

BOARD OF OPTOMETRY
INITIAL STATEMENT OF REASONS

Hearing Date: December 6, 2011

Subject Matter of Proposed Regulations: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

Section(s) Affected: Section 1575 in Division 15 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of each Adoption, Amendment, or Repeal:

The current *Disciplinary Guidelines and Model Disciplinary Orders* referenced in the regulation (DG-3, 5-99) must be made consistent with current law. This proposal by the Board of Optometry (Board) will re-name the regulation to *Uniform Standards Related to Substance Abuse and Disciplinary Guidelines* and reference the 4th edition (DG-4, 4-2011), reflecting changes in law, as well as making technical changes to address unnecessary and duplicative elements, and some technical changes to reflect the current probationary environment.

Factual Basis/Necessity:

Background

Senate Bill 1441: On June 30, 2008, the Medical Board of California was scheduled to sunset its Diversion Program and reverted to disciplinary action as the only means of addressing physicians with substance abuse problems. The sunset was primarily due to the program's failure of its fifth audit, conducted by the Center for Public Interest Law (the Medical Board's Enforcement Monitor), for overall ineffectiveness, lack of standards and failure to protect the public from harm. At the same time, there was extensive media coverage citing deficiencies in the Medical Board's Diversion Program, including patients harmed by physicians who continued to practice even after testing positive for drugs. On January 24, 2008, with the sunset of its Diversion Program imminent, the Medical Board held a Diversion Summit to discuss other options for physicians with substance abuse problems.

On March 10, 2008, the Senate Business, Professions and Economic Development Committee (Senate Committee) held a hearing to review physician's and health practitioner's substance abuse programs. The resulting legislation, authored by the Senate Committee Chair, Senator Ridley-Thomas, was Senate Bill (SB) 1441: Healing arts practitioners: substance abuse (Chapter 548, Statutes of 2008).

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the Department of Consumer Affairs (Department) establish a Substance Abuse Coordination Committee (Committee) subject to the Bagley-Keene Open Meeting Act comprised of the Executive Officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. The Department is committed to ensuring that licensees who are confirmed to be abusing drugs and/or alcohol, and who pose a risk to the public, are not diverted from an enforcement action or public

disclosure of that action. The Department is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice. The Committee has developed sixteen uniform standards as required by SB 1441. The Board is proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines through the regulatory process. Uniform Standards 13, 14, and 15 only apply to Boards with diversion programs and are not incorporated in these guidelines because the Board of Optometry does not have a diversion program. Uniform Standard 16 is also omitted because it is each Board's reporting criteria to the Department and not pertinent to the Disciplinary Guidelines.

Other Amendments/Deletions: The Board has not updated the standards and terms in its Disciplinary Guidelines in the past 12 years. The disciplinary and probationary environment has changed significantly since 1999 and the Board's proposed changes are meant to address this. Many of the changes are based on best practices exemplified by the Department of Consumer Affairs' various Boards and Bureaus that have proven to be effective and in the best interest for consumers and the licensees receiving discipline.

Existing Law

Business and Professions Code (BPC) section 3010.1 requires that protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions.

BPC section 3091 allows the Board, among other things, to place a licensee on probation with terms and conditions.

BPC section 3110 allows the Board to deny or discipline a license for, among other things, unprofessional conduct, which include incompetence and gross negligence in carrying out usual licensed optometric functions. This section also includes specified drug-related transgressions, e.g., unlawful use or possession of any dangerous drugs or devices or alcoholic beverages, in the definition of unprofessional conduct.

The Board proposes to add specified uniform standards related to substance abuse by incorporating them by reference into CCR section 1575. This proposal also updates the Board's existing standards and optional terms of probation. The following describes those uniform standards being added by the Board, including the updates of its Disciplinary Guidelines and other clarifying and minor changes.

CCR section 1575

Section 1575 is amended as follows:

- Renames the regulation from *Disciplinary Guidelines and Model Disciplinary Orders to Uniform Standards Related to Substance Abuse and Disciplinary Guidelines*.
- Incorporates by reference the new guidelines, including the Uniform Standards Related to Substance Abuse and changes the revision date from DG 3, 5-99 to DG 4, 9-2011.
- Amends language to be reflective of the title change of the regulation.
- Amends the language to require that the Board "comply" with the uniform standards as required by SB 1441, and continue to "consider" the updated guidelines in order to ensure that the most appropriate disciplinary actions are taken.

- Adds clarifying language indicating when it is appropriate to use the Disciplinary Guidelines and Uniform Standards.
- Adds subsection (b) in order to clarify further when the Uniform Standards are to be used, specifically when a licensee is able to establish that, his or her situation warrants omission of a specific standard as a term of probation.

Title Page (pg. 1)

Adds a title page with the new title of the regulation, the revision date of the document and a statutory citation pertaining to the Board's mandate that "protection of the public shall be the highest priority" for style purposes.

Table of Contents (pg. 2)

Adds a table of contents for organizational purposes and ease of use of the document.

Introduction (pg. 3)

Adds an introduction that describes the function of the Board as a disciplinary entity, the purpose of the disciplinary guidelines and standards, who is to use them and how they are meant to be used.

Definitions (pg. 3 – 4)

Adds definitions for the following to assist in the understanding of how to use the document effectively:

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|--------------------------------|--------------------------|
| • Public Record | • Citations |
| • Cost Recovery | • Stipulated Settlements |
| • Probation Monitoring Purpose | |

Disciplinary Guidelines – 2011 Edition (pg. 5)

Evidence in Aggravation/Mitigation of Discipline: Adds examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges (ALJs) in providing for discipline in their proposed decisions. This information is added to assist in the development of proposed decisions.

Disciplinary Guidelines Summary for Use by Administrative Law Judges: Replaces the previous description of how to use the original disciplinary guidelines with a new description.

1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines: This has been added for reference purposes only. The underline and strikethrough will be deleted once the regulation is approved by the Office of Administrative Law (OAL).

Uniform Standards for Those Licensees Whose License is on Probation Due to Substance Abuse Problem (pg. 7 – 15)

In order to comply with SB 1441, the Board proposes to add the following standards, which shall adhere to all cases in which a license is placed on probation due, in part, to a substance abuse

problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

Standard 1. Clinical Diagnostic Evaluation: Requires that if a licensee (hereafter “Respondent”) is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. This standard would also require that a report with an opinion be submitted by the evaluator in compliance with SB 1441.

A clinical diagnostic evaluation would not be necessary in a situation where there is demonstrable immediate threat to the public safety and/or where violations are so egregious (e.g., crimes in addition to substance abuse, harm or death of a patient) that the Board would not allow the Respondent to practice under any circumstances; thus, the Board would seek revocation instead of permitting rehabilitation or treatment.

The purpose of this standard is to increase consumer protection by:

- Specifying requirements for a clinical diagnostic evaluation of the Respondent, required qualifications for the providers evaluating the Respondent, and timeframes for completion of the clinical diagnostic evaluation;
- Ensuring that the Board is notified quickly if the Respondent is a threat to himself or herself or the public while allowing due process;
- Setting forth minimum standards for clinical diagnostic evaluations and ensures evaluations are conducted in accordance with applicable best practices, while allowing the evaluator the discretion to determine and use the most appropriate tool in assessing the Respondent;
- Providing the Board with a professional opinion as to whether the Respondent has a substance abuse problem, and whether the Respondent is a threat to himself or herself or others; and
- Prohibiting personal, financial and business relationships between the evaluator and Respondent, thereby ensuring objectivity in assessments.

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a Respondent and evaluating their case. The Board needs opinions from professional evaluators to help it determine the possible basis for the identified behavior. Many individuals who have substance abuse issues also have other mental problems/diagnoses. The evaluator can present recommendations for a therapeutic plan. Any disciplinary action should be based on the behavior and the resulting harm or risk of harm. Treatment recommendations may be incorporated into a contract or Board order as elements for monitoring or criteria toward re-entry requirements.

By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that Respondents who have undergone treatment and have made steps towards recovery can safely return to practice.

Standard 2. Removal from Practice Pending Clinical Diagnostic Evaluation: Requires the Board to order the Respondent to cease practice during the clinical diagnostic evaluation pending the results and review by Board staff. Also requires the Respondent to be randomly drug tested at least (2) two times per week while awaiting the results of the clinical diagnostic evaluation. Further, the Board proposes to require that Board staff take into consideration certain factors when determining if the Respondent should be required to return to either part-time or full-time practice. These factors include, but are not limited to the license type, Respondent's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, nature of substance abuse and whether a Respondent is a threat to himself or herself or the public.

The Board has statutory authority over Respondents and a mandate to protect the public; however, the Board's ability to remove Respondents immediately from the work place is limited. There are requirements of due process, which require clear and convincing evidence in some cases, the preponderance of evidence, or proof of immediate, imminent danger to the public or others. These requirements are necessary in order for the Board to legitimately prevent someone from practicing. In some cases, an Interim Suspension Order (ISO), Temporary Suspension Order (TSO), or Penal Code 23 (PC 23) is required. The ISO and TSO have a tendency to be expensive, labor intensive, and require time to process. These are part of the disciplinary process and are usually temporary until an accusation is filed and a decision is rendered. The PC 23 is the result of criminal action taking place and allows for suspension of the license based on criminal filings. In each case, the cause for the suspension must be proven or found, and there must be sufficient evidence to warrant the action. The ability of any licensing agency to have the financial means to issue hundreds of orders based on complaints alone without legitimate, legally authorized investigations is unrealistic, and would be met with opposition from every area of the professional landscape such as licensees, associations, attorneys, public advocates and more.

The purpose and value of this program is the ability to quickly intervene when a Respondent is presented as having a substance abuse issue whether or not there is sufficient evidence to warrant an ISO, or TSO.

Standard 3. Board Communication with Probationer's Employer: Requires the Board to collect the names, physical and mailing addresses, and telephone numbers of all employers and supervisors of the Respondent. The Respondent will be required to give consent to authorize the Board to communicate with his or her employers regarding their work status, performance and monitoring.

The purpose of this standard is to allow the Board and employers to stay in contact in order to prevent relapse and ensure that the Respondent is complying with their probation. It is widely known that it is best for a person entering recovery to be honest with their employer about their addiction and the steps they are taking to overcome it. Open channels of communication will give the Board the ability to quickly intervene and take the necessary action in order to keep the Respondent on track and protect patients, especially if the Respondent is using illegal substances or alcohol on the job.

Standard 4. Drug Testing: Requires the Board to randomly test a Respondent whose license is placed on probation or in a diversion program due to substance abuse **randomly** 52-104 times per year in the first year of probation, and 36-104 times per year in the second year and each year thereafter of probation. Nothing would preclude the Board from increasing the number of random tests for any reason or use other testing methods in place of, or to supplement biological fluid testing, if appropriate.

Standard 4 would also require the Board to follow exceptions to the testing frequency schedule if certain conditions exist and adds additional drug standards related to testing locations and scheduling of tests.

Many of the standards specific to testing collection and specimen handling are consistent with or based upon guidelines established by the U.S. Department of Transportation.

Requiring the certification of laboratories through the National Laboratories Certification Program ensures consistent handling and processing of test results. The minimum number of tests provided will help to identify relapse and allow for licensees to be randomly tested.

Randomness is a very important component in drug testing. The testing frequency schedule being proposed by the Board allows for appropriate randomness in testing (without regular interval or pattern), preventing Respondents from gauging when they will be tested. By establishing minimum testing frequency “ranges” and employing randomness in testing, licensees will not be able to consider one or more days as a “safety period” following the submission of a biological sample for testing.

Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to “flush” their system overnight. Further, the established certification of the laboratory will include creatine and pH levels, which can be a sign of a licensee “flushing” their system. Further, the standard is broad enough to allow the Board to fit each licensee’s situation on a case-by-case basis.

The exceptions included in this standard allow for more flexibility in the Board’s drug testing program to fit each licensee’s needs for appropriate rehabilitation and allows the Board to assess the level of risk involved. For example, exemption one (1) regarding the consideration of previous testing to adjust the testing frequency schedule. According to the SB 1441 Uniform Standard #4 Subcommittee, there are cases where a Respondent who is an admitted recovered substance abuser or addict, has already participated in a rehabilitation program before entering diversion or being placed on probation. In cases where there is evidence that the person has randomly tested and has maintained sobriety, some flexibility should be granted to the Board in determining the duration of high frequency testing, that is equivalent to the proposed testing schedule. Allowing exceptions will not only protect the public and fit each licensee’s needs, but it will ensure successful rehabilitation of the Respondent by providing a plan that is manageable and realistic.

Standard 5. Participation in Group Support Meetings: Requires the Board to follow criteria in compliance with SB 1441 in order to determine the frequency of group meeting attendance and to verify that the meeting facilitator is an experienced, mental health professional. These requirements will ensure recovery and include communication with the Board, as needed, to keep the Respondent on track.

The purpose of this standard is to increase consumer protection by:

- Holding Respondents placed on probation due to substance abuse accountable for attending meetings and being active in their own recovery;
- Allowing the group meeting facilitator and the Board to work together to assist in the Respondents recovery and quickly preventing relapse with open channels of communication; and
- Ensuring that Respondents are receiving professional help from a person not related to them in any way that will allow for objectivity and balance during their recovery.

Standard 6. Determining When Treatment is Necessary: Requires the Board to follow criteria in compliance with SB 1441 to determine whether inpatient, outpatient, or other type of treatment is necessary. The criteria will guide the Board and ALJs to consider all aspects of the Respondent's drug or alcohol condition and professional circumstance in order to determine the appropriate treatment. Establishing criteria also ensures that each person whose license is placed on probation or in a diversion program due to substance use will receive the same, standard considerations while allowing for flexibility on a case-by-case basis.

Standard 7. Worksite Monitor Requirements: Requires the Board to determine if a worksite monitor is necessary for a particular Respondent and requires the worksite monitor to meet specified requirements that must be considered by the Board. As directed by SB 1441, the Board is required to establish monitor requirements and standards, including, but not limited to: (1) required qualifications of monitors, (2) required methods of monitoring by monitors, and (3) required reporting by monitors. The monitor's role is to monitor a Respondent who is chemically impaired and to ensure that the Respondent is not abusing drugs and/or alcohol. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the Respondent's behavior that may be cause for suspected substance abuse.

The monitor should not have any financial or personal relationship with the Respondent. This will ensure that the monitor is providing impartial evaluations. The provision that allows the Board to waive this requirement is due to the fact that some Respondents may only have available to them a monitor who is their employer. The Board will review these types of situations on a case-by-case basis. It is also important that the monitor be a health care professional, even if he or she is not of the same profession, as this may not be manageable in a hospital setting if the manager of the department is of a different profession.

Frequent face-to-face contact with the Respondent is important in order to assess their appearance, eye contact, and behavior. The monitor needs to interview the staff in the office on a Respondent's behavior and review the attendance records in order to adequately report to the Board their overall performance.

The reporting criteria would identify a timeline for reporting to the Board of possible substance abuse by the Respondent, what information must be included in the monitor report, and the timeline the report is to be submitted to the Board.

Also, included in the standard is the language to require the Respondent and monitor to sign and submit the required consent forms and affirmation in order for the Board to communicate with the monitor. Implementing this standard would provide (1) ongoing documentation of the Respondent's behavior and would ensure the public's safety and (2) immediate notification to the Board if a Respondent is suspected of working under the influence of drugs and/or alcohol.

Standard 8. Procedures for Positive Testing: Requires the Board to suspend a Respondent's license if he or she tests positive for a banned substance. Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. In order to carry out this mandate, it is appropriate for the Board to immediately suspend a Respondent's license if he or she tests positive for a banned substance until he or she has been assessed and the results interpreted. It is also appropriate for the Board to notify the Respondent's employer that the Respondent may not practice until the suspension is lifted.

Testing positive for a banned substance is a violation of their probation and in the past, many licensees have continued to work because of the Board's inability to communicate with their employer. Not only are the Respondents putting themselves at risk, but they are putting their employer at risk and most importantly, their patients.

Standards 9-10. Major/Minor Violations & Consequences: In compliance with SB 1441 major and minor violations and consequences are being defined. If a licensee commits a major violation, the Board would be required to automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board. If a licensee commits a minor violation, the Board would be required to determine what action is appropriate.

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. The Board protects the public through its Practice Act, regulations and related statutes. Major violations would result in consequences that would be the maximum allowed by current law under the Board's Practice Act and regulations. Minor violations would result in consequences determined appropriate by the Board e.g., increased biological testing, increased meeting attendance.

Standard 11. Petition for Return to Practice: In compliance with SB 1441, defines the criteria for a request to return to full-time practice. This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation before the Board will even consider this type of request. All licensees will be held to the same standard.

Standard 12. Petition for Reinstatement: In compliance with SB 1441, defines the criteria for a request for a full and unrestricted license. This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation before the Board will even consider this type of request. All licensees will be held to the same standard.

Probationary Terms and Conditions (pg. 16-23)

Adds language to clarify when standard probationary terms and conditions are issued, and a severability clause for the conditions imposed during probation. The severability clause is needed for all decisions and stipulated agreements where there are conditions of probation to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

Also adds Model Probationary Orders, similar to the Model Disciplinary Orders already in place, in order to provide guidance to all users of the Disciplinary Guidelines and establish consistency.

The Board is amending and adding the following standard terms and conditions as well:

Condition 1. Obey All Laws: Adds the requirement that Respondent's must notify the Board in writing, within 72 hours, of specified incidents that could affect their license. Also adds requirements for Criminal Court Order and Other Board or Regulatory Agency Orders. Licensees are already required to abide by all federal, state, and local laws. Licensees are also responsible for complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory orders, violation of those orders may impact the status of his or her discipline by the Board. This added language further emphasizes the Respondent's responsibility and specifies the Board's authority to take more immediate and severe action if other violations occur. If a Respondent violates other probationary conditions or orders, they may be unsafe to practice in this state.

Condition 2. Quarterly Reports: Adds the requirement that Respondents must file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. To enforce this condition, not submitting quarterly reports timely will result in a violation of their

probation. The Board's probation monitoring program is meant to actively enforce the Board's mandate to protect and serve the public by administering and enforcing the Optometry Practice Act and its regulations in the interest of the safe practice of optometry. A central aspect of the Board's program is to maintain continual contact with the Respondent to ensure that conditions of probation are met and minimize potential harm to the public. Adding a requirement of quarterly reports of compliance will assist the Board in meeting this goal and keep the Respondent on track.

Condition 3. Cooperate with Probation Monitoring Program: Amends this condition to further define what it means to cooperate with the Board's Probation Monitoring Program. Also clarifies that lack of cooperation is a violation of probation and that the Board will take swift action to discourage this behavior with disciplinary action. Explicitly delineating what is required will assist the Respondent because they will know what they need to do at all times during the program, no excuses. Full compliance with conditions of probation demonstrates the Respondent's commitment to rehabilitation and to correcting the problems which lead to the disciplinary action. It will also assist the Board's probation monitor in enforcing the standard terms and conditions effectively.

Condition 4. Probation Monitoring Costs: Adds the requirement that Respondents must pay for all costs incurred for probation monitoring during the whole probationary period. Further, language is added that filing of bankruptcy by the Respondent does not relieve him/her of their responsibility to reimburse the Board for these costs. Collecting costs from those individuals that incur the expenses prevents other licensees in good standing from having to pay for such programs. A fee is needed in order to support the Board's probation program, or else it will not be possible to sustain it at the level of monitoring proposed by SB 1441 and the updated Disciplinary Guidelines. The updated uniform standards and disciplinary guidelines are in line with the current, changing trends in the probationary environment and it has been found that a more interactive level of monitoring is necessary to ensure rehabilitation or revocation from practice of these individuals in order to protect the public. The proposed minimum probation monitoring fee of \$100 is the standard fee other DCA Boards and Bureaus currently have in place. In order to be in line with current standards within the Department, a minimum of \$100 is being used as well for this Board's purposes.

Condition 5. Function as an Optometrists: Adds the requirement that a Respondent on probation must function as an optometrist for a minimum of 60 hours per month for the entire term of probation. The Board's intent is not to cripple a licensee while they are on probation, but to keep them working so they can maintain their business, support themselves and their families, pay for the costs incurred by their probation, and most importantly, to maintain their skills as an optometrist. Establishing a condition that they must work during probation will ensure that the Respondent remains current on optometric methods and education, and is ready to practice as soon as their term ends (the ultimate goal, if revocation is not warranted instead).

Condition 6. Notice to Employer: Adds the requirement that that the Respondent must provide to the Board all information related to all their employers and supervisors, as well as provide written permission to the Board so that they may have continuous contact with the employers for the entire probationary period.

This condition allows the Board to determine the appropriateness of the setting for which the Respondent is providing, or will be providing optometric services. This condition additionally allows the Board to be informed of any employment termination, or separation of the Respondent from a position as an optometrist. The condition also provides the Board with a mechanism for ensuring that the employer providing optometric or other health-care related

services is informed of the license status of the Respondent so that if necessary, the work environment can be structured to ensure consumer safety.

If the Respondent were to exhibit work habits that would be unsafe for patients or if they violate any of the probation conditions as set forth in their Decision, then the Board would have the authority to take the appropriate action. By enabling the Board to communicate with employers, information can be shared that may keep patients from any potential danger. This also allow the Board to monitor the Respondent at a closer level to ensure that any behavioral inconsistencies are addressed in a timely manner. By giving the employer the accusation, this enables the employer to have the details of the underlying situation, which resulted in the Respondent's license being placed on probation. It will also assist the employer in being cognizant of any alerting signs that would possibly arise during their work day that would need to be reported to the Board.

Condition 7. Changes of Employment or Residence: Adds the requirement that a Respondent must notify the Board of a change in employment or residence, in writing, within 14 days. Regardless of whether this term and condition requires the notification of changes in employment or residence, BPC section 3070 already requires that licensees notify the Board of the address or addresses where they intend to practice optometry and any changes. This condition will strengthen that requirement because it adds a time period of 14 days for the Respondent to comply and requires that home addresses also be reported. A central aspect of the Board's probation monitoring program is to maintain continual contact with the probationers to ensure that conditions of probation are met and minimize potential harm to the public. This condition will assist the Board in accomplishing this goal more effectively.

Condition 8. Cost Recovery: Adds the requirement that the Respondent must pay the Board all costs related to the investigation and prosecution of their case. Also establishes guidelines of what can be done if a Respondent cannot submit payments due to financial hardship, and clarifies that not even bankruptcy will relieve a Respondent from their responsibility to pay these costs. This condition strengthens what is already required by BPC section 125.3 and will ensure that all costs are paid. Collecting costs from those individuals that incur the expenses prevents other licensees in good standing from having to pay for such programs.

Condition 9. Take and Pass California Laws and Regulations Examination: Amends this condition to require the Respondent to take the Board's Laws and Regulations Examination instead of an oral or written exam. The Board no longer creates or administers its own licensing examination. The National Board of Examiners and Optometry (NBEO) were approved by the Board to take that responsibility in 1999 pursuant to BPC section 3053. The NBEO only administers the licensing examination once a year at a test center in Charlotte, South Carolina. Because of this, the Board found that it would be difficult to require all probationers to take a portion of this exam, since they would have to travel to examine and would be required to wait a full year to take it. In many cases, due to the nature of the violation, not all probationers need to re-take a portion of the NBEO. Requiring that Respondents re-take a portion of the NBEO has been incorporated into Optional Condition #36 on page 33 of the guidelines so that it may be used for those Respondents who have shown that they need to take it. The Laws and Regulations Examination is offered at the Board of Optometry's Sacramento location, or staff is willing to travel to a secure location so that the Respondent may take the exam closer to their residence.

This condition is also amended to eliminate the "Condition Subsequent" option which required the Respondent to cease practice only after they had failed the exam and had been notified by the Board. The remaining "Condition Precedent" option restricts the Respondent from practicing until they have passed the examination. This will increase consumer protection by requiring

Respondents to be familiar with the law and passing the exam before they begin to practice during their probation.

California Optometry law is a subject that all Respondents should have knowledge about by the end of their probation, since a violation of the law is the cause for the position they are in. For this same reason, it is appropriate to restrict a Respondent from practicing until they pass the examination. This condition will ensure that all Respondents are made aware of the law so that they do not have to enter a probation monitoring program again in the future. Also, their knowledge of the law will result in more protection for consumers when they are able to return to practice.

Condition 10. Community Services: Amends this condition to require the Respondent to provide non-optometric or professional services for free to a community or charitable organization within 30 days instead of 60 days. Also adds the requirement that the Respondent begin to provide services no later than 15 days after the Board approves the program.

Shortening the timeline in which Respondents must begin to meet this condition and establishing a start date of no later than 15 days after approval of the program, provides the Board a mechanism to enforce this condition. The Board will be able to hold the Respondent accountable with deadlines for completion. In addition, the language is amended to allow the option of providing professional optometric services, not just non-optometric. Allowing the Respondent to provide professional services are in line with Condition 5. Function as an Optometrist; it enables them to continue working. The community and the Respondent is better served by allowing the use of their optometric skills and knowledge, especially if the Respondent is an excellent practitioner whose current probationary status is a result of poor life choices and not due to incompetence as an optometrist.

Providing community services maintains the Respondent's self-worth as an individual and promotes their legitimacy as a health practitioner. This can be an effective catalyst for change in the behaviors that brought disciplinary action against them. Community service is also a way of making non-monetary restitution to the community where the violation of law occurred. Free optometric services are invaluable and a tremendous resource for charitable organizations, especially in underserved area. This condition holds a positive result for everyone involved.

Condition 11. Valid License Status: Adds the requirement that a Respondent's license must be valid for the length of their probation and clarifies that all renewal fees and CE required for renewal must be current to avoid a violation of probation.

Adding this condition further strengthens Conditions 5 and 10 because without a valid license, the Respondent will not be able to work, or provide charitable, optometric services. In addition, if a Respondent does not have a current license, that means that they are not completing their CE in order to stay update to date with current trends in the practice of optometry and they are not being active in the reinstatement of their license after the close of their probation. This condition will assist Board staff in its enforcement of other standards and conditions by clearly stating what is expected of the Respondent when it comes to the status of their license, even though they are on probation.

Condition 12. Tolling for Out-of-State Residence or Practice: Amends this condition to establish that if a Respondent decides to reside or practice out-of-state, permanently or temporarily, their probation period will be tolled but not the cost recovery requirement, nor the probation monitoring costs incurred. Also amends this condition to add further guidelines for out-of-state Respondents pertaining to notifying the Board of the move date and return date, if any; and a

limit of two years for tolling, with exceptions, if the Respondent is on probation and practicing in the other state.

The previous condition was too broad and allowed tolling for an indefinite period of time. This did not allow the Board's Probation Monitor to close out a case because it was unknown when the Respondent would return to California, if they were planning on returning at all. Also, the previous language did not allow for the collection of cost recovery or probation monitoring costs. The changes to this condition will make Respondents out-of-state accountable for the consequences of the disciplinary action taken against them. Moving to another state will no longer be a way to evade probationary terms and Board staff will be able to have closure for these kinds of situations.

Condition 13. License Surrender: Adds this condition to clarify the option to surrender a license and establishes guidelines on how to do so. Clarifies that all enforcement costs incurred are to be paid to the Board upon reinstatement of the license and that the surrender of a license will still be considered a Disciplinary Action that will remain in the Respondent's history with the Board.

Although most Respondents want to return to practice after probation, there are some that do not. The public is better protected when they are being treated by optometrists who are interested in their profession, thus the addition of this option is necessary to avoid forcing an optometrist into a practice they are no longer interested in. Maintaining records of the Respondent's disciplinary history and requiring that repayment of all enforcement costs begin if they change their mind and want their license reinstated ensures that Respondents will not be choosing to surrender their license as a way to avoid their responsibilities.

Condition 14. Violation of Probation: Amends this condition with non-substantive, grammatical changes and adds language to give the Board authority to require that the probationary period be extended if an Accusation or Petition to Revoke Probation is filed against the Respondent, or until all disciplinary issues are final. Also gives the Board authority to disregard Petitions for Modification of Discipline while Accusations and Petitions are pending.

Giving the Board authority to extend probation, if any of the above situations occur will increase consumer protection by keeping unsafe Respondents out of practice until all their disciplinary issues are resolved. Also, a consideration to modify discipline should only be reserved for those Respondents that have been on good behavior, not those who violate the terms of their probation.

Condition 15. Completion of Probation: Amends this condition with a non-substantive change. The word "certificate" is replaced with the word "license." Both words were once used interchangeably but now "license" better describes the Respondent's actual initial license to practice optometry (OPT) versus other additional "certifications" that can be added to their OPT license, e.g., Therapeutic Pharmaceutical Agents (TPA), Lacrimal Irrigation & Dilution (TPL), and Glaucoma Certification (TLG).

Condition 16. Sale or Closure of an Office and/or Practice: Adds this condition to require the Respondent to appropriately transfers patient records and ensure that their patients are refunded money for work/services not completed or provided in the case that the Respondent must sell or close their office and/or practice.

This condition is intended to protect patients who have an optometrist in this situation due to a Board's disciplinary action. With this condition in place, Respondents will not be able to walk

away from their responsibilities without first ensuring that their patient records are protected and all unfinished work is refunded.

All conditions have been re-numbered and re-ordered for organizational purposes. Non-substantial changes to the language have been made to meet staff preferences, maintain consistency throughout the document and to correspond with the current probationary environment (e.g., use of the word “certificate” has been replaced by the preferred word “license.”)

Standard Alcohol/Drug Conditions (pg. 24-25)

In order to comply with SB 1441 uniform standards, the Board is proposing to add the following standards, which will apply to every licensee who is on probation for substance abuse.

Condition 9. Exception for Personal Illness and Condition 11. Alcohol - Abstain from Use have been combined to create Condition 16. below.

Condition 17. Abstention From Use of Controlled Substances/Alcohol: Amends this section to expand the types of drugs that may not be in the Respondent’s possession, except when the drugs are lawfully prescribed as part of documented medical treatment. Adds to the section that the Respondent will execute a release authorizing the release of pharmacy, prescribing, physical and mental records, and information regarding treating physicians or other professionals treating the Respondent as requested by the Board.

Adds to the section that the Respondent will not be in the presence of illegal substances. Also adds that if the Respondent is found to be using any types of drugs, it will constitute a violation of probation and shall result in disciplinary action and reported to each of the Respondent’s employers.

The amendments to this condition more clearly describe what it means to “abstain” for the purposes of the Board’s probation monitoring program. Allowing the Board to have access to medical and pharmacy records will ensure a very thorough monitoring of the Respondent that will hopefully prevent relapse. Keeping the Respondent’s employer informed if they test positive will protect patients from potential harm by allowing the Board and the employer to work together to keep the Respondent out of practice until they get their drug or alcohol abuse under control.

Condition 18. Biological Fluid Testing: Amends this section to expand and define “Biological Fluid Testing” to include blood, urine, saliva, breathalyzer, and hair follicle testing and establishes a testing frequency schedule (Standard 4 pursuant to SB 1441, pg. 5 of this document) Allows the Board to automatically suspend a Respondent for failing to cooperate with the required testing or if her or she tests positive for a prohibited substance. Clarifies that failure to submit to testing on the day requested will constitute a violation of probation which can result in the filing of an accusation or petition to revoke the license. Also requires the Respondent to make daily contact with the Board to determine when they must test and that employers must be notified if the licensees tests positive for a prohibited substance.

Due to technological changes in drug testing, it is preferable to define “Biological Fluid Testing” to include other methods that may be able to detect some substances that are not picked up by a urine test. This is necessary to protect the public by allowing for better drug and alcohol testing.

Furthermore, this condition establishes strict consequences when non-cooperation occurs and reinforces the drug testing standards established by SB 1441. Swift removal of the Respondent from practice is necessary if they are found to be abusing a restricted substance in order to prevent patient harm, and this condition will give the Board the authority to do so.

Optional Conditions (pg. 26-34)

The Board is proposing to amend and add the following optional conditions, which are imposed dependant upon the violation(s) committed.

Condition 19. Participate in Group Support Meeting: Adds the requirement that a Respondent must participate in a 12-step recovery meeting or equivalent at least once a week during probation, as directed/approved by the Board. The licensee must submit dated and signed documentation confirming attendance to the Board during the entire period of probation.

Many, though not all, support groups follow a 12-step treatment model, which has been proven to be successful for decades. These types of meetings are typically anonymous and recovering licensees can be reassured that what is said during support group meetings is not repeated outside those walls. Since health practitioners are held by society to have the highest moral standards, this is an important component to battle the shame and fear that they may feel for letting their life become so unstable. The non-judgmental environment of these programs will ensure that licensees become aware that they are accountable for their actions without excessive guilt. Recovering licensees will learn to recognize their past failings and correct them without dwelling on the past. Most importantly, this type of program offers help to their members during hours outside of scheduled meetings to assist during difficult times (e.g., relapse prevention).

In addition, the 12-Step program can be tailored to individuals with alcohol problems and/or various types of other issues. Requiring that the licensee submit dated and signed documentation confirming attendance will assist the Board in gathering evidence that the licensee is taking the steps necessary to become a practicing, competent health provider, and in turn continue to serve and protect the public.

Condition 20. Notice to Patients: Adds this condition to require that the Respondent post a prominent notice in their office and website, within 30 days of the effective date, stating that they are on probation.

The purpose to add this condition is to educate the public of the discipline imposed on respondents.

Condition 21. Alcohol and Drug Treatment: Completely amends this condition's requirements and title to strengthen the condition. The condition is amended to require that the Respondent complete a treatment program of at least six months within the first nine months of probation. Also requires that the program director, or treating psychiatrist or psychologist to share treatment and biological fluid testing information with the Board, and submit monthly reports with the Respondent's progress.

The purpose of this condition is to ensure that the Respondent receives professional and adequate treatment for their alcohol and/or drug problems. This condition also enables the Board to ensure compliance with the reporting requirements.

Condition 22. Worksite Monitoring: Amends this condition to allow for the option of the use of a worksite monitor if it is necessary for a particular Respondent. Also adds that worksite monitor

must submit quarterly reports of performance so that the Board may review the Respondent's progress.

This condition would require the worksite monitor to meet specified requirements that must be considered by the Board. The requirements for the worksite monitor mimic the requirements of Standard 7 established by SB 1441 on page 7 of this document. The monitor's role is to monitor a Respondent who has shown to be an unsafe practitioner and is also responsible for reporting to the Board whether patient safety may be at risk and any change in the Respondent's behavior that may be cause for suspicion.

The monitor should not have any financial or personal relationship with the Respondent. This will ensure that the monitor is providing impartial evaluations. The provision that allows the Board to waive this requirement is due to the fact that some Respondents may only have available to them a monitor who is not their employer. The Board will review these types of situations on a case-by-case basis. It is also important that the monitor be a health care professional, even if he or she is not of the same profession, as this may not be manageable in a hospital setting if the manager of the department is of a different profession.

Frequent face-to-face contact with the Respondent is important in order to assess the their appearance, eye contact, and behavior. The monitor needs to interview the staff in the office on a Respondent's behavior and review the attendance records in order to adequately report to the Board the Respondent's overall performance.

The Quarterly Reports of Performance identify a timeline (mimics timeline established by Probationary Term and Condition 2) for reporting to the Board, what information must be included in the monitor report, and the timeline the report is to be submitted to the Board. It also makes the Respondent responsible for the submission of the reports by their worksite monitor, or else it will constitute a violation of probation. A central aspect of the Board's program is to maintain continual contact with the probationers and their worksite monitors to ensure that conditions of probation are met and minimize potential harm to the public.

Also, included in the standard is the language to require the Respondent and monitor to sign and submit the required consent forms and affirmation in order for the Board to communicate with the monitor. Implementing this standard would provide (1) ongoing documentation of the Respondent's behavior and would ensure the public's safety and (2) immediate notification to the Board if a Respondent is suspected of working in such a way that patients would be harmed.

Condition 23. Direct Supervision: Adds this condition to allow for the option of the use of a Direct Supervisor for the Respondent. This differs from the worksite monitor above in that the Supervisor must be immediately available in the assigned patient area. The Board must approve the level of supervision and the supervisor prior to the Respondent engaging in practice. The Supervisor must submit Quarterly Reports of Performance in a specified timeline (mimics timeline established by Probationary Term and Condition 2) and makes the Respondent responsible for their submission to avoid violation of probation.

The purpose of this condition is to enhance consumer safety by ensuring that Respondents who have proven to be in inadequate practitioners do not harm patients again. The Direct Supervisor will be able to work closely with the Respondent to gauge their level of incompetency, which will assist the Board in its decision on whether to allow the optometrists to continue to practice.

Condition 24. Remedial Education: Amends this condition with non-substantial grammatical changes and adds the requirement that the remedial courses be pertaining to the practice of

optometry at an accredited institution, pertinent to the violation, approved by the Board, and completed within one year from the effective date of the decision is the a “C” or better. All courses must be approved by the Board and paid by the Respondent.

The purpose of this condition is to allow the Respondent the opportunity to be educated in the areas they are deficient so that when their probation ends, they will be safer practitioners. Also, some Respondents who are petitioning for reinstatement have not practiced optometry in California for multiple years. In cases like this, it would be appropriate to require completion of comprehensive education courses prior to resuming practice.

Condition 25. Suspension: Amends this condition by adding that suspension will begin upon reestablishment of employment during the probationary period if the Respondent is not employed or is on any other type of leave. Employers must be made aware of the suspension and the dates it is in effect.

BPC section 490 gives the Board the authority to suspend a license as a mode of discipline for optometrists found guilty of violating the Optometry Practice Act.

The purpose of this condition is to assure that those practicing optometry are doing so safely and to rehabilitate the Respondent rather than punish them. As part of probation, the public may be better protected if the Respondent is suspended from the practice of optometry.

Condition 26. Employment Limitations: Adds this condition to restrict the Respondent from serving as a supervisor, and working as faculty member at a school of optometry or as an instructor for CE.

The purpose of this condition is to prevent the Respondent from engaging in practice as an optometrist in situations where there is no close supervision and/or where the Respondent would have undue authority over others and access to controlled substances (if it's a drug abusing practitioner) or circumstances related to their violation. Allowing the Respondent to be in a teaching capacity is also ill advised because they have violated the Optometry Practice Act and that should be enough to render them unqualified to educate future optometrists or assist current licensed optometrists in renewing their license. If the Respondent is working in a “float” capacity (e.g., temporary placement arrangement in nursing homes, private practice), there is no assurance that the contracting facility or contracting family is aware of the optometrist's probation.

Requiring that the Respondent work at a regularly assigned work-site is best so that the Board may communicate with one consistent employer and the Respondent can be better observed to ensure he or she fully meets the terms of their probation.

Condition 27. Psychotherapy or Counseling Program: Amends this conditions with non-substantial grammatical changes and adds that the psychotherapy or counseling program will end at the Board's discretion and upon the recommendation of the counselor instead of “until the Board deems that no further psychotherapy is necessary.”

The amendments clarify further what is required in this condition and strengthens the condition by implying that the Board must communicate with the treating counselor to make an informed decision.

Condition 28. Mental Health Evaluation: Amends this condition to only require a mental evaluation to determine the Respondent's capability to perform duties as an optometrist. The deleted text related to psychiatric or psychological treatment is covered under Condition 26 on page 29 of this document. Clarifies that non-compliance with this condition will result in

suspension of the license until the evaluation is completed, and establishes the flexibility to allow a waiver of this requirement if good faith efforts are shown by the Respondent.

The purpose of this condition is to ensure that the Respondent is fit to practice if there is a case where the evidence demonstrates that mental illness or disability was a contributing cause of the violations. Suspension of the license if the Respondent does not comply will ensure patient safety.

Condition 29. Medical Health Evaluation: Amends this condition with non-substantial, grammatical changes.

Condition 30. Medical Treatment: Amends this condition with non-substantial, grammatical changes and deletes language clarifying the purpose for the condition. The deletion was necessary because there may be other situations where this condition may be used and the definition restricts that ability.

Condition 31. Restitution: Adds this condition to require that the Respondent show proof that they have, or are currently paying restitution in the amount that is owed to the affected party if their violation had a monetary component. The 90 day requirement will assist the Board in enforcing this condition to make sure that the Respondent pays what is owed.

Condition 32. Audi Required: Adds this condition to require that an audit take place to ensure Respondent's compliance with patient visits, billings and payments.

The purpose of this condition is mainly for Respondents whose violations are related to billing fraud or other monetary or business management issues. Optometry is a health-care profession than can double as a lucrative business with the selling of contact lenses and eyeglasses. As an example, Respondents may have taken advantage of their patient's trust and billed for services that were not needed in order to make a profit. In cases such as this, this condition will assist the Board in ensuring that the Respondent becomes educated regarding ethical billing practices so that they will no longer harm patients. An audit will most likely reveal any billing issues the Respondent may have, if any.

Condition 33. Lens Prescription – Maintain Records, Condition 34. Restricted Practice, Condition 35. Restriction on Branch Offices, and Condition 36. Restrictions on Advertisements: All these conditions have been amended with non-substantial, grammatical changes.

Condition 37. Take and Pass NBEO Exam: Adds this condition to require that the Respondent take certain portions of the National Board of Examiners of Optometry (NBEO) exam in the first 12 months of probation, if needed.

The purpose of this condition to test Respondents in order to ensure that they are still competent practitioners, especially if they have not practiced for a few years. For Respondents who are petitioning for reinstatement, this will be a valuable condition as some have not practiced optometry in California for multiple years. In cases like this, it would be appropriate to require the completion of a comprehensive examination.

Also, some licensees will have been placed on probation due to their lack of skill as optometrists. This condition will test their knowledge and assist the Board in deciding whether to return the Respondent to practice or revoke their license.

Condition 38. Continuing Education: Adds this condition to require that the Respondent complete specific hours of Continuing Education (CE) within 90 days of the effective date of the Decision.

The purpose of this condition is to ensure that the Respondents has taken the remedial education they need in order to practice safely once their probation has ended. The condition clarifies that this CE will not count toward their renewal and requires proof of attendance and completion, as well as approval from the Board.

Condition 21 from the previous guidelines on page 33 was deleted because it is no longer needed. A worksite monitor or direct supervisor will be able to handle issues related to sexual transgressions if the Board opts to place an individual who committed a violation of this nature on probation. Sexual misconduct warrants the maximum discipline of revocation, which is in line with the current probationary environment.

All conditions have been re-numbered and re-ordered for organizational purposes. Non-substantial changes to the language have been made to meet staff preferences, maintain consistency throughout the document and to correspond with the current probationary environment (e.g., use of the word “certificate” has been replaced by the preferred word “license.”)

Recommended Discipline Based on Violation (pg. 34-48)

This section provides possible penalties for each violation and model language that is recommended to Administrative Law Judges by the Board. The examples provided are only given for illustrative purposes and by no means lists all possible violations. This section has been amended to conform with the additions, re-numbering and re-ordering of the conditions in the SB 1441 Standards and updated Disciplinary Guidelines. Non-substantial changes to the language have been made to meet staff preferences, maintain consistency throughout the document and to correspond with the current probationary environment.

Underlying Data

1. Senate Bill 1441 (Chapter 548, Statutes of 2008) authored by Senator Ridley-Thomas
2. The Substance Abuse Coordination Committee’s “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2010”
3. Uniform Standard #4 Subcommittee – Proposed Amendments and Rationale, March 10, 2011
4. Board of Optometry Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (As revised September 2011).

Business Impact

The Board has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States.

The following types of businesses would be affected:

- Businesses owned by licensees of the Board who face disciplinary action.
- Businesses that employ licensees of the Board who face disciplinary action.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative and disciplinary action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Probationers are responsible for paying all costs during their probation, including, but not limited to the clinical diagnostic evaluations, biological testing, and facilitated group support meetings. The average salary of a practicing optometrist in California is approximately \$82,000 per year.

The Board enforces probation whenever the actions of an optometrist indicate that the licensee may pose an immediate threat to the public. A licensee could be placed on probation at a minimum of 3 years. The chart below shows estimated probationary costs. Probation costs vary depending on the type of violation committed and terms in the probationary order.

	Monthly Cost	Annual Cost	3 year term	5 year term
Monitoring Fee	\$100	\$1,200	\$3,600	\$6,000
CA Law & Reg Exam		\$23 One Time		
Add'l CE Courses		\$50 - \$2000		
Biological Fluid Test Year 1 = 52-104 Year 2 = 36-104	\$607 *	\$7,280 *	\$21,840 *	\$36,400 *
Clinical Diagnostic Evaluation		\$1,000 - \$4,000 per evaluation		
License Revocation/ Wages Lost	\$6,833	\$82,000	\$246,000	\$410,000
Group Support Meeting (if payment req'd)	\$50 - \$100	varies	varies	varies
Cost Recovery AG \$3,500 + OAH \$750 + Evidence/Witness \$750 **		\$5,000 per case on average		
Counseling Program		Varies \$100 - \$2,000		
Mental Health Evaluation		Varies \$100 - \$2,000		
Medical Treatment		Varies \$100 - \$5,000		
Billing Audit		Varies \$100 - \$5,000		
National Boards Exam		Varies \$100 - \$500		

* Assuming the maximum testing amount is used.

** Attorney General (AG); Office of Administrative Hearings (OAH)

Average Biological Fluid Test costs involve a urine analysis at \$45 per test, plus the average collection fee of \$25, for a total average cost of \$70 per urine test. If the 52-104 times per year for the first year, and 36-104 per year for the second year of testing requirements results in a probationer's inability to participate in the testing program, the Board will send the case to the Office of the Attorney General to pursue revocation for the probationer's failure to comply with the Biological Testing term and condition. The same applies all conditions the are violated by the probationer.

The Board anticipates up to four new probationers established each year, which will be subject to the new Biological Fluid Testing requirements. The Board anticipates that at least half of the probationers will not be able to afford the cost of the testing frequency and/or will not comply with the terms of their probation, which will result in the Board's pursuit of revocation of the probationer's license. The Board estimates it will incur an estimated annual cost of \$10,000 for the prosecution and hearing costs associated with the revocation of two probationers.

Specific Technologies or Equipment

The adoption of these regulations does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Do not seek a regulatory change.

Rejected: The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. Without this regulatory change, the Board would not be able to take effective disciplinary action against substance abusing licensees and other licensees with different violation to ensure public protection. These proposed changes gives the Board tools to monitor substance abusing licensees and other disciplined licensees while protecting the public.