



NOTICE OF TELECONFERENCE ENFORCEMENT COMMITTEE MEETING

December 3, 2021
9:00 a.m. to 11:00 a.m.
(or until completion of business)

Pursuant to the statutory provisions of Government Code section 11133, neither a public location nor teleconference locations are provided. To access the Webex event, attendees will need to click the following link and enter their first name, last name, email, and the event password listed below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mc5cceb968371d87fd3ed8acbccaa5a3fe>

If joining using the link above

Event number: 2494 536 4873

Event password: BCE12032021

If joining by phone

+1-415-655-0001 US Toll

Access code: 249 453 64873

Passcode: 22312032

The preferred audio connection is via mobile phone. The phone number and access code will be provided as part of your connection to the meeting. When signing into the Webex platform, participants may be asked for their name and email address. Participants who choose not to provide their names will be required to provide a unique identifier, such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment. Public comments will be limited to two minutes per person unless, in the discretion of the Board, circumstances require a shorter period. Members of the public will not be permitted to "yield" their allotted time to other members of the public to make comments.

Important Notices to the Public: The Board of Chiropractic Examiners will hold this meeting via Webex – access information is provided above. General instructions for using Webex are attached to the agenda. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at (916) 263-5355, or e-mailing chiro.info@dca.ca.gov, or sending a written request to the Board of Chiropractic Examiners, 1625 N. Market Boulevard, Suite N-327, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

AGENDA

- 1. Call to Order & Establishment of a Quorum**
- 2. Approval of October 16, 2020 Meeting Minutes**
- 3. Review, Discussion, and Possible Action Regarding the Expert Witness Recruitment and Selection Process**

- 4. Review, Discussion, and Possible Action Regarding the Record Keeping Requirements for Chiropractic Patient Records (California Code of Regulations, Title 16, Section 318)**
- 5. Review, Discussion, and Possible Action Regarding Proposed Statutory Language to Amend Business and Professions Code Section 1007, subdivision (c), - Specified Exemptions to the Patient Notification Requirement for Licensees Placed on Probation by the Board**
- 6. Review, Discussion, and Possible Action regarding:**
 - A. Consumer Protection Enforcement Initiative (CPEI)
 - B. The Board's *Disciplinary Guidelines and Model Disciplinary Orders* and Implementation of the Uniform Standards for Substance Abusing Licensees (California Code of Regulations, Title 16, Section 384)
- 7. Public Comment for Items Not on the Agenda**

Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting (Government Code sections 11125 and 11125.7(a)). Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Committee Chair.
- 8. Future Agenda Items**

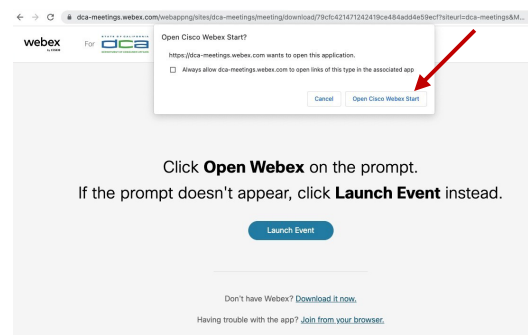
Note: The Committee may not discuss or take action on any matter raised during this section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting (Government Code section 11125).
- 9. Adjournment**

In accordance with Government Code section 11133, no physical location is available for observation and public comment, so please plan to attend the meeting telephonically. Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

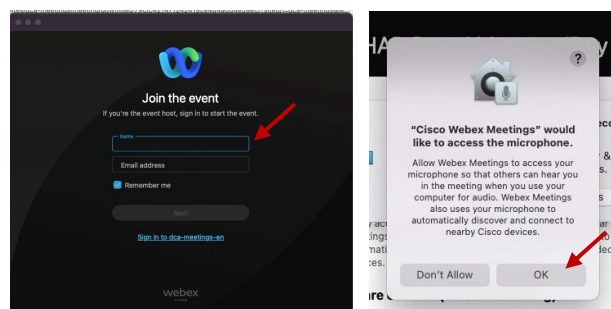
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If joining using the meeting link

- 1 Click on the meeting link. This can be found in the meeting notice you received.
- 2 If you have not previously used Webex on your device, your web browser may ask if you want to open Webex. Click “Open Cisco Webex Start” or “Open Webex”, whichever option is presented. DO NOT click “Join from your browser”, as you will not be able to participate during the meeting.



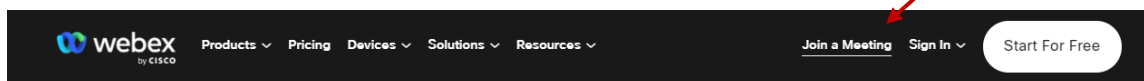
- 3 Enter your name and email address. Click “Join as a guest”. Accept any request for permission to use your microphone and/or camera.



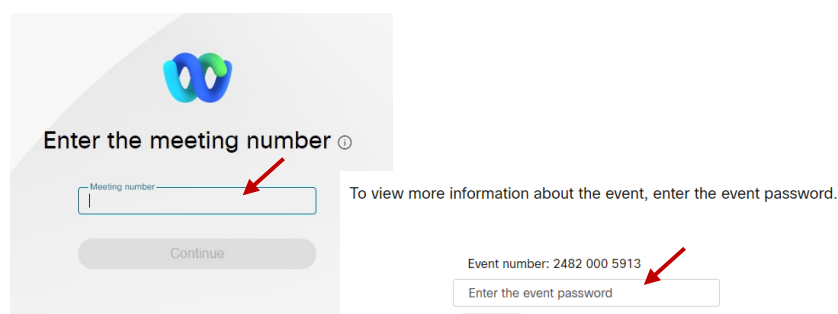
OR

If joining from Webex.com

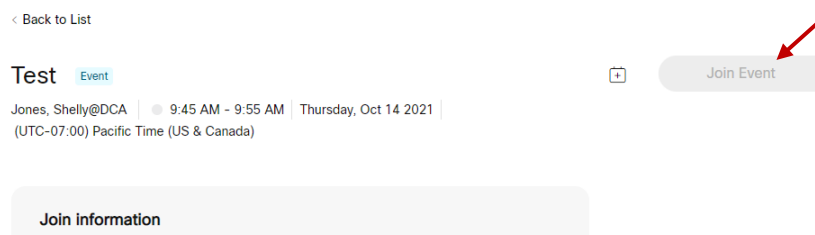
- 1 Click on “Join a Meeting” at the top of the Webex window.



- 2 Enter the meeting/event number and click “Continue”. Enter the event password and click “OK”. This can be found in the meeting notice you received.



- 3 The meeting information will be displayed. Click “Join Event”.



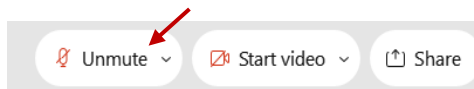
OR

Connect via telephone:

You may also join the meeting by calling in using the phone number, access code, and passcode provided in the meeting notice.

Microphone

Microphone control (mute/unmute button) is located on the command row.

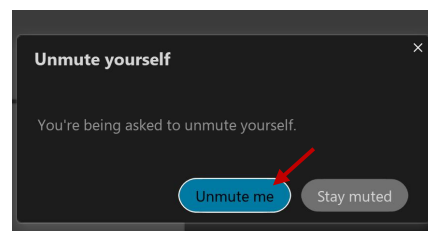


Green microphone = Unmuted: People in the meeting can hear you.



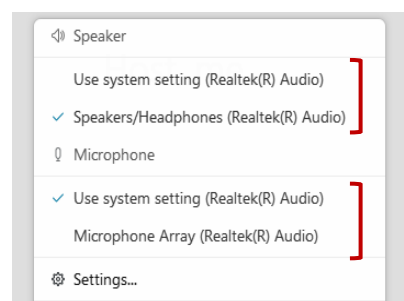
Red microphone = Muted: No one in the meeting can hear you.

Note: Only panelists can mute/unmute their own microphones. Attendees will remain muted unless the moderator enables their microphone at which time the attendee will be provided the ability to unmute their microphone by clicking on “Unmute Me”.



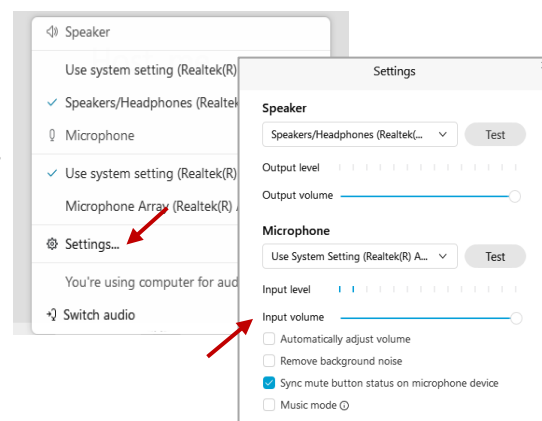
If you cannot hear or be heard

- 1 Click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window, select a different:
 - Microphone option if participants can't hear you.
 - Speaker option if you can't hear participants.



If your microphone volume is too low or too high

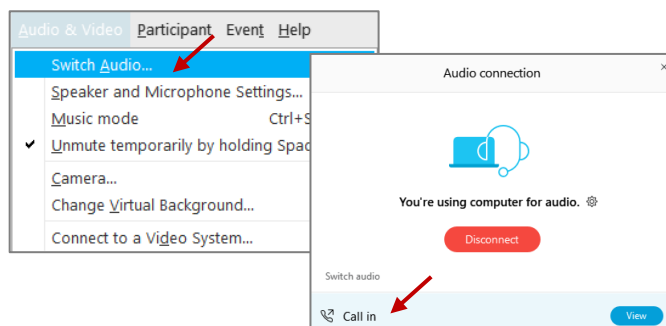
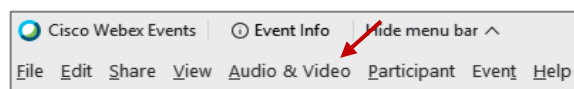
- 1 Locate the command row – click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window:
 - Click on “Settings...”:
 - Drag the “Input Volume” located under microphone settings to adjust your volume.



Audio Connectivity Issues

If you are connected by computer or tablet and you have audio issues or no microphone/speakers, you can link your phone through webex. Your phone will then become your audio source during the meeting.

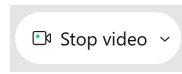
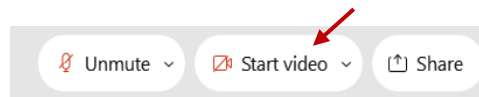
- 1 Click on “Audio & Video” from the menu bar.
- 2 Select “Switch Audio” from the drop-down menu.
- 3 Select the “Call In” option and following the directions.



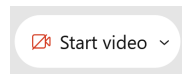
Web Camera

Only panelists (e.g. staff, board members, presenters) can access the web camera feature.

Camera control (Start Video/Stop Video button) is located on the command row.



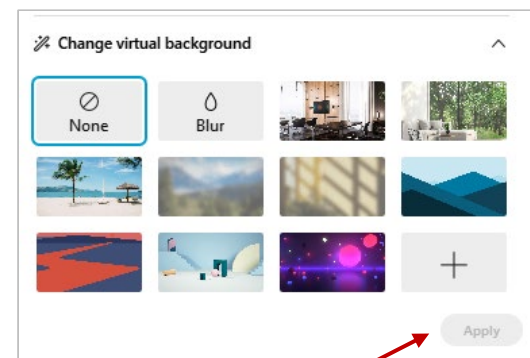
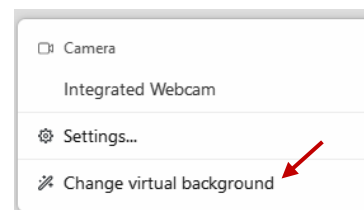
Green dot in camera = Camera is on: People in the meeting can see you.



Red dot in camera = Camera is off: No one in the meeting can see you.

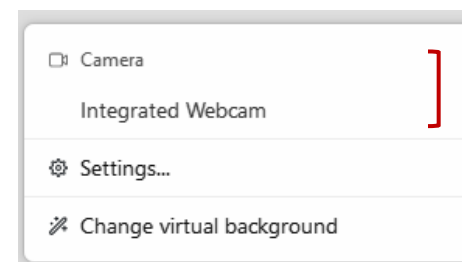
Virtual Background

- 1 To access virtual backgrounds, click on the bottom facing arrow located on the video button.
- 2 Click on "Change Virtual Background".
- 3 From the pop-up window, click on any of the available images to display that image as your virtual background and click "Apply".



If you cannot be seen

- 1 Locate the command row – click on the bottom facing arrow located on the video button.
- 2 From the pop-up window, select a different camera from the list.





**Agenda Item 2
December 3, 2021**

Approval of October 16, 2020 Meeting Minutes

Purpose of the Item

The Enforcement Committee will review and approve the minutes of the previous Committee Meeting.

Action(s) Requested

The Committee will be asked to make a motion to approve the October 16, 2020 Committee Meeting minutes.

Background

N/A

Attachment(s)

- October 16, 2020 Enforcement Committee Meeting Minutes (Draft)

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
October 16, 2020**

Teleconference Meeting

Committee Members Present

Sergio Azzolino, D.C., Chair
David Paris, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Kristin Walker, Enforcement Manager
Anthony Pane, Assistant Chief Counsel
Clay Jackson, Regulations Attorney III
Tammi Pitto, Enforcement Analyst
Natalie Boyer, Continuing Education Analyst

Call to Order

Dr. Azzolino called the meeting to order at 12:04 p.m.

Roll Call

Dr. Paris called roll. Frank Ruffino, Public Member, was not present. A quorum was established.

Approval of April 19, 2019, Committee Meeting Minutes

MOTION: DR. PARIS MOVED TO APPROVE THE MINUTES OF THE APRIL 19, 2019 ENFORCEMENT COMMITTEE MEETING.

SECOND: DR. AZZOLINO SECONDED THE MOTION.

Discussion: There was none.

Public Comment: There was none.

VOTE: 2-0, (DR. AZZOLINO – AYE, DR. PARIS – AYE) MOTION CARRIED.

Review, Discussion and Possible Action on Proposed Language to Amend California Code of Regulations, Title 16, Sections 390.4 (Contested Citations) and 390.5 (Compliance with Citation/Order of Abatement)

Ms. Walker explained Business and Professions Code (BPC) section 125.9 contains specific provisions that must be included in a citation program. However, upon review of the Board's regulations (California Code of Regulations [CCR], title 16, sections 390-390.6), two required provisions within that statute were not included in the Board's citation system:

- If a hearing is not requested, payment of any fine shall not constitute an admission of the violation charged (BPC section 125.9(b)(4)).
- Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine (BPC section 125.9(b)(5)).

Ms. Walker stated in addition to the two provisions from BPC section 125.9, staff is also proposing an amendment to CCR, title 16, section 390.4 to change the deadline for requesting an informal conference from 14 days after service of the citation to 30 days of the date of issuance of the citation, for consistency with the deadline for requesting a formal administrative hearing and to reduce confusion for licensees who want to request both appeal options.

Mr. Jackson stated the proposed revisions would help make it clear to the regulated public and allow consistency in the timelines, which is very important.

Mr. McCarther asked about one of the sentences in the proposed language for CCR, title 16, section 390.5(c) where it states “the full amount of the assessed fine shall be added to the fee for renewal of a license.” He indicated he has no concerns with the language but wanted to be sure the Board has the appropriate authority to do so.

Ms. Walker replied the proposed language came directly from the statute and staff will work with legal on how to implement it.

Mr. Jackson confirmed the Board would be able to do so.

Dr. Azzolino stated the regulation states failure to pay the citation may result in disciplinary action and asked if there was a defined action or if it was discretionary.

Ms. Walker explained the most effective way to ensure payment of the fine would be to put a hold on the license and prevent it from being renewed until the fine has been paid. However, in the current citation system, the Board does not have the ability to put a hold on the license so Enforcement staff must refer unpaid fines to the Franchise Tax Board Intercept Program or pursue disciplinary action against the licensee. She stated the proposed language will provide a more efficient mechanism to ensure licensees comply with their citation without pursuing formal discipline for failing to pay a fine.

Mr. McCarther asked if this prevents us from using the Franchise Tax Board in cases where the cited individual is not renewing their license.

Ms. Walker stated the proposed changes would not prevent the Board from using the Franchise Tax Board. However, staff will need to monitor the accounts closely to prevent double collection in cases where the licensee pays the Board directly.

MOTION: DR. AZZOLINO MOVED TO RECOMMEND THAT THE BOARD APPROVE THE PROPOSED LANGUAGE TO AMEND CCR, TITLE 16, SECTIONS 390.4 (CONTESTED

CITATIONS) AND 390.5 (COMPLIANCE WITH CITATION/ORDER OF ABATEMENT) AND COMMENCE THE RULEMAKING PROCESS.

SECOND: DR. PARIS SECONDED THE MOTION.

Discussion: There was none.

Public Comment: There was none.

VOTE: 2-0, (DR. AZZOLINO – AYE, DR. PARIS – AYE) MOTION CARRIED.

Review, Discussion and Possible Action Regarding the Expert Witness Program

Ms. Walker provided an update on the Board's Expert Witness Program and explained the Committee has worked to revamp the program's guidelines, selection criteria, and standards, and staff obtained sample reports from three experts to develop a template for all expert reports and also use as a baseline to evaluate the reports received during the expert recruitment process.

Ms. Walker stated in addition to the Board's work on its Expert Witness Program, the Department of Consumer Affairs launched an Expert Witness Program to review and evaluate expert witness training and develop best practices to be shared across the Department. Although the program was placed on hold due to COVID-19, some items that were shared through the program can be beneficial to the Board's review of its program.

Dr. Azzolino stated everything looks great and he had no questions.

Dr. Paris concurred with Dr. Azzolino and had no questions.

Public Comment: There was none.

Review, Discussion and Possible Action Regarding the Top 10 Enforcement Violations

Dr. Azzolino stated the data provided is similar to what he has been seeing over the last several years and asked if there are any recent trends.

Ms. Walker indicated failed continuing education audits continue to be an issue, and some of the data includes broad regulations that tend to apply to most cases, such as endangering the public, moral turpitude, or dishonesty. She explained that citing these regulations is not very informative to the true nature of the case, and in order to develop material that can be used to educate licensees and the public, it may be helpful to take a more comprehensive approach and summarize what the Board and Enforcement staff see as key issues.

Dr. Azzolino agreed that would be very helpful and stated this information is not only for the Board and can also to help licensees better understand how not to commit these types of violations. He asked if it would be beneficial to provide statistics on the sources of the complaints, such as patients and insurance companies.

Ms. Walker replied that excluding Board-initiated cases for failed continuing education audits and licensee arrests and convictions, most complaints are received directly from patients and

the general public.

Mr. Puleo stated the Board typically shares this information when providing presentations and explained it is important to let the public know they can bring their concerns to the Board's attention.

Mr. Pane stated making that information available also enhances public protection.

Mr. McCarther asked if this would have any identifying information related to specific cases.

Ms. Walker stated the information would be categorized without any specific case information.

Dr. Paris added he believes this would be valuable information to include.

Dr. Azzolino stated unless the Committee needs a motion, he would like to direct staff to include information regarding the source of complaints in Enforcement Program updates.

Mr. Pane indicated no motion was necessary.

Mr. Jackson agreed with Mr. Pane.

Mr. Puleo indicated when the Board's new IT system is fully operational, staff will be able to more easily identify this information.

Public Comment: There was none.

Update on Enforcement Program Statistical Data

Ms. Walker provided an update on the Enforcement Program's statistical data and indicated the number of complaints has decreased this fiscal year, primary due to a lack of failed continuing education audits due to the waivers currently in place. She stated the number of pending complaints is comparable to the last two fiscal years and is a significant workload for the Enforcement Unit.

Dr. Azzolino asked if staff could provide more information regarding the complaints that are categorized as unprofessional conduct, as that information would benefit public protection by educating licensees.

Ms. Walker indicated staff should be able to provide additional information after the Enforcement module of the Board's new IT system is implemented.

Dr. Paris asked if some of these unprofessional conduct complaints were COVID-driven.

Ms. Walker replied that some COVID-related complaints are contained in the category of unprofessional conduct while most are listed under improper advertising.

Dr. Paris asked if the increase in citations was related to failed continuing education audits.

Ms. Walker responded affirmatively and explained those citations were primarily issued to licensees who either did not take any continuing education or had failed multiple continuing education audits. She stated the Enforcement Unit took an educational approach to the failed

continuing education audits by issuing letters of admonishment when appropriate.

Dr. Paris asked for clarification on the number of continuing education audits being conducted by the Board so he can understand if the percentage of failed continuing education audits is the same or increasing.

Mr. Puleo explained staff increased the number of continuing education audits being conducted and some of those failed audits resulted in citations being issued.

Dr. Paris asked if it was possible to see the data as a percentage of audits.

Mr. Puleo stated the Board is currently unable to audit continuing education due to the waivers in place and staff hopes to automate the audits in the new IT system because they are very labor-intensive. He also stated hopefully the IT system will allow staff to track the audit data in more detail.

Dr. Azzolino indicated for many of his specialty certifications, he cannot renew them unless he uploads his continuing education and suggested the Board do the same.

Mr. Puleo stated staff is planning to do that with the new IT system.

Mr. McCarther explained the renewal process in the new IT system requires licensees to upload their continuing education certificates and certify they completed all of their continuing education before being able to pay for and submit their license renewal application.

Public Comment: There was none.

Public Comment for Items Not on the Agenda

There was none.

Future Agenda Items

Dr. Azzolino requested seeking legal counsel's assistance with determining how the Board can address issues he is seeing with advertising and promotions on social media.

Mr. McCarther asked for more clarity on the specific concerns.

Dr. Azzolino explained he frequently sees content in Instagram posts that he would consider to be unprofessional conduct on Instagram and clarified he is seeking guidance on how the Board can address this online content and determine whether the content constitutes unprofessional conduct or is protected by free speech.

Dr. Paris indicated he is supportive of holding that discussion.

Public Comment: There was none.

Adjournment

Dr. Azzolino adjourned the meeting at 12:56 p.m.



**Agenda Item 3
December 3, 2021**

**Review, Discussion, and Possible Action Regarding the
Expert Witness Recruitment and Selection Process**

Purpose of the Item

Staff will present a proposed recruitment timeline for Subject Matter Experts for the Board's Enforcement Program to the Enforcement Committee for review and discussion.

Action(s) Requested

The Committee will be asked to consider recommending to the full Board that it authorize Board staff to initiate the recruitment process for Subject Matter Experts for the Board's Enforcement Program in January 2022.

Background

The Committee has worked with staff to enhance the expert witness selection criteria, standards, process, training materials, and application. Staff compiled a sample case and obtained sample reports from three experts, and plans to use this information to create an expert report template and as a baseline to evaluate the writing samples that will be submitted during the recruitment process.

Staff is requesting the Board's authorization to initiate the recruitment process for new Subject Matter Experts for the Board's Enforcement Program based on the following proposed timeline:

- **January 3, 2022:** Post recruitment announcement on the Board's website and begin accepting applications.
- **February 15, 2022:** Final deadline to submit applications.
- **March 4, 2022:** Final deadline to submit completed writing exercises (applicants prepare an expert report based on a sample case).
- **March 2022:** Members of the Enforcement Committee conduct interviews with qualified applicants.
- **April 2022:** Board staff executes contracts with selected applicants and conducts a training session.

Attachment(s)

N/A



**Agenda Item 4
December 3, 2021**

Review, Discussion, and Possible Action Regarding the Record Keeping Requirements for Chiropractic Patient Records (California Code of Regulations, Title 16, Section 318)

Purpose of the Item

Staff will present the Board's current record keeping regulation (California Code of Regulations [CCR], title 16, section 318), as well as examples of comparable regulations in Colorado and Texas, to the Enforcement Committee for review and discussion.

Action(s) Requested

The Committee will be asked to review CCR, title 16, section 318 and discuss if any additions and/or revisions to the regulation are necessary.

Background

The Board's current record keeping regulation, CCR, title 16, section 318, outlines the minimum requirements for documenting and maintaining chiropractic patient records. However, this regulation does not specify the necessary documentation for the patient history, complaint, diagnosis/analysis, and treatment, and it does not differentiate between an initial patient encounter and an established patient visit. As a result, the Board's Enforcement Program must rely on experts' opinions regarding the standard of care to support inadequate record keeping violations in many cases, as the record keeping requirements are not clearly expressed in the regulation.

Attachment(s)

1. California Code of Regulations, Title 16, Section 318 (Chiropractic Patient Records/Accountable Billings)
2. Code of Colorado Regulations, 3 CCR 707-1, Rule 1.22 (Record Keeping Requirements)
3. Texas Administrative Code, Title 22, Part 3, Chapter 76, Rule 76.1 (Required Contents of Patient Records)

California Code of Regulations, Title 16, Section 318

§ 318. Chiropractic Patient Records/Accountable Billings.

(a) Chiropractic Patient Records. Each licensed chiropractor is required to maintain all active and inactive chiropractic patient records for five years from the date of the doctor's last treatment of the patient unless state or federal laws require a longer period of retention. Active chiropractic records are all chiropractic records of patients treated within the last 12 months. Chiropractic patient records shall be classified as inactive when there has elapsed a period of more than 12 months since the date of the last patient treatment.

All chiropractic patient records shall be available to any representative of the Board upon presentation of patient's written consent or a valid legal order. Active chiropractic patient records shall be immediately available to any representative of the Board at the chiropractic office where the patient has been or is being treated. Inactive chiropractic patient records shall be available upon ten days notice to any representative of the Board. The location of said inactive records shall be reported immediately upon request.

Active and inactive chiropractic patient records must include all of the following:

- (1) Patient's full name, date of birth, and social security number (if available);
- (2) Patient gender, height and weight. An estimated height and weight is acceptable where the physical condition of the patient prevents actual measurement;
- (3) Patient history, complaint, diagnosis/analysis, and treatment must be signed by the primary treating doctor. Thereafter, any treatment rendered by any other doctor must be signed or initialed by said doctor;
- (4) Signature of patient;
- (5) Date of each and every patient visit;
- (6) All chiropractic X-rays, or evidence of the transfer of said X-rays;
- (7) Signed written informed consent as specified in Section 319.1.

(b) Accountable Billings. Each licensed chiropractor is required to ensure accurate billing of his or her chiropractic services whether or not such chiropractor is an employee of any business entity, whether corporate or individual, and whether or not billing for such services is accomplished by an individual or business entity other than the licensee. In the event an error occurs which results in an overbilling, the licensee must promptly make reimbursement of the overbilling whether or not the licensee is in

any way compensated for such reimbursement by his employer, agent or any other individual or business entity responsible for such error. Failure by the licensee, within 30 days after discovery or notification of an error which resulted in an overbilling, to make full reimbursement constitutes unprofessional conduct.

Note: Authority cited: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)). Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)).

- B. Upon revocation and relinquishment of license, the licensee shall immediately stop the practice of chiropractic and shall tender his/her license to practice chiropractic to the Board within twenty-four hours from the effective date of revocation or relinquishment. The licensee shall notify all patients within thirty calendar days that the licensee has ceased the practice of chiropractic and that the patient must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a practitioner designated by the patient, or if the licensee's practice is sold, to the chiropractor who purchases the practice. The transfer of patient records must be completed within sixty days. These terms may be set forth in the revocation or relinquishment order. Written notice of the termination of practice must be made to all patients of the practice to the patient's last known address, or by legal notice by publication.
- C. The practitioner who is suspended, relinquished, or revoked cannot be on the premises of the office to observe, monitor, or participate in any way in care given. A practitioner may derive no income from the practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension.
- D. Any request to deviate from this Rule must be set forth in writing to the Board. The board may review the request and may, upon good cause shown, issue an amended termination order. The decision to amend the terms for the termination of practice is final with the Board. A failure to comply with the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.
- E. For any termination of practice for reasons other than suspension, relinquishment, or revocation, the licensee or his designee shall notify all patients within sixty calendar days that the licensee has ceased the practice of chiropractic and that the patient may make arrangements for the transfer of patient records. The licensee or his designee shall make the patient records or copies of the patient records available to the patient, to a practitioner designated by the patient, or if the licensee's practice is sold, to the chiropractor who purchases the practice. The transfer of patient records must be completed within sixty days. Written notice of the termination of practice must be made to all patients of the practice to the patient's last known mailing address, last known e-mail address, or legal notice by publication.

1.21 Animals in the Office

If a chiropractor allows animals in his/her office, the chiropractor shall be responsible for their proper care and feeding, shall have them vaccinated and licensed, as appropriate, and shall maintain compliance at all times with the sanitation requirements referenced in section 12-215-115(1)(g), C.R.S.

1.22 Record Keeping Requirements

Documentation of the patient's health history, presenting complaint(s), progression of care, diagnosis, prognosis and treatment plan must be reflected in the record keeping and written reports of the patient file. Records are required to be contemporaneous, legible, utilize standard medical terminology or abbreviations, contain adequate identification of the patient, contain adequate identification of the provider of service and indicate the date the service was performed. All professional services rendered during each patient encounter should be documented. Any addition or correction to the patient file after the final form shall be signed and dated by the person making the addition or correction. The following minimum components must be documented within the patient file:

A. Initial Patient Visit:

1. History:

- a. Chief complaint(s) described in terms of onset, provocative, palliative, quality, radiation, setting, and timing.
- b. Surgical, hospitalization, past/recent illness, trauma, family, social, past/recent system review, and past/recent allergies.
- c. Non-prescription, prescription, botanical, homeopathic medicines, and vitamin supplements.
- d. A reasonable effort to obtain and review pertinent records as clinically indicated from other health care providers, imaging facilities, or laboratories.

2. Examination:

- a. Vital signs as clinically indicated.
- b. Document examinations or tests ordered or performed and the results of each as necessitated by the patient's clinical presentation consistent with common healthcare practices.
- c. Document examinations of neuromusculoskeletal conditions using a format of inspection, palpation, neurological testing, range of motion, and orthopedic testing.
- d. Document prognosis and/or outcome expectations.
- e. When clinically indicated, treatment options/alternatives should be documented.
- f. When referring to another healthcare provider, correspondence may be provided for patient care coordination.

B. Established Patient Visit:

- 1. **Subjective Complaint:** The patient's description of complaints should be recorded at each visit indicating improvement, worsening, or no change.
- 2. **Objective Findings:** Changes in the clinical signs of a condition should be described by the chiropractor at each visit.
- 3. **Assessment or Diagnosis:** It is not necessary to update this category at each visit. However, periodic clinical re-evaluations should be performed, specifically documented and recorded in the daily entries. Changes in the patient's diagnosis should be recorded in the daily entries when clinically indicated. Prognosis and/or outcome expectations should be updated periodically consistent with the clinical presentation.
- 4. **Plan of Management:** A provisional plan of management should be recorded initially and further entries should be made as this plan is modified and/or as a patient enters a new phase of treatment or has a diagnosis change. Changes in procedures should be documented and based on clinical assessment and reasoning.

5. Procedures: Daily recording of procedures performed should include a description of type and location of procedure. Units of time should be recorded when appropriate.
- C. Ancillary Documentation:
1. Correspondence sent and received.
 2. Specialty reports (diagnostic imaging, laboratory results, nerve conduction studies, etc.).
 3. Communications (telephone conversations, dialogue with patient guardian or other healthcare providers).
- D. Patient clinical records shall be maintained for a minimum of seven years after the last date of treatment or examination, or at least two years after the patient reaches the age of eighteen, whichever occurs later.
- E. When the destruction cycle is imminent, written notice to the patient's last known address, or notice by publication, must be made sixty days prior to destruction allowing a thirty (30) day period wherein the patient may claim his/her records. When a patient claims such records, the records must be provided to the patient, or legal guardian, at no charge; however, recovery of appropriate postage and handling costs is permitted.
- F. Records shall be destroyed in a manner that totally obliterates all information contained in the record such as by incinerating, shredding, or permanently deleting.
- G. Records may not be withheld for outstanding/past due professional fees. A reasonable fee for copying records may be assessed to the requesting party.
- H. If patient records are maintained electronically, then an off-site, secure back-up and data recovery system must be in place. Contemporaneous documentation is required regardless of whether electronic record keeping is accessible.

1.23 Solicitation of Accident Victims

Any licensee, either directly or through an agent, engaging in permissible solicitation under section 12-30-103(2), C.R.S., shall fully disclose in writing to the patient, prior to establishing a doctor-patient relationship, the nature of the solicitation as well as the licensee's relationship with other service providers.

1.24 General Licensing Provisions

- A. The following provisions shall be in effect relating to change of name and address.
1. The licensee shall submit legal evidence of name change by court record or marriage certificate within sixty days.
 2. The licensee shall submit any change of address within thirty days of such change. The change of address may be submitted in writing, by fax, or electronically. Telephone notification will not be accepted. Failure to notify the Board of the above changes within the guidelines outlined above may result in Board action against the licensee pursuant to section 12-215-111, C.R.S.

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EXAMINING BOARDS

PART 3

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 76

PATIENT RECORDS AND DOCUMENTATION

RULE §76.1

Required Contents of Patient Records

(a) "Patient record" means any record regularly used, created, or stored by a licensee or other person pertaining to a patient's history, diagnosis, treatment, prognosis, or billing, including records of other health care providers, currently or having been in the possession or custody of the licensee or other person.

(b) "Initial visit" means a contact with a new patient, a patient presenting a new condition or illness, or a patient presenting a recurrence of a previous condition.

(c) A licensee shall ensure a patient record supports all diagnoses, treatments, services, and billing.

(d) A licensee shall ensure a patient record is timely created, accurately dated, legible, signed or initialed by the individual who actually performed the treatment or service, and contains a key to abbreviations.

(e) As a minimum, a licensee shall include the following in all patient records created during an initial visit:

- (1) patient history;
- (2) description of symptoms or purpose of the visit;
- (3) findings of examinations, including imaging and laboratory records;
- (4) assessment;
- (5) diagnosis;
- (6) prognosis;
- (7) treatment plan, recommendations, and orders; and
- (8) treatment or service provided and the patient's response.

(f) Other than consultations, reports of findings, or non-therapeutic contacts with a patient, a licensee shall include in all records of a subsequent visit:

- (1) an updated history since last visit, if any;
- (2) the purpose of visit and changes in symptoms, if any, since last visit;
- (3) an examination of the area involved in the diagnosis;
- (4) an assessment of any change in the patient's condition since last visit;
- (5) the treatment or service provided and the patient's response; and
- (6) change in treatment plan or planned referrals if indicated.

(g) A licensee shall comply with all state and federal documentation laws pertaining to health care providers.

Source Note: The provisions of this §76.1 adopted to be effective September 13, 2020, 45 TexReg 6360

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**Agenda Item 5
December 3, 2021**

**Review, Discussion, and Possible Action Regarding Proposed
Statutory Language to Amend Business and Professions Code Section 1007,
subdivision (c), - Specified Exemptions to the Patient Notification Requirement
for Licensees Placed on Probation by the Board**

Purpose of the Item

Staff will present proposed statutory language to amend Business and Professions Code section 1007, subdivision (c), to the Enforcement Committee for review and discussion.

Action(s) Requested

The Committee will be asked to review and discuss the proposed statutory language to amend Business and Professions Code section 1007, subdivision (c), and consider recommending to the full Board that it include this proposal in the “New Issues” section of the Board’s Sunset Review Report.

Background

Senate Bill 1448 (Hill, Chapter 570, Statutes of 2018), known as the Patient’s Right to Know Act of 2018, added Business and Professions Code section 1007, which requires licensees placed on probation by the Board on or after July 1, 2019, to provide a separate disclosure that includes the licensee’s probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the Board, the Board’s telephone number, and an explanation of how the patient can find further information on the licensee’s probation on the licensee’s profile page on the Board’s online license information Internet Web site, to a patient or the patient’s guardian or health care surrogate before the patient’s first visit following the probationary order while the licensee is on probation.

Business and Professions Code section 1007, subdivision (c), specifies the exemptions to this patient notification requirement. However, some of these exemptions are not applicable to doctors of chiropractic and can be misused by licensees to avoid notifying patients of their probationary status.

Staff recommends the Committee consider proposed statutory language to remove the nonapplicable exemptions from this mandatory patient notification requirement.

Attachment(s)

- Proposed Statutory Language to Amend Business and Professions Code Section 1007, subdivision (c) (Draft)

Proposed Statutory Language to Amend Business and Professions Code
Section 1007, subdivision (c)

§ 1007. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(43) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) "Board" for purposes of this section means the State Board of Chiropractic Examiners.

(Added by Stats. 2018, Ch. 570, Sec. 2. (SB 1448) Effective January 1, 2019.)

DRAFT



**Agenda Item 6A
December 3, 2021**

**Review, Discussion, and Possible Action regarding:
Consumer Protection Enforcement Initiative (CPEI)**

Purpose of the Item

Staff will present a plan to divide the proposed CPEI regulation package into six smaller regulation packages grouped by general topic to the Enforcement Committee for review and discussion.

Action(s) Requested

The Committee will be asked to review and discuss staff's plan to divide the proposed CPEI regulation package into smaller packages and consider recommending to the Board that it approve the plan.

Background

At its August 29, 2016 meeting, the Board approved the attached proposed language to add or amend 12 sections of the Board's regulations to establish stricter reporting and disclosure requirements for licensees and applicants and increase the Board's enforcement authority.

Board staff has been working on the CPEI regulation package and has determined, after review by the Department of Consumer Affairs Regulations Unit legal counsel, that additional changes are necessary to portions of the proposed language prior to proceeding with the regulatory process. To expeditiously move this proposal forward, staff recommends dividing the regulation package into the following six packages:

1. Chiropractic Practice Locations

- Amend 16 CCR 303 (Filing of Addresses)
- Amend 16 CCR 306.3 (Investigators; Authority to Inspect Premises)
- Amend 16 CCR 308 (Display of License)
- Add 16 CCR 308.1 (Notice to Consumers)

2. Discipline by Other Agencies and Licensee Reporting Requirements

- Amend 16 CCR 304 (Discipline by Another Jurisdiction)
- Amend 16 CCR 314 (Law Violators)
- Add 16 CCR 317.3 (Licensee Reporting Requirements)

3. Supervision of Unlicensed Individuals at Chiropractic Practices

- Amend 16 CCR 312 (Supervision of Unlicensed Individuals)

- 4. Order for Physical or Mental Examination of Applicants**
 - Add 16 CCR 321.3 (Physical or Mental Examination of Applicants)
- 5. Filing and Evaluation Process for Petitions for Reinstatement, Reduction of Penalty, or Early Termination of Probation**
 - Add 16 CCR 384.1 (Petitions for Reinstatement, Reduction of Penalty, or Early Termination of Probation)
- 6. Sexual Contact with a Patient and Required Actions Against Registered Sex Offenders**
 - Add 16 CCR 390.7 (Sexual Contact with Patient)
 - Add 16 CCR 390.8 (Required Actions Against Registered Sex Offenders)

With the Board's approval, staff plans to work with legal counsel to develop and update the proposed language for each of the regulation packages and present the packages to the Committee for review and discussion at future meetings in 2022.

Attachment(s)

- Proposed Language: Consumer Protection Enforcement Initiative (CPEI), Approved August 29, 2016

Proposed Language: Consumer Protection Enforcement Initiative (CPEI)**§303. Filing of Addresses.**

(a) Each person holding a license to practice chiropractic in the State of California under any and all laws administered by the board shall file with the board his or her proper and current place of physical practice address of his principal office and, where appropriate, each and every sub-office satellite office, with the board at its office in Sacramento and shall immediately notify the board at its said office of any and all changes of place of practice address, giving both his old and his new address within 30 days of change. If a licensee does not have a practice address, the licensee may file with the board his or her proper and current residential address. The address provided pursuant to this paragraph shall be public information unless the licensee also submits an alternate address pursuant to paragraph (b).

(b) In addition to the address filed pursuant to paragraph (a), a licensee may designate a post office box number or other alternate address as the address of record that shall be public information.

(c) Each licensee shall report to the board each and every change of address within 30 (thirty) days after each change, providing both the old and new addresses. The change of address shall be submitted in writing and mailed or faxed to the board at its office in Sacramento.

NOTE: Authority cited: Sections 27 and 136 of the Business and Professions Code, Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii). Reference: Sections 27 and 136 of the Business and Professions Code, Section 1000-10(a), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii).

§304. Discipline by Another State Jurisdiction.

~~The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state.~~

(a) Any disciplinary action taken against a licensee by another licensing entity or authority of this state or of another state or an agency of the federal government or province thereof, or the United States Military or a foreign government or any other jurisdiction shall constitute unprofessional conduct.

(b) Disciplinary action is defined as any revocation, suspension, probation, or reprimand of a professional license.

Note: Authority cited: Sections 1000-4(b) and 1000-10(a), of the Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii). Reference: Sections 1000-4(b) and 1000-10(a), of the Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii).

§306.3. Investigators; Authority to Inspect Premises.

The board or its designee may inspect the physical premises of any chiropractic office during regular business hours. Failure by a licensee to allow such an inspection shall be considered as unprofessional conduct.

Note: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Sections 1000-4(b), 1000-4(e) and 1000-4(h), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§308. Display of License.

(a) Each person holding a license shall prominently display a their current active license in the entry area or waiting area of their principal place of business ~~a conspicuous place in the licensee's principal office or primary place of practice.~~

(b) Any licensed ~~D~~doctor of ~~C~~chiropractic with more than one place of practice shall obtain from the board a Satellite Office Certificate for each additional place of practice. Said certificate must be renewed annually.

(c) A licensed ~~D~~doctor of ~~C~~chiropractic must prominently display in a conspicuous place a current active Satellite Office Certificate in the entry area or waiting area of at the office for which it was issued at all times while treating, examining or evaluating patients at that location.

(d) Notwithstanding subdivisions (b) and (c), any licensed doctor of chiropractic who is practicing in a mobile setting, such as at a health fair, a sporting event, or a patient's home, shall not be required to obtain and display a satellite certificate. However, any licensee practicing in such a mobile setting must at all times carry a current and active pocket license and shall make their pocket license available for inspection to a representative of the board or any member of the public immediately upon request.

(e) No licensed ~~D~~doctor of ~~C~~chiropractic shall display any chiropractic license, certificate or registration, which is not currently active and valid.

NOTE: Authority cited: Section 104 of the Business and Professions Code and Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 104 of the Business and Professions Code and Sections 1000-5, 1000-7 and 1000-12, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

308.1. Notice to Consumers

(a) A licensee engaged in the practice of chiropractic shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board. The notice shall include the following statement and information:

Notice to Consumers

Chiropractic doctors are licensed and regulated by the Board of Chiropractic Examiners

(916) 263-5355

www.chiro.ca.gov

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 40-point type in Arial font.

(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in the patient's medical records, stating the patient understands the chiropractor is licensed and regulated by the board.

(3) Including the notice in a statement on letterhead, discharge instructions, or other documents given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

NOTE: Authority cited: Sections 138 of the Business and Professions Code and 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 138 of the Business and Professions Code and 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§ 312. Illegal Practice Supervision of Unlicensed Individuals.

~~Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment.~~ An "unlicensed individual" is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid California chiropractic license. An exemption is hereby created for chiropractic students ~~doctors~~ participating in board approved preceptorship programs.

The licensed doctor of chiropractic shall initially examine and prepare a written treatment plan for a patient prior to the provision of physiotherapy treatment. The unlicensed individual shall follow and provide only the treatment defined in the written plan.

(a) The permitted activities of unlicensed individuals are as follows:

(a1) Unlicensed individuals may take the history of a patient. ~~However, this activity is separate from the consultation which at all times must be conducted by the licensed doctor.~~ The licensed doctor of chiropractic must confirm the history with the patient and determine all appropriate evaluations, imaging, examinations and referrals.

(b2) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations ~~except they may not perform such examinations which require diagnostic or analytic interpretations nor may they~~ at the direction of the licensed doctor of chiropractic. Unlicensed individuals may not render a conclusion either verbally or in writing to a patient regarding the patient's physical condition. ~~As an example, unlicensed individuals may not perform evaluations of heart or lung soundings.~~ Such individuals shall be at all times under the ~~immediate and direct~~ supervision of a licensed ~~D~~doctor of Chiropractic.

~~“Immediate and d~~Direct supervision” means the licensed ~~D~~doctor of Chiropractic shall be at all times ~~on the premises~~ present in the same chiropractic facility where the examinations are being conducted. The licensed ~~D~~doctor of Chiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings.

(c3) Unlicensed individuals may administer ~~physical~~ physiotherapy treatments as an adjunct to chiropractic adjustment, provided the ~~physical~~ physiotherapy treatment is conducted under the adequate indirect supervision of a licensed ~~D~~doctor of Chiropractic.

Adequate “Indirect supervision” means shall include all of the following:

(1) ~~The~~ licensed doctor of chiropractic shall be present in the same chiropractic facility with the unlicensed individual at least fifty percent of any work week or portion thereof the said individual is on duty unless this requirement has been waived by the board. The licensed doctor of chiropractic shall be readily available to the said individual at all other times for advice, assistance and instruction.

(2) ~~The doctor shall initially examine and prepare a written treatment program for a patient prior to the providing of physical therapy treatment by the unlicensed individual.~~

(3) ~~The doctor shall provide periodic reevaluation of the treatment program and of the individual's performance in relation to the patient. “Periodic reevaluation” shall mean at least once every thirty days the patient is under active care.~~

(4) ~~The doctor shall perform and record an evaluation of the patient and his or her response to treatment at the termination thereof.~~

(d4) The licensed doctor of chiropractic is responsible for evaluating a radiographic image before any markings are added that obstruct portions of a body part. The licensed doctor of chiropractic may refer the evaluation of radiographic images to a radiologist. Following the licensed doctor of chiropractic's review of the radiograph, the
Unlicensed individuals may mark X-ray films administered generated by a licensed Doctor of Chiropractic. "Marking X-rays" is defined as drawing and measuring between reference points and making angular and linear measurements. Unlicensed individuals are not permitted to make any diagnostic conclusions or chiropractic analytical listings, and
The licensed doctor of chiropractic is responsible for any pathological entities covered or obstructed by the markings.

(eb) Unlicensed individuals may not: administer

(1) Generate X-rays unless they hold a valid X-ray technician certificate from the issued by the Department of Public Health Services, Radiologic Health Branch, or participate under the direct supervision of a licensed Doctor of Chiropractic in a as part of a training program approved by that department and set forth in Section 25668.1 of the California Health and Safety Code. This prohibition, set forth in Section 30403 of Title 17 of the California Administrative Code includes the following activities:

(1A) Positioning of patient;

(2B) Setting up of X-ray machines;

(3C) Pushing a button to generate a radiographic beam;

(4D) Developing of films. However, the Department of Public Health Services, Radiologic Health Branch has determined that unlicensed individuals may develop X-ray film if that is their sole radiologic responsibility.

(2) Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. All preceptors must be under the direct supervision of a licensed doctor of chiropractic.

(c) Unlicensed individuals who exceed the permitted scope of practice set forth in this regulation shall be in violation of Section 15 of the Chiropractic Initiative Act and shall be prohibited from applying for a California chiropractic license for such time as may be determined by the board. Student doctors participating in board approved preceptorship programs are not to be considered "unlicensed individuals" when working in said program.

(d) A violation of this section shall constitute unprofessional conduct and may subject the licensee to disciplinary action.

NOTE: Authority cited: Section 1000-4(b), of the Business and Professions Code (Chiropractic Initiative Act of California, (Stats. 1923, p. 1xxxviii). Reference: Section 1000-15, of the Business and Professions Code (Chiropractic Initiative Act of California, (Stats. 1923, p. 1xxxviii)) and Section 25668.1, California Health and Safety Code; Section 30403 of Title 17, California Administrative Code.

§314. Law Violators.

It shall be the duty of every licensee to notify the Executive Officer or his or her designee of any violation of the act and statutes governing the practice of chiropractic, or these rules and regulations, in order that the board may take disciplinary action.

NOTE: Authority cited: Sections 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii). Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923 p. 1xxxviii).

§317.2. Gag Clauses in Civil Agreements Prohibited.

(a) A licensee shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to attempt to withdraw a complaint he or she has filed with the board.

(b) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

NOTE: Authority cited: Sections 1000-4(b), and 1000-10 (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Section 475, Business and Professions Code. Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Section 475, Business and Professions Code.

§317.3. Licensee Reporting Requirements.

(a) A licensee shall report any of the following to the board:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action, as defined in section 304.

(b) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the arrest, the conviction, or the disciplinary action.

(c) Failure to make a report required by this section shall constitute unprofessional conduct.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§321.1. Physical or Mental Examination of Applicants.

(a) In addition to any other requirements for licensure, whenever it appears evidence exists that an applicant for a license may be unable to perform as a chiropractor safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may order the applicant to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The board shall pay the full cost of such examination.

(b) An applicant's failure to comply with an order issued under subdivision (a) shall render his or her application incomplete.

(c) The report of the evaluation shall be made available to the applicant

(d) If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

(e) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to deny an application due to an applicant's fitness for licensure, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons, chiropractors or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceedings pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the applicant pursuant to the provisions of Section 11507.6 of the Government Code.

NOTE: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) and Sections 480, 820, 822 of the Business and Professions Code.

384.1 Petitions for Reinstatement, Reduction of Penalty, or Early Termination of Probation

(a) In petitioning for Reinstatement under Section 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) or Reduction of Penalty which would include Early Termination of Probation under Government Code section 11522, the petitioner has the burden of demonstrating any rehabilitative or corrective measures he or she has taken since the revocation or disciplinary action and, that he or she has the necessary and current qualifications and skills to safely engage in the practice of chiropractic within the scope of current law, and accepted standards of practice.

(b) In reaching its determination the board may consider various factors including the following:

(1) The original violation(s) for which action was taken against the petitioner's license including:

(A) The type, severity, number, and length of violations.

(B) Whether the violation involved intentional, negligent or other unprofessional conduct.

(C) Actual or potential harm to the public, patients, or others.

(D) The length of time since the violation(s) was committed.

(2) Prior disciplinary and criminal actions also taken against the petitioner by the board, any local, state, or federal entity, territory, foreign country, or U.S. federal jurisdiction:

(A) The petitioner's compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.

(B) Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.

(C) The petitioner's legal and regulatory history to and since the violation(s).

(3) The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.

(4) The petitioner's documented rehabilitative efforts including:

(A) Efforts to maintain and/or upgrade professional skills and knowledge through continuing education or other methods.

(B) Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's chiropractic practice.

(C) Service to community or charitable groups.

(D) Voluntary restitution to those affected by the original violation(s).

(E) Use of appropriate professional medical or psychotherapeutic treatment.

(F) Participation in appropriate self-help and/or rehabilitation groups.

(G) Use of appropriate peer review mechanisms.

(H) Participation in professional chiropractic organizations or associations.

(5) Assessment of the petitioner's rehabilitative and corrective efforts including:

(A) Whether the efforts relate to the original violation(s).

(B) The date rehabilitative efforts were initiated.

(C) The length, time, and expense associated with rehabilitative efforts or corrective actions.

(D) The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice chiropractic.

(E) The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).

(F) The nature and status of ongoing and continuing rehabilitation efforts.

(c) In addition, the board may consider other appropriate and relevant matters not listed in the above guidelines.

(d) All statements to be introduced at hearing must be made in person or pursuant to Government Code Section 11514 (evidence by affidavit). All other statements not made in person or pursuant to Government Code Section 11514 must be under oath and will be considered only as administrative hearsay.

(e) A petition for reinstatement shall be submitted on an application form (Form # 09PRRL – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Reinstatement of Revoked License," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(f) A petition for early termination of probation shall be submitted on an application form (Form # 09PTP – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Early Termination of Probation," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(g) A petition for reduction of penalty shall be submitted on an application form (Form # 09PRP – Revised 5/2016) prescribed and provided by the board, and titled "Petition for Reduction of Penalty," accompanied by such evidence, statements, or documents as are therein required, and filed with the board at its office in Sacramento.

(h) A petitioner pursuant to Section 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) whose license has been revoked or cancelled may not petition the board for reinstatement until two (2) years has elapsed since the effective date of the decision revoking the license or the date the license was cancelled.

NOTE: Authority cited: Sections 1000-4(b) 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii); Section 1003 Business and Professions Code; and Sections 11514 and 11522 Government Code.

Reference: Sections 1000-4(b) and 1000-10(c) Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§390.7. Sexual Contact With Patient.

Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c)(3) of Section 729 of the Business and Professions Code, shall contain an order of revocation. A proposed decision shall not contain a stay of the revocation.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

§390.8. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, under federal law, or by a foreign government, or any other jurisdiction or province thereof, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure 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.

(2) If the individual is licensed under (Chiropractic Initiative Act of California) the board shall promptly revoke the license of the individual 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. The board shall not stay the revocation nor place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the ~~healing arts~~ board from exercising its discretion to deny or discipline a license under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to [insert effective date]. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).

Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii).



**Agenda Item 6B
December 3, 2021**

**Review, Discussion, and Possible Action regarding:
The Board's *Disciplinary Guidelines and Model Disciplinary Orders* and
Implementation of the Uniform Standards for Substance Abusing Licensees
(California Code of Regulations, Title 16, Section 384)**

Purpose of the Item

Staff will provide the Enforcement Committee with an update on the regulatory proposal to amend California Code of Regulations (CCR), title 16, section 384, incorporate the Board's revised *Disciplinary Guidelines and Model Disciplinary Orders* by reference, and implement the Uniform Standards for Substance Abusing Licensees.

Action(s) Requested

No action is requested at this time.

Background

For the past several years, the Board has been working on updates to its *Disciplinary Guidelines and Model Disciplinary Orders* and the implementation of the Uniform Standards for Substance Abusing Licensees. At its July 17, 2014 meeting, the Board reviewed and discussed the three options to "trigger" the application of the Uniform Standards: 1) a presumption unless rebutted by the licensee; 2) conducting a clinical diagnostic evaluation of the licensee; or 3) finding evidence establishing the licensee is a substance-abusing licensee after providing notice and conducting a hearing. The Board voted to approve the third option for when the Uniform Standards apply.

Board staff has been developing a regulation package to update the *Disciplinary Guidelines* and implement the Uniform Standards with the approved "trigger" language. However, after review of the proposed language to amend CCR, title 16, section 384 and the revised *Disciplinary Guidelines* that are being incorporated by reference, staff has determined that additional changes are necessary prior to proceeding with the regulatory process.

Staff plans to collaborate with the Department of Consumer Affairs (DCA) Regulations Unit legal counsel to make necessary updates and revisions to the Board's *Disciplinary Guidelines* and present proposed language to amend CCR, title 16, section 384, incorporate the revised *Disciplinary Guidelines* by reference, and implement the Uniform Standards to the Committee for review and discussion at a future meeting in 2022.

Attachment(s)

- *Uniform Standards Regarding Substance-Abusing Healing Arts Licensees*, DCA Substance Abuse Coordination Committee, Dated March 2019

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Dean Grafilo, Director
March 2019

Substance Abuse Coordination Committee

Dean Grafilo, Chair
Director, Department of Consumer Affairs

Michelle Wong
CA Department of Health Care Services

Ben Bodea
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Anthony Lum
Dental Hygiene Committee of California

Karen Fischer
Dental Board of California

Kimberly Kirchmeyer
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Shara Murphy
California State Board of Optometry

Elaine Yamaguchi
**Board of Vocational Nursing and
Psychiatric Technicians**

Angie Burton
Osteopathic Medical Board of California

Rebecca Mitchell
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Jason Kaiser
Physical Therapy Board of California

Lynn Forsyth
Physician Assistant Committee

Brian Naslund
Board of Podiatric Medicine

Antonette Sorrick
Board of Psychology

Joseph Morris
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Paul Sanchez
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Jessica Siefertman
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

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

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

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

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

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

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

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

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

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

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

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

VI. LICENSED SUPERVISION DURING PRACTICE

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

OTHER DRUG STANDARDS

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

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

as well as, numerous different intervals of testing.

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

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

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

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

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

Collection of specimens shall be observed.

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

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

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

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

PETITIONS FOR REINSTATEMENT

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

OUTCOMES AND AMENDMENTS

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

Historical Data - Two Years Prior to Implementation of Standard

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

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

Post Implementation Data- Three Years

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

Data Collection

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

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

#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

#6 SENATE BILL 1441 REQUIREMENT

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

#6 Uniform Standard

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

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

#7 SENATE BILL 1441 REQUIREMENT

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

#7 Uniform Standard

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

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

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

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

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

#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

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

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

(a) Specimen Collectors:

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

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

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

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

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

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

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

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

(e) General Vendor Requirements

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

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

#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

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

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

#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

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

#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

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

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

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