

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

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**AGENDA ITEM:** 9.1  
**DATE:** November 20, 2014

**ACTION REQUESTED:** Information Only: Complaint Intake and Investigations Update

**REQUESTED BY:** Cynthia Klein, RN, Chairperson

**BACKGROUND:**

**PROGRAM UPDATES**

**COMPLAINT INTAKE:**

**Staff**

Complaint Intake has gained many new positions through a Budget Change Proposal (BCP) approved for fiscal year 2014/15 – 1 Associate Governmental Program Analyst (AGPA), 2 Staff Services Analysts (SSA), 1 Office Technician (OT) and 2 Office Assistants (OA).

We have filled the 2 SSA positions by promoting in house complaint intake staff. We are in the process of backfilling their OT positions. We have also filled the AGPA position. We are currently interviewing for the OT and OA positions. We hope to have these filled by the end of November.

**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.

**INVESTIGATIONS:**

**Staff**

The investigation unit has gained many new positions from the BCP approved for fiscal year 2014/15 – 5 Special Investigators and 1 Office Technician. There are 3 pending positions, 2 in Southern CA and 1 in Northern CA. One of the positions will be filled December 1, 2014. We have 1 pending Office Technician position.

**Program**

Investigators are focused on clearing all aging cases. There are approximately 43 cases over one year. The new field investigators will help us keep cases in house that are more appropriate for investigation by the board.

Both the Northern and Southern Units are continuing their outreach with agencies ;

On September 9, 2014, four northern investigators attended a meeting of the Northern Enforcement Network. This Network is a group of investigation/enforcement staff from Cal DOJ Elder Abuse, Cal Bureau of Medi-Cal Fraud and Elder Abuse, CDPH and other regulatory agencies in Northern California.

On October 21, 2014, the two BRN Supervising Special Investigators gave a presentation to the CA Long-Term Care Ombudsman Fall Training Conference, introducing BRN enforcement and investigations to representatives from Ombudsman districts throughout California.

On October 14, 2014, two of the southern investigators were invited to attend and present at the Santa Barbara Multi-Disciplinary Task Force meeting. This Task Force is comprised of staff from Adult Protective Services (APS), various Ombudsman, the local District Attorney, and Community Care license staff to name a few. The group focuses on elder abuse and fraud issues throughout Santa Barbara county. BRN staff was invited to regularly participate, and on this occasion, present the BRN Investigation role and how we can interact with the various agencies.

### **Statistics**

The following are internal numbers (end of month) across all investigators not broken out on the performance measurement report.

BRN Investigation Unit	Oct 2013	Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014
Total cases assigned	256	252	243	223	236	251
Total cases unassigned (pending)	89	59	58	49	52	49
Average days to case completion	278	215	294	326	301	327
Average cost per case	\$3,447	\$2,792	\$3,312	\$3,529	\$3,804	\$3,776
Cases closed	36	34	19	33	28	49

BRN Investigation Unit	Apr 2014	May 2014	June 2014	Jul 2014	Aug 2014	Sep 2014
Total cases assigned	242	244	236	225	218	285
Total cases unassigned (pending)	74	70	71	88	116	47
Average days to case completion	229	230	209	228	227	219
Average cost per case	\$3,772	\$2,289	\$3,106	\$3,743	\$3,453	\$2,809
Cases closed	37	45	31	28	39	47

As of October 30, 2014, there were 362 DOI investigations pending.

**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, Deputy Chief  
Complaint Intake and Investigations  
(916) 515-5265

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

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**AGENDA ITEM: 9.2**  
**DATE: November 20, 2014**

**ACTION REQUESTED:** Information Only: Discipline and Probation Update

**REQUESTED BY:** Cynthia Klein, RN, Chairperson

**BACKGROUND:**

PROGRAM UPDATE

Staff

The Probation Unit has a vacancy for a probation monitor at the Associate Governmental Program Analyst (AGPA) level and has begun the recruitment process. The Probation Unit has completed interviews for one additional monitor at the Staff Services Analyst (SSA) level and has filled the additional Office Technician (OT) position.

The Citation and Fine unit has promoted an internal candidate from SSA into the vacant AGPA position; therefore, recruitment will begin to fill the vacant SSA. The Discipline unit has interviewed and is in the process of hiring two SSA positions and three OTs. We are currently recruiting for the vacant discipline analyst position.

Program – Discipline

The discipline unit is noticing an increase in cases involving fraud in the area of Basic Life Support (BLS) certification and Advanced Cardiac Life Support (ACLS) training. The BRN has received notification that 72 RNs from a single facility submitted false or invalid BLS and or ACLS certification.

The BRN has begun posting accusations to the National Council of State Boards of Nursing (NCSBN-Nursys) system at the time of service as opposed to waiting for the final decision to be rendered.

An alert will be added to the Nursys system when a citation is final to comply with California Code of Regulations section 1435.7, which mandates notification to other boards of nursing and other regulatory agencies. The alert will stay on the system for 3 years.

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-November 7, 2014) decision statistics:

Decisions Adopted	642
Pleadings served	346
Petitions to Revoke Probation served	37
Surrenders signed by E. O.	112

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.

Program – Probation

The case load per probation monitor is approximately 153.

Statistics – Probation

Below are the statistics for the Probation program from July 1, 2014 to November 5, 2014.

Probation Data	Numbers	% of Active
Male	240	27%
Female	681	73%
Chemical Dependency	416	45%
Practice Case	228	25%
Mental Health	1	0%
Conviction (Alcohol/Drug = 102)	276	30%
Advanced Certificates	89	10%
Southern California	490	53%
Northern California	415	46%
Tolled at the AG	16	1%
Pending with AG/Board	106	11%
License Revoked YTD	13	1%
License Surrendered YTD	35	3%
Terminated YTD	7	%
Successfully completed YTD	35	3%
Active in-state probationers	921	
Completed/Revoked/Terminated/ Surrendered YTD	90	
Tolled Probationers	260	
Active and Tolled Probationers	1,181	

**NEXT STEP:**

Follow directions given by committee and/or board.

**FISCAL IMPACT, IF ANY:**

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

**PERSON TO CONTACT:**

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



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

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**AGENDA ITEM: 9.3**  
**DATE: November 20, 2014**

**ACTION REQUESTED:** Information Only: Diversion Program Update

**REQUESTED BY:** Cynthia Klein, RN, Chairperson

**BACKGROUND:**

**Program Update**

Staff members of the Board of Registered Nursing have become aware of false information being disseminated by stakeholders and others as it relates to the (BRN), the Diversion Program, Enforcement, and the Probation Program. It appears that providing information to administrators, nursing schools, and hospitals is now more crucial than ever. To counteract some of this misinformation and to help others become aware of the Diversion Program, the BRN has been invited to give presentations at training sessions and major conferences. On September 19<sup>th</sup>, the Deputy Chief, Beth Scott and the Diversion Program Manager, Carol Stanford presented information regarding the BRN's enforcement processes and the Diversion Program at a class in southern California entitled BRN Drug Diversion. There were several questions and statements that were addressed to clarify the misconceptions surrounding the purpose of the BRN and the Diversion Program.

On September 24<sup>th</sup>, the Diversion Liaison Committee Meeting was held at the Hilton Garden Inn in Sacramento. The Executive Officer, Louise Bailey, the Deputy Chief, Beth Scott, the Diversion Program Manager, Carol Stanford and staff, the Maximus Project Director, Virginia Matthews and case managers, along with representatives from all of the Diversion Evaluation Committees were in attendance. There were approximately 38 attendees. This is an annual required meeting of the DLC Committee to maintain the continuity and integrity of the program. Several issues were addressed and the minutes of the meeting are available upon request.

On September 25<sup>th</sup> the Nurse Facilitator's Conference was conducted at the Hilton Garden Inn in Sacramento. It was attended by the Deputy Chief, Beth Scott, the Diversion Program Manager, Carol Stanford and staff, the Probation Program Manager, Sheila Granby and staff and representatives of the Nurse Support Groups throughout the State. There were approximately 65 attendees. There was lively conversation and training that occurred with several issues addressed and clarified. This is also a vital conference to maintain valuable communication between the facilitators, board staff and the contractor. The minutes of this meeting are available upon request.

The Diversion Program has hired two new employees: Don Walker will be replacing Millie Lowery who will be retiring effective November 30<sup>th</sup> and Stephanie Morrison who has been hired as a Staff Services Analyst. Millie Lowery has been stalwart in her commitment to the Diversion Program for many years. Her work is to be commended and she will be missed.

## **Contractor Update**

The Diversion Program Contract was awarded to Maximus, the current contract is valid for a period of five years. The Department of Consumer Affairs support and expertise in this process is to be commended along with their staff, William Pequinot, who was instrumental in working with the health care boards to maintain a comprehensive and thorough bidding process. The BRN is thankful to the DCA for their support and professionalism throughout the bidding process.

The Diversion Program staff is meeting with the contractor on a regular basis to develop and update the forms for the new contract which will begin January 1, 2015.

## **Diversion Evaluation Committees (DEC)**

There are currently one public member and three physician member vacancies at this time. Recruitment continues.

## **Statistics**

The Statistical Summary Report for July and September is attached. As of August 31, 2014, there were 1,906 successful completions.

### **NEXT STEP:**

None

### **FISCAL IMPACT, IF ANY:**

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

### **PERSON TO CONTACT:**

Carol Stanford, Diversion Program Manager  
(916) 574-7616

**BOARD OF REGISTERED NURSING  
DIVERSION PROGRAM  
STATISTICAL SUMMARY  
July 1, 2014 - August 31, 2014**

	CURRENT MONTHS	YEAR TO DATE (FY)	PROGRAM TO DATE
<b>INTAKES COMPLETED</b>	25	25	4,882
<b>INTAKE INFORMATION</b>			
Female	16	16	3,822
Male	9	9	1,033
Unknown	0	0	27
Average Age	30-49		
Most Common Worksite	Unemployed		
Most Common Specialty	Critical Care/Med-Surg		
Most Common Substance Abused	Alcohol/Norco		
<b>PRESENTING PROBLEM AT INTAKE</b>			
Substance Abuse (only)	14	14	3,090
Mental Illness (only)	1	1	158
Dual Diagnosis	10	10	1,562
Undetermined	0	0	72
<b>REFERRAL TYPE*</b>			
Board	15	15	3,565
Self	10	10	1,317
*May change after Intake			
<b>ETHNICITY (IF KNOWN) AT INTAKE</b>			
American Indian/Alaska Native	0	0	36
Asian/Asian Indian	1	1	113
African American	0	0	158
Hispanic	3	3	206
Native Hawaiian/Pacific Islander	0	0	23
Caucasian	19	19	4,008
Other	2	2	72
Not Reported	0	0	266
<b>CLOSURES</b>			
Successful Completion	13	13	1,906
Failure to Derive Benefit	0	0	120
Failure to Comply	1	1	961
Moved to Another State	0	0	52
Not Accepted by DEC	1	1	56
Voluntary Withdrawal Post-DEC	3	3	326
Voluntary Withdrawal Pre-DEC	5	5	491
Participant Withdrawn-Failure to sign con	1	1	1
Closed Public Risk	5	5	304
No Longer Eligible	0	0	16
Clinically Inappropriate	1	1	26
Client Expired	0	0	39
Sent to Board Pre-DEC	0	0	1
<b>TOTAL CLOSURES</b>	30	30	4,299
<b>NUMBER OF PARTICIPANTS: 456 (as of August 31, 2014)</b>			

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

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**AGENDA ITEM:** 9.3.1  
**DATE:** November 20, 2014

**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.

**APPOINTMENT**

Below is the name of the candidate who is being recommended for appointment to the Diversion Evaluation Committees (DEC). His application and résumé is attached. If appointed, his term will expire November 30, 2018.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Dian Harrison (public pending interview)			
Peter Scheid	Physician	Burbank	8
Kwame Okoreeh	Nurse	Ontario	9
James Collier	Physician	Emeryville	13

**RESIGNATION**

Below is a Diversion Evaluation Committee Member who resigned for personal reasons.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Sam Shapiro	Physician	Burbank	9
Kathleen Coe	Nurse	Burbank	9

**NEXT STEP:** Continue recruiting efforts

**FISCAL IMPACT, IF ANY:** None

**PERSON TO CONTACT:** Carol Stanford, Diversion Program Manager  
(916) 574-7616

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

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**AGENDA ITEM:** 9.4  
**DATE:** November 20, 2014

**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.

**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

**PERSON TO CONTACT:** Stacie Berumen  
Assistant Executive Officer  
(916) 574-7600

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

**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"> <li>• Cost to the Board – Additional staff to review and approve evaluators prior to evaluations. Then create and maintain list of clinical evaluators.</li> <li>• Cost to RN – cost of clinical diagnostic evaluation.</li> </ul>

**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><b>#2:</b> 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&amp;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"> <li>• Cost to the Board – additional NEC for Probation Program</li> <li>• Cost to licensee – loss of wages during cease practice – undetermined. Average</li> </ul>

**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&amp;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"> <li>• Cost to licensee for drug testing – approximately \$800; \$100/test x 8 tests)</li> </ul>
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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>B&amp;P Code Section 315(c)(4)</b> 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"> <li>• Increased cost of adjudicating complaints</li> <li>• Increased staff cost for monitoring and data input</li> <li>• Cost of obtaining aggregate data and reports from drug testing contractor</li> <li>• Cost of modifying BreZE</li> </ul> Cost to Licensee – <ul style="list-style-type: none"> <li>• Minimum \$2,200/year due to increase of minimum number of tests from 30 to 52 @ \$100/test.</li> <li>• Loss of wages as a result of voluntary license</li> </ul>

**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 BreEZe 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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**Board of Registered Nursing – Diversion/Discipline Committee  
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>B&amp;P Code Section 315(c)(5)</b> 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>B&amp;P Code Section 315(c)(6)</b> 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>B&amp;P Code Section 315(c)(7)</b> 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>B&amp;P Code Section 315(c)(8)</b> Procedures to be followed when a licensee tests positive for a banned substance.				
<b>UNIFORM STANDARD SUMMARY</b>	<b>DIVERSION PROGRAM</b>	<b>PROBATION PROGRAM</b>	<b>PROGRAMMATIC CONSIDERATION &amp; ISSUES</b>	<b>FISCAL IMPLICATIONS</b>
<p><b>#8:</b> 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&amp;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&amp;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&amp;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&amp;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&amp;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>B&amp;P Code Section 315(c)(10)</b> 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&amp;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"> <li>• Cost to Board associated with increased staff/staff time to change drug testing frequency, notify probationer and contractor of frequency,</li> </ul>

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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&amp;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"> <li>• Costs to RN associated with loss of income and increased testing.</li> </ul>
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		citation and fine/or warning, or re-evaluation/testing.		
<b>B&amp;P Code Section 315(c)(11)</b> 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><b>#11:</b> 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>B&amp;P Code Section 315(c)(12)</b> 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><b>#12:</b> 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>	
<p><b>B&amp;P Code Section 315(c)(13)</b> 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.</p>				
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>B&amp;P Code Section 315(c)(14)</b> 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"><b>#14:</b></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&amp;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"> <li>• Additional staff /staff time required to input and maintain information related to practice restrictions and detailed description of any restriction.</li> <li>• Additional cost to modify BreEZe.</li> </ul>

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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>B&amp;P Code Section 315(c)(15)</b> 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>B&amp;P Code Section 315(c)(16)</b> 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><b>#16:</b> 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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DRAFT

**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.

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**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.

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**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:**

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**PROBATION PROGRAM:** Conforms to the Standard.

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**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.

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**DIVERSION PROGRAM:**

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**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.

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**DIVERSION PROGRAM:**

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**PROBATION PROGRAM:** Conforms to the Standard.

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**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.

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**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.