacting the statute was not to make adoption of the standards discretionary. (See Standard 2, 8, and 9)</p>	<p>follow-up on testing results, filing, and inputting data into system.</p> <ul style="list-style-type: none"> • Costs to RN associated with loss of income and increased testing.
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		citation and fine/or warning, or re-evaluation/testing.		
B&P Code Section 315(c)(11) Criteria that a licensee must meet in order to petition to return to practice on a full-time basis.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#11: The licensee shall meet the following criteria before submitting a request (petition) to return to full-time practice: 1) demonstrate sustained compliance with current recovery program; 2) demonstrate the ability to practice safely as evidenced by current worksite reports, evaluations, and any other information relating to the licensee’s substance abuse; and 3) negative drug screening reports for at least 6 months, two positive worksite monitor reports, and complete compliance with other conditions of the program.</p>	<p>Substantial conformance. Participants generally work part-time by choice or due to job availability. The Diversion Evaluation Committee seldom imposes the part-time practice restriction. If it did, it would take the specified criteria, except 6 months of negative drug screens, into consideration in rendering its decision.</p>	<p>Not applicable.</p>	<p>None.</p>	<p>None.</p>
B&P Code Section 315(c)(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#12: Sets forth criteria licensee must meet to request (petition) for a full and unrestricted license, including: 1) sustained compliance with the terms</p>	<p>Diversion Program participants do not have “restricted” licenses. When approved to return to work, participants will have practice restrictions, which are determined by</p>	<p>As a result of several of the probationary conditions, the registered nurse will have a “restricted” license until successful completion of probation. The</p>	<p>The Diversion Program has very stringent practice requirements. The participant must keep his/her license in inactive status until the Diversion Evaluation Committee determines that the RN is safe to return to practice, which is generally after 6 to 9 months</p>	<p>None.</p>

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<p>of the disciplinary order, if applicable; 2) successful completion of recovery program, if required; and 3) continuous sobriety for three (3) to five (5) years.</p>	<p>the Diversion Evaluation Committee after careful consideration of multiple factors related to the participant’s recovery and compliance with contract requirements.</p>	<p>restrictions include prior Board approval for any job requiring an RN license, may not supervise other RNs, cannot be a faculty member in a Board-approved prelicensure nursing program or a Board-approved continuing education course, and periodic work performance evaluations from supervisor.</p>	<p>with full-contract compliance. When the registered nurse is permitted to return to work, appropriate safeguards/practice restrictions are put in place to ensure consumer/patient protection, including approval of any RN position or change(s) in position, initially may not have access to or administer controlled substances, and supervision by a worksite monitor. The RN may petition to “transition” from the Program after a minimum of two years of full compliance with his/her Diversion Program contract, including completion of any treatment requirements. The RN must complete a “Transition Paper” and the Gorski Relapse Prevention Program, and meet with the DEC to request approval for the transition. During the transition period the RN is required to continue random drug testing, have prior approval for job changes, submit monthly self-reports, have in-person contact with WSM at least once a week, and pay fees. The WSM must submit monthly reports. The transition period is generally one year.</p>	
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B&P Code Section 315(c)(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee’s termination from the program and referral to enforcement.

UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#13: Sets forth vendor reporting time for major and minor violations; approval process, criteria, and requirements for specimen collectors,</p>	<p>Conforms to the Standard.</p>	<p>The Standard does not apply to the Probation Program.</p>	<p>None.</p>	<p>None.</p>

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group meeting facilitators, and worksite monitors, treatment providers; and general vendor requirements.				
B&P Code Section 315(c)(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p align="center">#14:</p> <p>Requires the board to disclose the name, any practice restrictions, and a detailed description of any restrictions 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.</p>	<p>Does not conform. Applicants to the Program and participants in the Program during the first 6 to 9 months are not permitted to work and must put their licenses in inactive status. The inactive status information is available to the public on the BRN website.</p>	<p>The Standard does not apply to the Probation Program.</p>	<p>Since the inception of the Program, a participant’s records and participation in the Diversion Program have been confidential. The confidential nature of the Program is a factor in registered nurses voluntarily entering the Program. Implementation of the Standard would breach the confidential nature of the Diversion Program authorized by statute. Specifically, B&P Code, Section 2770.12(b) requires that participant records of participants in the Diversion Program be kept confidential, and 2770.12(c) sets forth the circumstances under which the registered nurse waives any confidentiality rights. The Board has maintained the confidentiality of participant records both internally and externally; only limited BRN staff is allowed access to the records. Compliance with Standard 14 would require more BRN staff to have access to the records to make the information available to the public. But more importantly, the public would be able to determine that the licensee is a participant in the Board’s Diversion Program, since license restrictions can only be imposed via Board discipline or participation in the Diversion Program.</p>	<ul style="list-style-type: none"> • Additional staff /staff time required to input and maintain information related to practice restrictions and detailed description of any restriction. • Additional cost to modify BreEZe.

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			<p>Disciplinary actions are posted on the BRN website and clearly identified as “discipline.” Posting of restrictions that are not “discipline/disciplinary” would enable the public to deduce that the RN is a participant in the Diversion Program; thus violating the participant’s confidentiality rights and the statute.</p> <p>It is unknown if the required information can be made available to the public using BreEZe. The Standard involves the Department, which has overall responsibility for BreEZe, as well boards with a diversion program; therefore, the Board will pursue the issue with the Department.</p>	
B&P Code Section 315(c)(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee.				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#15: Requires an external independent audit at least once every 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. 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 finding to the board by June</p>	<p>No action has been taken. The BRN, together with the other healthcare professional licensing boards with a Diversion Program, contract, through the Department, with the same vendor to provide monitoring services for its participants.</p>	<p>The Standard does not apply to the Probation Program.</p>	<p>Since the Diversion Program contract is managed by the Department and involves multiple boards, implementation of the Standard will necessitate participation of these entities.</p> <p>The auditing cycle is not congruent with the contracting periods. The contract is generally for a three-year period with two one-year extensions.</p>	<p>Cost of the audit.</p>

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<p>30 of each 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. The board and the department shall respond to the findings of the audit report.</p>				
<p>B&P Code Section 315(c)(16) Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensee protects patients from harm and is effective in assisting in recovering from substance abuse in the long term.</p>				
UNIFORM STANDARD SUMMARY	DIVERSION PROGRAM	PROBATION PROGRAM	PROGRAMMATIC CONSIDERATION & ISSUES	FISCAL IMPLICATIONS
<p>#16: The Standard specifies the criteria related to licensees with substance abuse problems who are in the Diversion or Probation Program that the board must report annually to DCA and the Legislature. The report must also specify the drug(s) the licensee abused. The board must analyze the data to determine if there are indicators for lower or higher probability of success of the program. The Standard also sets forth criteria to determine if the program protects patients from harm and is effective in assisting licensees in recovering from substance</p>	<p>Conforms to the Standard. Data on all the criteria are maintained except major and minor violations, which have been added to the RFP. The contractor is required to monitor trends, conduct a trends analysis, and make recommendations annually or more frequently, as appropriate, to the Board.</p>	<p>Not in conformance. The majority of the information/data is contained in individual probationer files. The Board does not currently maintain the information in a centralized data system, and therefore, cannot retrieve aggregate data or conduct trend analysis as required by the Standard.</p>	<p>The required data is not obtainable from BreEZe and will necessitate creation of a separate data tracking system. This option is contrary to the Board and Department’s goal of having one data system. Furthermore, implementation will require additional staff/staff time: to create the system; input and retrieve the data from existing files; to maintain and continually update the system; and to analyze the data. Currently, the Probation Program Manager maintains and uses Excel to generate statistical data/reports for the Program. Aggregate data is reported at Diversion/Discipline and Board meetings and includes: gender; basis of probation (CD, practice, mental health, convictions, etc.); cases pending at AG/Board; licenses revoked, or surrendered; successful completions and terminations. The required</p>	<p>Potentially significant fiscal impact, even if the data can be obtained from BreEZe or previous Department computer data bases such as CAS. The cost is attributed to additional staff/staff time needed to retrieve, input, maintain, and analyze the data on an on-going basis.</p>

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abuse.			<p>information is not maintained in Excel. Implementation of the Standard could be quite costly in view of depth and breadth of information that is required. As of February 20, 2014, there were 832 in-state probationers and 412 (50%) were on probation for substance-abuse related violations.</p> <p>Staff is working with the Department to determine what, if any, of the data can be obtained from BreEZe, as well as to obtain Department recommendation(s) for dealing with the Standard.</p> <p>Since the Standard pertains to evaluation of the effectiveness of the Diversion and Probation Programs, it is not necessary to include it in regulations.</p>	
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**COMPARISON OF MEDICAL BOARDS PROPOSED TEXT TO THE
UNIFORM STANDARDS,
DIVERSION PROGRAM & PROBATION PROGRAM**

DRAFT 4-15-2014

B&P Code Section 315(c)(1): 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 SUMMARY: Specifies the qualifications for the practitioner conducting the clinical diagnostic evaluation, method for conducting the evaluation, content of the evaluation report, timeframe for submission of the report, relationship prohibitions between licensee and evaluator, and action to be taken the evaluator determines that the licensee is a threat to himself, herself, or others. The evaluator must be Board approved.

DIVERSION PROGRAM: N/A

PROBATION PROGRAM: Conforms to the Standard.

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B&P Code Section 315(c)(2) Specific requirements for the temporary removal of a licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation 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 SUMMARY: Requires the board to order the licensee to cease practice until the clinical diagnostic evaluation report is reviewed by diversion/probation staff. The licensee must test randomly at least two times per week during this time and the cease practice continues until the licensee has at least 30 days of negative drug screens. The Diversion or Probation Manager determines if the licensee is safe to return to practice, using specified criteria.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard, with minor differences.

The standard says cease practice during the clinical diagnostic evaluation pending the results of the clinical evaluation and review by the board staff. Medical board says review by the Board.

The standard says the diversion or probation manager shall determine whether or not the licensee is safe to return to either part-time or fulltime practice.

Medical Board says the Board shall review and determine whether the licensee is safe to return to practice. Medical Board also puts a time frame of within 5 business days of receipt for the review of the clinical diagnostic evaluation report to determine whether the licensee is safe to return to practice.

Medical Board uses the term biological testing while the Standard uses drug testing.

Page 2 & 3

B&P Code Section 315(c)(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.

#3 UNIFORM STANDARD SUMMARY: Requires the licensee to provide specified information related to employers and supervisors and to give written consent authorizing the board, employers, and supervisors to communicate.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 4

B&P Code Section 315(c)(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.

#4 UNIFORM STANDARD SUMMARY: Establishes two levels of testing: Level 1 (Year 1) 52 – 104 tests per year; Level 2 (Years 2 -5) 36 – 104 tests per year. After year 5, testing is 1 time per month if there have been no positive tests in the previous 5 consecutive years of probation or diversion. The board may increase frequency for any reason. Testing frequency exceptions are: 1) licensee has participated in treatment or monitoring program that required testing, 2) violation was outside of employment, 3) not employed in healthcare field, 4) licensee is on tolled status, and 5) substance abuse disorder is not diagnosed. The Standard also specifies drug testing standards and requires collection of specified data for 2 years prior to implementation, if available, and for 3 years post-implementation.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard, but splits them up into different code sections.

Page 6

B&P Code Section 315(c)(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.

#5 UNIFORM STANDARD SUMMARY: Specifies the criteria that the board must consider when determining the frequency of group meetings and sets forth the qualifications and requirements for the meeting facilitator.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 7 & 8

B&P Code Section 315(c)(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 UNIFORM STANDARD SUMMARY: Specifies the criteria to be used in determining type of treatment, including evaluator's recommendation from the clinical diagnostic evaluation in Standard #1, scope of substance abuse, licensee's treatment history, and documented length of sobriety.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 3

B&P Code Section 315(c)(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.

#7 UNIFORM STANDARD SUMMARY: Sets forth worksite monitor (WSM) criteria, including prohibited financial, personal, or familial relationships between the WSM and the licensee; WSM's scope of practice; licensure status, i.e., active and unrestricted, and no discipline within the last 5 years.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 9-11

B&P Code Section 315(c)(8) Procedures to be followed when a licensee tests positive for a banned substance.

#8 UNIFORM STANDARD SUMMARY: When a licensee tests positive for a banned substance, the board shall order the licensee to cease practice, and, if working, the licensee must leave work, and the board shall notify the employer and WSM. If the positive is confirmed, Standard 9 is implemented. If positive is not confirmed, the cease practice is lifted. When determining if a test is positive, the board should, as applicable: 1) consult the specimen collector and the laboratory; 2) communicate with licensee and/or any other physician who is treating the licensee; and 3) communicate with any treatment provider, including group facilitator/s.

DIVERSION PROGRAM:

PROBATION PROGRAM: Not in conformance with the Standard in that the cease practice is not immediate. Medical Board says it shall lift the cease-practice order within one business day.

Page 13

B&P Code Section 315(c)(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 UNIFORM STANDARD SUMMARY: 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.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 14

B&P Code Section 315(c)(10) 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. (**Note:** The Uniform Standard does not address the “deferred prosecution” language. The language would have to be included in the Board’s decision placing the licensee on probation. The Standard is not applicable to the Diversion Program.)

#10 UNIFORM STANDARD SUMMARY: Lists actions that would constitute a major violation, e.g., failure to complete a board-ordered program, multiple minor violations, treating patients while under the influence of drugs/alcohol, testing positive and confirmation for substance abuse, failure to obtain biological testing for substance abuse, etc. The consequences for a major violation include 1) a cease practice order, with requirement to undergo a clinical diagnostic evaluation and licensee must test negative for at least a month of continuous drug testing before being allowed to return to work; 2) termination of contract/agreement; and 3) referral for disciplinary action. The Standard also identifies actions that would constitute a minor violation, e.g., untimely receipt of required documents, unexcused non-attendance at group meetings, failure to contact a monitor, etc., as well as the consequences for such violations.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard. Under the major violations include but are not limited to section, the Medical Board adds “Uses, consumes, ingests, or administers to himself or herself a prohibited substance. They also add, “Fails to comply with any term or condition of his or her probation that impairs public safety”. They did not include “Failure to complete a board-ordered program” though this may be a term of probation as it is with the RN probationary terms.

Under the minor violations section, the Medical Board adds increase the frequency of biological fluid testing. It does not include “Termination of a contract/agreement.” Consequences are not limited to just what is listed.

Page 14 & 15

B&P Code Section 315(c)(11) Criteria that a licensee must meet in order to petition to return to practice on a full-time basis.

#11 UNIFORM STANDARD SUMMARY: The licensee shall meet the following criteria before submitting a request (petition) to return to full-time practice: 1) demonstrate sustained compliance with current recovery program; 2) demonstrate the ability to practice safely as evidenced by current worksite reports, evaluations, and any other information relating to the licensee’s substance abuse; and 3) negative drug screening reports for at least 6 months, two positive worksite monitor reports, and complete compliance with other conditions of the program.

DIVERSION PROGRAM:

PROBATION PROGRAM: Conforms to the Standard.

Page 16

B&P Code Section 315(c)(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 UNIFORM STANDARD SUMMARY: Sets forth criteria licensee must meet to request (petition) for a full and unrestricted license, including: 1) sustained compliance with the terms of the disciplinary order, if applicable; 2) successful completion of recovery program, if required; and 3) continuous sobriety for three (3) to five (5) years.

DIVERSION PROGRAM:

PROBATION PROGRAM: Does not conform to the Standard. Medical Board did not include this Standard.

B&P Code Section 315(c)(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

#13 UNIFORM STANDARD SUMMARY: Sets forth vendor reporting time for major and minor violations; approval process, criteria, and requirements for specimen collectors, group meeting facilitators, and worksite monitors, treatment providers; and general vendor requirements.

DIVERSION PROGRAM: Medical Board does not have a Diversion Program.

PROBATION PROGRAM: The Standard does not apply to the Probation Program, but the Medical Board has language set up for this Standard. Though there is language for some the Standard, it does not have all. It does not have information on the subsections Treatment Providers and General Vendor Requirements.

Page 17

B&P Code Section 315(c)(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 UNIFORM STANDARD SUMMARY: Requires the board to disclose the name, any practice restrictions, and a detailed description of any restrictions 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.

DIVERSION PROGRAM: Does not conform. Medical Board does not have a Diversion Program.

PROBATION PROGRAM: The Standard does not apply to the Probation Program.

B&P Code Section 315(c)(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 UNIFORM STANDARD SUMMARY: Requires an external independent audit at least once every 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. 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 finding to the board by June 30 of each 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. The board and the department shall respond to the findings of the audit report.

DIVERSION PROGRAM: Does not conform. Medical Board does not have a Diversion Program.

PROBATION PROGRAM: The Standard does not apply to the Probation Program.

B&P Code Section 315(c)(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensee protects patients from harm and is effective in assisting in recovering from substance abuse in the long term.

#16 UNIFORM STANDARD SUMMARY: The Standard specifies the criteria related to licensees with substance abuse problems who are in the Diversion or Probation Program that the board must report annually to DCA and the Legislature. The report must also specify the drug(s) the licensee abused. The board must analyze the data to determine if there are indicators for lower or higher probability of success of the program. The Standard also sets forth criteria to determine if the program protects patients from harm and is effective in assisting licensees in recovering from substance abuse.

DIVERSION PROGRAM: Does not conform. Medical Board does not have a Diversion Program. There will be no reported information

PROBATION PROGRAM: Conforms with the Standard. Does not include all of the bullet points because some of them pertain to the diversion program and the Medical Board does not have a diversion program.

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.4
DATE: June 4, 2015

ACTION REQUESTED: Vote on whether to recommend approval of Regulatory Proposal to Modify the Recommended Guidelines for Disciplinary Orders and Conditions of Probation in California Code of Regulations, Article 1, Section 1444.5, Disciplinary Guidelines

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

The Board of Registered Nursing (BRN) last amended the Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines) in 2003. BRN staff were reviewing the Guidelines prior to the overhaul of the board members in 2010. A regulatory proposal was initiated in March 2011 to incorporate the Uniform Standards as required by SB 1441; however, the board was sunset in December 2011 and the regulatory proposal was not acted upon by the board in time.

The DDC recommended moving the regulatory proposal to the full board for consideration at the June 2015 meeting.

Louise Bailey, Executive Officer, and Stacie Berumen, Assistant Executive Officer, met with Senator Jerry Hill, Chairperson of the Senate Business, Professions, and Economic Development Committee and one of his consultants on May 13, 2015, to discuss the issues identified in a letter dated April 21, 2015 to the board president. As a result of the meeting, additional language was incorporated into the regulatory proposal regarding the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

The proposed regulatory language and modified Guidelines are attached.

NEXT STEP: Follow directions given by board.

PERSONS TO CONTACT: Ronnie Whitaker
Legislative and Regulatory Analyst
Phone: (916) 574-7600

Stacie Berumen
Assistant Executive Officer
Phone: (916) 574-7600

§1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled: “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (10/0205/2015), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the presence of aggravating factors; the age of the case; or evidentiary ~~problems~~ issues.

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 acts 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 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

HISTORY:

1. New section filed 6-17-97; operative 6-17-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment of "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (incorporated by reference) and amendment of section filed 6-14-2000; operative 7-14-2000 (Register 2000, No. 24).
3. Amendment of section and Notefiled 4-24-2003; operative 5-24-2003 (Register 2003, No. 17).
4. Amendment of section and Note filed 7-23-2014; operative 7-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 30).

§1444.51. Uniform Standards Related to Substance Abuse.

(a) The board shall also apply, as required, the Department of Consumer Affairs’ Substance Abuse Coordination Committee’s Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) [hereafter “Uniform Standards”], which are hereby incorporated by reference. The “Uniform Standards” describe the mandatory conditions that apply to a substance abusing licensee, except that the board may impose more restrictive conditions if necessary to protect the public.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the board finds that

the evidence proves that an individual is a substance-abusing licensee for the purposes of section 315 of the code, then all relevant terms and conditions contained in the Disciplinary Guidelines and the “Uniform Standards” shall apply as written and be used in the order placing the licensee on probation.

Note: Authority cited: Section 2715, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

DRAFT

State of California
Board of Registered Nursing



Recommended Guidelines
for
Disciplinary Orders
and
Conditions of Probation

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Introduction



In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended with appropriate conditions.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 27.)

Factors to Be Considered



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

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

Violations and Recommended Actions



The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

~~An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:~~

~~Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.~~

Nursing Practice Act



~~2761(a)(1) a.) Incompetence or gross negligence.~~

- ~~• Recommended discipline:
— *Revocation*~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~
- ~~• Condition 19 if patient death occurred.~~

~~2761(a)(1) b.) Incompetence or gross negligence.~~

- ~~— To direct another or to personally falsify and/or make grossly
— incorrect, grossly inconsistent, or unintelligible entries in any
— hospital, patient, or other record not pertaining to controlled
— substances.~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*~~

~~2761(a)(2) Conviction of practicing medicine without a license.~~

- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

- ~~2761(a)(3) **Fraudulent advertising:**~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

- ~~2761(a)(4) **Disciplinary action against health care license by another state, government agency, or licensing board:**~~
- ~~• Recommended discipline
— *Revocation or
Revocation stayed with 3 years probation*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*
— *(Discipline to be determined based on guidelines' recommended
discipline for underlying violation(s).)*~~

- ~~2761(a) **Other actions which constitute unprofessional conduct include but are not limited to:**~~
- ~~**Failure to report client abuse to the appropriate agency:**~~
- ~~• Recommended discipline:
— *Revocation*~~
 - ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

~~**Holding oneself out as any of the following without meeting the BRN standards:**~~

- ~~• Nurse practitioner — also a violation of Section 2761(j) and 2835~~
- ~~• Nurse anesthetist — also a violation of Section 2761(j) and 2829~~
- ~~• Certified nurse midwife — also a violation of Section 2761(j)~~
- ~~• Public health nurse — also a violation of Section 2761(j)~~
- ~~• Nurse practitioner with a furnishing number — also a violation of Section 2836.3~~
- ~~• Nurse midwife with a furnishing number — also a violation of Section 2746.51~~
- ~~• Board-listed psychiatric mental health nurse~~
- ~~• Clinical nurse specialist — also a violation of Section 2838~~

- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*~~

- ~~2761 (b) Procuring a certificate by fraud, misrepresentation, or mistake:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
- ~~2761 (c) Involvement in the procurement of or assisting in a criminal abortion.~~
- ~~• Minimum discipline:~~
 - ~~— Revocation stayed with 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (d) Violating or abetting violation of any section of the Nursing Practice Act.~~
- ~~• Minimum discipline: _____~~
 - ~~— Revocation stayed with 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (e) Furnishing false information.~~
- ~~(1) In applying for licensure:~~
- ~~• Minimum discipline:~~
 - ~~— Denial or revocation of license.~~
- ~~(2) In applying for renewal of license:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).~~
- ~~• Recommended discipline:~~
 - ~~— Revocation~~
- ~~2761 (g) Impersonating an applicant in an examination:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
- ~~2761 (h) Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
-

~~2761(i) — Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act):~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others appropriate.~~

~~2761(j) — Holding oneself out as a nurse practitioner without meeting the BRN standards:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate.~~

~~2761(k) — Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse:~~

~~————— No evidence of potential or actual patient harm:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate.~~

~~————— Potential or actual patient harm evidenced:~~

- ~~• Minimum discipline:
Revocation~~

~~2762(a) — Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others:~~

~~————— (1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:
Revocation.~~

~~————— (2) In cases of first time offense, with documented evidence of an on-going rehabilitation program:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation: *1-19*~~

~~2762(b) — Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

~~In cases of first time offense with documented evidence of an on-going rehabilitation program:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation: 1-19~~

~~2762(c) — Conviction of a criminal offense involving the prescription, consumption, or self administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs. (See also 2761(f) and 2762 (a), (b) and (c).)~~

~~(1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:~~

~~*Revocation*~~

~~(2) In cases of first time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation*~~

~~Minimum conditions of probation: 1-19~~

~~(3) In cases where the conviction is for falsification of records pertaining to controlled substances:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation:~~

~~*1-13 and others as appropriate*~~

~~2762(d) — Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation: 1-19~~

~~2762(e) — Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate~~

~~For repeated and similar acts:~~

- ~~• Minimum conditions of probation: *1-19*~~

~~2836.3(c) — Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices:~~

- ~~• Recommended discipline:
Revocation~~
- ~~• Minimum discipline:
Revocation stayed with 3 years probation~~
- ~~Minimum conditions of probation:
1-13 and others as appropriate~~

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>2761(a)(1) Incompetence</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation – License should be suspended for re-education to remediate knowledge deficits prior to returning to practice. The suspension is followed by 3 years probation.</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(1) Gross Negligence</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(2) Conviction of practicing medicine without a license</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(3) Fraudulent advertising</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	
<u>2761(a)(4) Disciplinary action against health care license by another state, government agency, or licensing board</u>	<u>Revocation or Revocation stayed with 3 years probation</u>	<u>Public Repeval with Costs</u>	<u>1-13 and others as appropriate</u>
<u>2761(a) Failure to report client abuse to the appropriate agency</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a) Holding oneself out as any of the following without meeting BRN standards:</u> • <u>Nurse Practitioner</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<ul style="list-style-type: none"> • <u>Nurse Anesthetist</u> • <u>Certified Nurse Midwife</u> • <u>Public Health Nurse</u> • <u>Nurse Practitioner with Furnishing Number</u> • <u>Nurse Midwife with Furnishing Number</u> • <u>Clinical Nurse Specialist</u> • <u>Board-listed Psychiatric Mental Health Nurse</u> 			
<u>2761(b) Procuring a certificate by fraud, misrepresentation, or mistake</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(c) Involvement in the procurement of or assisting in a criminal abortion</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(d) Violating or abetting violation of any section of the Nursing Practice Act</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	
<u>2761(e) Furnishing false information (Applying for license)</u>	<u>Denial or Revocation of license</u>	<u>Denial or Revocation of license</u>	
<u>2761(e) Furnishing false information (Applying for renewal license)</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>1-13 and others as appropriate</u>
<u>2761(f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(g) Impersonating an applicant in an examination</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(h) Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(i) Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5, Division 2 (Medical Practice Act)</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(j) Holding oneself out as a nurse practitioner without meeting the BRN standards</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(k) Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne</u>	<u>Revocation stayed with 3 years probation</u>	<u>Public Repeoval with Costs</u>	<u>1-13 and others as appropriate</u>

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>infectious diseases from licenses or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse (No evidence of potential or actual patient harm)</u>			
<u>2761(k)</u> <u>Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licenses or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse (Potential or actual patient harm evidenced)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(a)</u> <u>Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others (Selling drugs for personal gain or replaced, withheld or substituted drugs on the job)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(a)</u> <u>Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(b)</u> <u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired (Multiple incidents)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(b)</u> <u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(c)</u> <u>Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (Under the influence, withheld or substituted drugs on the job)</u>	<u>Revocation</u>	<u>Revocation</u>	

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>2762(c) Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(c) Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (Conviction for falsification of records pertaining to controlled substances)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2762(d) Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(e) Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u> <u>For repeated and similar acts: 1-19</u>
<u>2836.3(c) Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

Additional Business and Professions Code Statutes



- 119(a) Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
- 119(b) Lending license to any person or knowingly permitting the use thereof by another.
- 119(c) Displaying or representing any license not issued to him/her as being his/her license.
- 119(d) Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.
- 119(e) Knowingly permitting any unlawful use of a license issued to him/her.
- 119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code:
- ~~Recommended discipline for 119(a)-(f):~~
Revocation
 - ~~Minimum discipline:~~
Revocation stayed with 3 years probation
 - ~~Minimum conditions of probation~~
1-13 and others as appropriate
- 125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:
- (a) Allows his/her license to be used by such person.
- (b) Acts as his/her agent or partner.
- ~~Recommended discipline:~~
Revocation
 - ~~Minimum discipline:~~
Revocation stayed with 3 years probation:
 - ~~Minimum conditions of probation~~
1-13 and others as appropriate

~~125.6~~ ~~**Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with three years probation*~~

- ~~• Minimum conditions of probation:~~

~~*1-13 and others as appropriate.*~~

~~480(a)~~ ~~**Acts Disqualifying Applicant:**~~

~~(See attached Policy Statement on Denial of Licensure.)~~

~~(1) Conviction of a crime.~~

~~(2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or~~

~~(3) Any act which if done by a licensee of the business or profession in question would be grounds for suspension or revocation of license.~~

~~480(c)~~ ~~**Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**~~

- ~~• Recommended discipline for 480(a) and (c):~~

~~*Denial of licensure*~~

~~492~~ ~~**Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**~~

~~493~~ ~~**The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**~~

~~496~~ ~~**Subversion of licensing examinations:**~~

- ~~• Recommended discipline:~~

~~*Denial of licensure, actual suspension or revocation.*~~

~~498~~ ~~**Securing license by fraud, deceit, or misrepresentation:**~~

- ~~• Recommended discipline:~~

~~*Denial of licensure, suspension, or revocation.*~~

~~726~~ ~~**Sexual abuse, misconduct, or relations with a patient:**~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

810 (a)(1) — Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

- ~~Recommended discipline:~~
~~Revocation~~
- ~~Minimum discipline:~~
~~Revocation stayed with 3 years probation.~~
- ~~Minimum conditions of probation:~~
~~1-13 and others as appropriate.~~

810(a)(2) — Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

- ~~Recommended discipline:~~
~~Revocation~~
- ~~Minimum discipline:~~
~~Revocation stayed with 3 years probation.~~
- ~~Minimum conditions of probation:~~
~~1-13 and others as appropriate.~~

820 — Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.

- ~~Recommended discipline:~~
~~Suspension or revocation~~

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:</u> (a) <u>Allows his/her license to be used by such person.</u> (b) <u>Acts as his/her agent or</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>partner.</u>			
125.6 <u>Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
480(a) <u>Acts Disqualifying Applicant:</u> (1) <u>Conviction of a crime.</u> (2) <u>Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another;</u> <u>or</u> (3) <u>Any act which if done by a licensee of the business or profession in question would be grounds for suspension or revocation of license.</u>	<u>Denial of Licensure</u>		
480(c) <u>Applicant knowingly making a false statement of fact required to be revealed in the application for such license.</u>	<u>Denial of Licensure</u>		
496 <u>Subversion of licensing examinations.</u>	<u>Denial of licensure, or Revocation</u>		
498 <u>Securing license by fraud, deceit, or misrepresentation.</u>	<u>Denial of licensure, or Revocation</u>		
726 <u>Sexual abuse, misconduct, or relations with a patient.</u>	<u>Revocation</u>		
810(a)(1) <u>Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
810(a)(2) <u>Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
820 <u>Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.</u>	<u>Revocation</u>		
821 <u>Failure of the licensee to comply with an order issued under</u>	<u>Revocation</u>		

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>Section 820.</u>			

Other Situations in which Revocation is the Recommended Penalty



1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the conditions of the Board's Probation Program.
3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.
4. ~~Patient neglect by failure to provide competent nursing care.~~
5. ~~Second~~Subsequent offenses unless the respondent can demonstrate that he/she has been rehabilitated.

Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she 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 \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

Drug/Alcohol Rehabilitation Criteria



Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of an appropriate drug/alcohol treatment program (~~a minimum of six (6) months duration~~). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program ~~will~~may include at least the following elements:
 - Chemical-free treatment philosophy
 - Individual and/or group counseling
 - Random, documented biological fluid screening
 - Participation in nurse (or other professionals') support group(s)
 - Education about addictive disease
 - Adherence to a 12-step recovery program philosophy, or equivalent
 - Written documentation of participation in 12-step recovery groups, or equivalent

- For registered nurse licensees, if employed ~~in as a nurse, ing for a minimum of six (6) months~~ with documentation (from the employer) ~~that the employer was aware of the previous drug or alcohol abuse problems. Documentation~~ must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.

- For respondents seeking reinstatement of license, if employed, ~~ment for a minimum of six (6) months with~~ documentation from the employer that while employed, there was no evidence of alcohol or drug use.

Mitigation Evidence



The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) ~~Recent, dated w~~ Written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated and signed letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated and signed performance evaluation(s) from respondent's employer.
- F) Recent, dated and signed ~~physical examination~~ mental health evaluation or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Recent proof of compliance with any board or criminal court orders.
- ⓂH) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

Conditions of Probation and Rationale



The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

Listing of Probation Conditions



STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

- 1) Obey all Laws
- 2) Comply With Board's Probation Program
- 3) Report in Person
- 4) Residency or Practice Outside of State
- 5) Submit Written Reports
- 6) Function as a Registered Nurse
- 7) Employment Approval and Reporting Requirements
- 8) Supervision
- 9) Employment Limitations
- 10) Complete a Nursing Course(s)
- 11) Cost Recovery (Does not apply to Applicants)
- 12) Violation of Probation
- 13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 14) Physical Examination
- 15) Participate in Treatment/Rehabilitation ~~Program~~ for ~~Chemical Dependence~~
Substance Use Disorder
- ~~16) Participate in Support Groups~~
- ~~16~~7) Abstain From Use of Psychotropic (Mood-Altering) Drugs
- ~~17~~A) Submit to Tests and Samples
- 18) Mental Health Examination

- 19) Therapy or Counseling Program
- 20) Actual Suspension of License

Introductory Language and Standard Probation Conditions



The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)



INTRODUCTORY LANGUAGE FOR ALL ORDERS –

IT IS HEREBY ORDERED that Registered Nurse License Number ____ issued to Respondent ____ is revoked. However, the revocation is stayed and respondent is placed on probation for ____ years on the following conditions.

SEVERABILITY CLAUSE –

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

***RATIONALE:** The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.*

- (1) **OBEY ALL LAWS** - Respondent shall obey all federal, state including but not limited to the NPA and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.

To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision; ~~unless previously submitted as part of the licensure application process.~~

CRIMINAL COURT ORDERS: If respondent is under criminal or regulatory agency court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

***RATIONALE:** All licensees are responsible for “abiding by the law” and complying with court orders, should the licensee be subject to court ordered parole or probation. This condition emphasizes the respondent’s responsibility and it provides the Board with a means to take more immediate and severe action if another violation occurs.*

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

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

***RATIONALE:** Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

(3) REPORTING IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings and shall be available by telephone for interviews/contact as directed by the Board or its designated representatives. Respondent must provide the Board a current telephone number at all times.

***RATIONALE:** This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Board, if necessary.*

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency ~~or~~ and practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board's Probation Program within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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

Respondent shall maintain a current license while in a tolled status.

***RATIONALE:** This ensures that respondents may not complete probation without being fully monitored for their term in California. This further assures that the Board is aware of all licensure outside of California as a professional nurse.*

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license active or otherwise and provide proof to the Probation Program.

RATIONALE: *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies to discipline registered nurses.*

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the competent practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in competent advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has ~~presented sufficient documentation of~~ demonstrated his or her good faith efforts to comply with this condition, ~~and if no other conditions have been violated~~, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

RATIONALE: *This provides the Board with an opportunity to monitor the respondent and determine if he/she can perform the functions and duties of a registered nurse or advanced practitioner in a competent manner. It also prevents the respondent from merely “sitting out” the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions.*

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary including orientation, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related ~~reports~~ documents as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any non-nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

A refresher course may be required prior to employment as determined by the Board.

RATIONALE: *This condition allows the Board to determine the appropriateness of a setting for which the respondent will be providing registered nursing services and to obtain reports relative to the respondent’s registered*

nursing competency. If an RN refresher course is assigned it must be completed prior to employment in order to validate clinical competency and protect the consumer.

This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.

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

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of ~~supervision and/or collaboration~~ monitoring before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the ~~direct supervision~~ monitoring of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of ~~supervision and/or collaboration~~ monitoring (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of ~~supervision and/or collaboration~~ monitoring may include, but is not limited to the following:

- (a) Maximum - The individual providing ~~supervision and/or collaboration~~ monitoring is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing ~~supervision and/or collaboration~~ monitoring is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing ~~supervision and/or collaboration~~ monitoring has person-to-person communication with respondent at least twice during each shift worked.
- (d) Advanced Practice – Registered nurses functioning in the advanced practice role will have the level of monitoring individualized as approved by the Board.
- ~~(d)~~ Home Health Care - If respondent is approved to work in the home health care setting, the individual providing ~~supervision and/or collaboration~~ monitoring shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing ~~supervision and/or collaboration~~ monitoring as required by the Board during each work day. The individual providing ~~supervision and/or collaboration~~ monitoring shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

RATIONALE: *This allows the Board to require appropriate ~~supervision and/or collaboration~~, to monitor monitoring of the respondent's registered or advanced practice nursing competency and thus protect consumer safety. The level of ~~supervision or need for advanced practice collaboration~~ will be determined by the Board at probation meetings.*

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

~~If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work. The maximum hours of work will be defined during the job approval process, additional hours may be approved upon written request by the employer.~~

***RATIONALE:** The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. Home health agencies are licensed by the state, and are staffed by registered nurse supervisors. On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. RNs disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations.*

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) assigned by the Board relevant to the practice of registered nursing ~~no later than six months prior to the end of his or her probationary term~~ by the date determined by the Board.

~~Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.~~

***RATIONALE:** This condition permits the Board to require the respondent to remediate deficiencies in knowledge which affected or may affect his/her practice of registered nursing. ~~This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.~~*

(11) COST RECOVERY - 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 \$ _____. 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 term.

~~If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.~~

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of 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 the respondent's license, the probationary period shall automatically be extended and shall not expire until ~~the accusation or petition has been acted upon by the Board~~ a final decision has been rendered by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

Optional Probation Conditions



(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board ~~shall~~ may request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

***RATIONALE:** This condition permits the Board to require the respondent to obtain appropriate treatment for physical problems/disabilities which could affect registered nursing practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the physical examination requirement.*

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE SUBSTANCE USE DISORDER - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved appropriate treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program treatment provider on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program treatment. If a program treatment is not successfully completed within the first nine

months of probation, the Board shall may consider respondent in violation of probation. Respondent shall continue with the recovery plan recommended by the treatment provider(s).

RATIONALE: This condition permits the Board to require the respondent to obtain appropriate treatment within a specified time period, for problems which could affect his/ her registered nursing practice and provides for continued involvement in a support system.

(16) SUPPORT GROUP ATTENDANCE - Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. ~~If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added.~~ Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

RATIONALE: This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse support groups for treatment of substance use disorder.

(167) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

RATIONALE: Abstinence from mood altering substances (alcohol/ drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(17A) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. ~~The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent~~

~~shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.~~

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, ~~and the Board files a petition to revoke probation or an accusation,~~ the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

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

If respondent fails to participate in a random, biological fluid testing or drug screening program ~~within the specified time frame as directed by the Board,~~ the Board may suspend respondent ~~shall immediately cease~~ from practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

***RATIONALE:** This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.*

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board ~~shall~~ may request that the Attorney General's office prepare an accusation or petition to revoke probation. ~~Respondent~~ The Board shall immediately ~~cease suspend Respondent's practice and Respondent~~ may not resume practice until notified by the Board.

During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, ~~respondent~~ the Board shall immediately ~~cease~~ suspend Respondent's practice and Respondent shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/ or could lead to relapse of a ~~chemical dependency problem~~ substance use disorder. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.*

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program by a licensed mental health provider until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

If the counselor identifies issues of concern related to Respondent's ability to practice the counselor shall immediately notify the Board. Further mental health evaluation may be required by the Board.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or ~~chemical dependency problem~~ substance use disorders which could affect her/his nursing practice.*

(20) ACTUAL SUSPENSION OF LICENSE - Respondent is suspended from the practice of registered nursing for ____ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *Business and Professions Code Section 2759(c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.*

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing.

Recommended Language for Applicants, ~~and~~ Reinstatements and Licensees



In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for licensees, exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Rule-Out Substance Abuse Assessment:** If the examiner conducting the physical and/or mental health evaluation determines that the respondent is dependent upon drugs or alcohol, or has had problem with drugs or alcohol that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation:
 - A. Participate in Treatment/Rehabilitation for Substance Use Disorder (condition #15)
 - B. Abstain from Use of Psychotropic (Mood-Altering) Drugs (condition #17)
 - C. Submit to Tests and Samples (condition #17A)
 - D. Therapy or Counseling Program (condition #19)

- **Exam applicants who are placed on probation:**

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

- **Endorsement applicants who are placed on probation:**

“The application of respondent _____ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

- **Reinstatement of licensure with conditions of probation:**

“The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

It is important to note that ~~in many cases,~~ petitioners for reinstatement who have not practiced registered nursing in the State Of California for eight years. ~~They~~ must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: “Upon successful completion of the licensure examination, a license shall be issued to respondent.”

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: “The respondent shall enroll in and successfully complete a refresher course that validates clinical competency or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework.”

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

Time Frames for Petitions for Reinstatement and Modification of Penalty



Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

Recommended Language for Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she 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 \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

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**BOARD OF REGISTERED NURSING**

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Ruth Ann Terry, MPH, RN
Executive Officer

POLICY STATEMENT ON DENIAL OF LICENSURE

The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

Convictions

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

Rehabilitation

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

EVIDENCE OF REHABILITATION

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list itemizes types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
 - a. Formal accusation and determination of other state,
 - b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
 - c. Terms of probation and evidence of current compliance if currently on probation in another state.

STATUTORY AUTHORITY FOR DENIAL OF LICENSURE

(Summarized Version of Business & Professions Code)

Grounds for Denial

- 480 (a) Board may deny a license on the basis of:
- (1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
 - (2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.
 - (3) Any act which is grounds for suspension or revocation of registered nurse's license.
- (b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)
- (c) May deny license if applicant knowingly made false statement of fact required in application.

Criteria for Related Crimes Required

- 481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

Criteria for Rehabilitation Required

- 482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

Attestations of Good Moral Character Not Required

- 484 No applicant can be required to submit attestations of good moral character.

Procedure for Board Upon Denial

- 485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

Reapplication After Denial

- 486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.
- 487 If a hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.
- 492 Successful completion of any diversion program under the Penal Code or successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.
- 493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

Violations of Exam Security

- 496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

REGULATIONS RELATING TO LICENSE DENIAL
(Summarized Version of California Code of Regulations)

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.

Such acts or crimes include, but are not limited to:

- (a) Conviction of child abuse.
- (b) Violation of Nursing Practice Act.
- (c) Conviction as a mentally disordered sex offender.
- (d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
- (e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

- (a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for a license.
 - (1) Nature and severity of acts or crimes.
 - (2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.
 - (3) Time that has elapsed since commission of acts or crimes.
 - (4) Extent to which applicant has complied with terms of parole, probation, restitution, or other sanctions.
 - (5) Evidence of rehabilitation submitted by applicant.