



MEMORANDUM

DATE	September 12, 2019
TO	Veterinary Medical Board
FROM	Mark Nunez, DVM, and Kathy Bowler Uniform Standards for Substance Abusing Licensees Subcommittee
SUBJECT	Agenda Item 5. Update, Discussion, and Possible Action Regarding Uniform Standards for Substance Abusing Licensees Subcommittee Report

Background:

As previously discussed in more detail [here](#), the Board approved draft regulations and Uniform Standards for Substance Abusing Licensees in October 2014. Due to the length of time lapsed, the Board agreed it is best to review, potentially revise, and readopt the language. The Board created a two-member subcommittee to work with staff, legal counsel, and the Deputy Attorney General liaison to make formal recommendations to the Board.

During its initial meeting, the subcommittee discussed the 2014 approved language with the Board’s Executive Officer (EO). In 2014, the Board was provided three options to determine what would trigger the Uniform Standards:

1. Presumption of substance abuse if conduct involved drugs or alcohol;
2. Clinical diagnosis of substance abuse; or
3. Finding of substance abuse after formal hearing.

The Board chose the third option. The subcommittee discussed the pros and cons for each and determined the third was still the best option.

The subcommittee then discussed concerns raised regarding the implementation of the Uniform Standards. The Uniform Standards will be used by Administrative Law Judges (ALJs), deputy attorneys general, and Board staff when considering proposed decisions and stipulated settlements. Much like the Board’s Disciplinary Guidelines, ALJs will “copy and paste” specific standards into Board-ordered probation conditions. Many of the Uniform Standards, however, were not written as probation conditions. Rather, the majority were written to provide strict standards *if* specific conditions were ordered.

For example, Uniform Standard #1 Clinical Diagnostic Evaluations begins with “*If a healing arts board orders [...]*” and provides specific requirements that must be met *if* ordered. Uniform Standard #1 is represented in the 2014 Board-approved language as Condition 6 and begins with, “Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation.” This language is problematic as it does not inform the respondent or Board staff when the Board might require the evaluation.

As written, the Board's 2014 language implies every condition is required every time and removes flexibility originally afforded to the Board. The EO requested the subcommittee re-evaluate the standards and determine what probation conditions should be mandatory in every probationary order involving substance abusing licensees and what should be optional (determined on a case-by-case basis).

Upon review, the subcommittee recommended five conditions be required, and the remaining be made optional:

Required:

1. Notification of Employer or Supervisor Information
2. Biological Fluid Testing
3. Abstain From the Use of Controlled Substances and Dangerous Drugs
4. Abstain From the Use of Alcohol
5. Violation of Probation Condition for Substance-Abusing Licensee

If Warranted (Optional):

1. Clinical Diagnostic Evaluations and Reports
2. Substance Abuse Support Group Meetings
3. Worksite Monitor for Substance-Abusing Licensee
4. Drug or Alcohol Use Treatment Program

The Board agreed with these recommendations during the April 2019 meeting.

Based on the subcommittee's input, the EO revised the 2014 language to clarify the required vs. optional conditions and drafted model language to properly implement the Uniform Standards. The attached proposed language and Uniform Standards are modeled on the Medical Board of California's successful Uniform Standard rulemaking and closely mirror the Substance Abuse Coordination Committee's (SACC) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011).

Update:

Due to time constraints, this item was postponed during the July 2019 Board meeting. Prior to the meeting, the Board received written concerns from Bonnie Lutz. To assist the discussion, subcommittee provided responses to each concern (Attachment 3).

Action Requested:

Please review and consider the attached proposed regulations and Uniform Standards for Substance Abusing Licensees.

1. Proposed Regulations (Pgs. 3-15)
2. Proposed Uniform Standards for Substance Abusing Licensees (Pgs. 16-41)
3. Responses to Specific Concerns Raised (Pgs. 42-47)

**Title 16. Professional and Vocational Regulations
Division 20. Veterinary Medical Board**

PROPOSED LANGUAGE

Changes to the existing regulation are shown in single underline for new text and ~~single strikeout~~ for deleted text.

Amend Section 2006 of Article 1 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

§ 2006. Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: “Veterinary Medical Board Disciplinary Guidelines, November 2018, July 2012 Edition” which are hereby incorporated by reference. Deviation from these guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 2006.5, without deviation, for each individual proven to be a substance-abusing licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 141, 480, 4890, 315, 315.2, 315.4, 4830.5, 4830.7, 4836.2, 4836.5, 4837, 4839.5, 4842, 4845, 4845.5, 4855, 4856, 4857, 4876, 4883, and 4886, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

Add Sections 2006.5 through 2006.57 of Article 1 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

§ 2006.5. Uniform Standards for Substance-Abusing Licensees.

(a) If, after notice and a hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with section 11500 et seq.), the Board finds that the evidence proves that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards for Substance-Abusing Licensees, July 2019,” which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee:

(1) Clinical Diagnostic Evaluations and Reports; Temporary Removal From Practice.

(A) If the Board orders a licensee who is on probation due to a substance abuse problem to undergo a clinical diagnostic evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of health care 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 evaluator shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

4. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem; whether the licensee is a threat to himself or herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

5. In formulating his or her opinion as to whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

a. License type;

b. Licensee's history;

c. Documented length of sobriety/time that has elapsed since substance use;

d. Scope and pattern of substance abuse;

e. Treatment history;

f. Medical history;

g. Current medical condition;

h. Nature, duration, and severity of substance abuse problem; and

i. Whether the licensee is a threat to himself or herself or the public.

6. The cost of an evaluation shall be borne by the licensee.

7. 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. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

(B) Whenever the Board orders a licensee to undergo a clinical diagnostic evaluation, the Board shall order the licensee to cease practice pending the results of the clinical diagnostic evaluation and review by the Board.

(C) While awaiting the results of the clinical diagnostic evaluation, the licensee shall undergo random biological fluid testing at least two (2) times per week.

(D) The Board shall review the clinical diagnostic evaluation report and determine within ten (10) business days of receipt whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the licensee based on the recommendations made by the evaluator. No licensee shall be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that a licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 2006.51, subsection (e).

(E) Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

(2) Notice of Employer or Supervisor Information. If a licensee whose license is on probation has an employer or supervisor, 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 for the Board, the worksite monitor, and his or her employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

(3) Biological Fluid Testing.

(A) The Board shall require biological fluid testing of substance-abusing licensees.

(B) For the purposes of this section, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.

(C) The Board may order a licensee to undergo a biological fluid test on any day, at any time, including weekends and holidays. Additionally, the licensee shall be subject to 52-104 random tests per year within the first year of probation, and 36-104 random tests per year during the second year of probation and for the duration of the probationary term, up to five (5) years. If there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, testing may be reduced to one (1) time per month.

(D) Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or has committed a violation as identified in section 2006.52, subsection (a), in addition to ordering any other disciplinary action that may be warranted.

(E) The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, except when testing on a specific date is ordered by the Board or its designee.

(F) The licensee shall be required to make daily contact with the Board or its designee to determine if biological fluid testing is required. The licensee shall be tested on the date of the notification as directed by the Board or its designee.

(G) Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements set forth in section 2006.55.

(H) The cost of biological fluid testing shall be borne by the licensee.

(I) Exceptions to Testing Frequency Schedule.

1. Previous Testing Orders/Sobriety. In cases where the 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 Board's own testing schedule so that the combined testing is equivalent to the requirements of this section.

2. Violation(s) Outside of Employment. A licensee 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 the first-year testing frequency requirements and participate in the second-year testing frequency requirements.

3. Not Employed in Health Care Field. The Board may reduce the testing frequency to a minimum of twelve (12) times per year for any licensee 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 Board. Prior to returning to any health care employment, the licensee shall be required to test at the first-year testing frequency requirement for a period of at least sixty (60) days. At such time the person returns to employment in a health care field, if the licensee has not previously met the first-year testing frequency requirement, the licensee shall be required to test at the first-year testing frequency requirement for a full year before he or she may be reduced to testing frequency of at least thirty-six (36) tests per year.

4. Tolling. The Board may postpone all testing for any licensee whose probation is placed in a tolling status while the licensee is not residing in California, provided the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to biological fluid testing as provided in this section. If the licensee returns to employment in a health care field and has not previously met the first-year testing frequency requirements, the licensee shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

5. Substance Abuse Disorder Not Diagnosed. In cases where no current substance abuse disorder diagnosis is made, a lesser period of monitoring and biological fluid testing may be adopted by the Board, but shall not be less than twenty-four (24) times per year.

(J) Reinstatement of License or Reduction of Penalty. Nothing herein shall limit the Board's authority to reduce or eliminate the penalties herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to section 4887 of the code.

(4) Group Support Meetings. If the Board requires a licensee to participate in group support meetings, the following shall apply:

(A) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to the following:

1. The licensee's history;
2. The documented length of sobriety/time that has elapsed since substance use;
3. The recommendation of the clinical evaluator;
4. The scope and pattern of use;

5. The licensee's treatment history; and

6. The nature, duration, and severity of substance abuse.

(B) The facilitator of a group support meeting shall conform to the following requirements:

1. He or she shall 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 nationally certified organizations.

2. He or she shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. A licensee's previous participation in a group support meeting led by the same facilitator does not constitute a current or former financial, personal, or business relationship.

3. He or she 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. He or she shall report a licensee's unexcused absence to the Board within twenty-four (24) hours.

(C) Any costs associated with attending and reporting on group support meetings shall be borne by the licensee.

(5) Worksite Monitor Requirements and Responsibilities.

(A) The Board may require the use of worksite monitors. If the Board determines that a worksite monitor is necessary for a particular licensee, the licensee shall, within 30 calendar days of the effective date of that determination, submit to the Board or its designee for prior approval the name of a worksite monitor. The worksite monitor shall meet the following criteria to be approved by the Board:

1. The worksite monitor shall not have a current or former 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 or supervisee of the licensee.

2. The worksite monitor's scope of practice shall include the scope of practice of the licensee being monitored, be another licensed health care professional if no monitor with like scope of 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 a licensed professional, the worksite monitor 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 agrees to monitor the licensee as set forth by the Board.

(B) The worksite monitor shall adhere to the following required methods of monitoring the licensee:

1. Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but not less than once per week.

2. Interview other staff in the office regarding the licensee's behavior, if requested by the Board.

3. Review the licensee's work attendance.

(C) Reporting by the worksite monitor to the Board shall comply with the following:

1. The worksite monitor shall verbally report any suspected substance abuse to the Board and the licensee's employer or supervisor as defined in subsection (c)(2) within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; the licensee's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board within forty-eight (48) hours of the occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include the following:

a. The licensee's name and license number;

b. The worksite monitor's name and signature;

c. The worksite monitor's license number, if applicable;

d. The worksite location(s);

e. The dates the licensee had face-to-face contact with the monitor;

f. The names of worksite staff interviewed, if applicable;

g. An attendance report;

h. Any change in behavior and/or personal habits; and

i. Any indicators that can lead to suspected substance abuse.

(D) The licensee shall complete any required consent forms and execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(E) If the monitor resigns or is no longer available, the licensee shall, within five (5) calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If the licensee fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, the licensee shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The licensee shall cease the practice of veterinary medicine until a replacement monitor is approved and assumes monitoring responsibility.

(F) Worksite monitoring costs shall be borne by the licensee.

(6) The licensee must remain in compliance with all terms and conditions of probation. If the licensee commits a major or minor violation, as defined in section 2006.52, the Board will execute the disciplinary actions required by that section, and impose any additional terms or conditions necessary for public protection or to enhance the rehabilitation of the licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315,

315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.51. Results of Biological Fluid Tests of Substance-Abusing Licensees.

(a) If the results of a biological fluid test indicate that a licensee has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order the licensee to cease practice and instruct the licensee to leave any place of work where he or she is practicing medicine or providing medical services. The Board shall also immediately notify all of the licensee's employers, and supervisors as defined under section 2006.5, subsection (c)(2), if any, and work site monitor, if any, that the licensee may not provide medical services or practice veterinary medicine while the cease-practice order is in effect.

(b) A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

(c) After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

(d) If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

(e) For the purposes of this Article, "prohibited substance" means: an illegal drug; a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board; alcohol; or other substance the licensee has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

(f) If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in section 2006.52, and the Board shall impose any or all of the consequences set forth in section 2006.52, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.52. Actions by Substance-Abusing Licensees and Consequences Thereof.

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

(1) Fails to complete a Board-ordered program;

(2) Fails to undergo a required clinical diagnostic evaluation;

(3) Commits multiple minor violations of probation conditions and terms;

(4) Treats a patient or patients while under the influence of a prohibited substance;

(5) Engages in any drug or alcohol related act that is a violation of state or federal law or regulation;

- (6) Fails to undergo biological fluid testing when ordered;
- (7) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;
- (8) Knowingly uses, makes, alters, or possesses any object or product in such a way as to defraud or attempt to defraud a biological fluid test designed to detect the presence of a prohibited substance; or
- (9) Fails to comply with any term or condition of his or her probation which presents an immediate threat to the violator or to the public.
- (b) If a licensee commits a major violation, the Board will take one or more of the following actions:
 - (1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.
 - (2) Increase the frequency of biological fluid testing.
 - (3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.
- (c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:
 - (1) Fails to submit required documentation to the Board in a timely manner;
 - (2) Has an unexcused absence at a required meeting;
 - (3) Fails to contact a worksite monitor as required; or
 - (4) Fails to comply with any term or condition of his or her probation which does not present an immediate threat to the violator or to the public.
- (d) If a licensee commits a minor violation, the Board will take one or more of the following actions:
 - (1) Issue a cease-practice order;
 - (2) Order practice limitations;
 - (3) Order or increase supervision of licensee;
 - (4) Order increased documentation;
 - (5) Issue a citation and fine, or a warning letter;
 - (6) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee;
 - (7) Take any other action as determined by the Board.
- (e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.53. Request by a Substance-Abusing Licensee to Return to Practice.

(a) Before a licensee may request to return to full time practice after the issuance of a cease-practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board, in conjunction with the evaluator, shall ensure that the licensee meets the following criteria:

- (1) Demonstrated sustained compliance with his or her current treatment or recovery program, as applicable;
- (2) Demonstrated ability to practice safely as evidenced by current worksite monitor reports (if currently being monitored), evaluations conducted by licensed health care practitioners, and any other information relating to the licensee's substance abuse and recovery therefrom; and
- (3) Negative biological fluid tests or biological fluid tests indicating that the licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 2006.51, subsection (e), for at least six (6) months, two (2) positive worksite monitor reports (if currently being monitored), and complete compliance with other terms and conditions of probation.

(b) Before a substance-abusing licensee may request a full and unrestricted license, the licensee shall demonstrate:

- (1) Sustained compliance with the terms of the disciplinary order, if applicable;
- (2) Successful completion of a treatment or recovery program, if required;
- (3) Consistent and sustained participation in activities that promote and support the licensee's recovery, including, but not limited to, ongoing support meetings, therapy, counseling, a relapse prevention plan, and community activities.
- (4) Ability to practice veterinary medicine safely; and
- (5) Continuous sobriety for three (3) to five (5) years.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.54. Disclosure of Substance-Abusing Licensee Information.

For licensees subject to section 2006.5, 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.

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

Note: Authority cited: Sections 315 and 4808, Business and Professions Code. Reference: Sections 315 and 4871, Business and Professions Code.

§ 2006.55. Requirements for Laboratories/Testing Locations and Specimen Collectors for Testing Substance-Abusing Licensees.

If the Board uses a private-sector vendor that provides laboratories or testing locations or specimen collection for testing substance-abusing licensees, the laboratory, location, or collection service shall meet all the following standards:

(a) The vendor must report to the Board any major violation, as defined in section 2006.52.

(b) The vendor must ensure that its laboratory, testing, or specimen collection providers or contractors meet all of the following:

(1) Specimen collectors shall either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(2) Specimen collectors shall conform to the current United States Department of Transportation Specimen Collection Guidelines.

(3) Testing locations shall comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(4) Specimen collectors shall observe the collection of testing specimens.

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

(6) Testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimen and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The 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.

(7) Specimen collection and testing locations shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which it is responsible on any day of the week.

(8) Testing locations shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(9) Testing sites shall be located throughout California.

(10) Testing sites shall be equipped with:

(A) An automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the licensee to check in daily for testing; and

(B) A secure, HIPAA-compliant website or computer system to allow staff access to drug test results and compliance reporting information that is available twenty-four (24) hours a day.

(11) Testing sites 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 biological fluid test results, medical histories, and any other information relevant to biomedical information.

(c) 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.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.56. Requirements for Diversion Program Vendors.

If the Board uses a private-sector diversion program services vendor, all of the following shall apply:

(a) The vendor shall comply with all of the following ~~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 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, but not limited to any other subcontracted services, the vendor will terminate services of said subcontractor within thirty (30) business days of notification of failure to provide adequate services.

(3) The vendor shall notify the Board within five (5) business days of termination of said subcontractor.

(b) An external audit shall be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the Department of Consumer Affairs with no real or apparent conflict of interest with the vendor providing the monitoring services. The independent reviewer or review team shall consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

(c) The audit in subsection (b) shall 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.

(d) The Board and the Department of Consumer Affairs shall respond to the findings in the audit report.

§ 2006.57. Reporting Requirements Relating to Substance-Abusing Licensees.

(a) The 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 on probation:

(1) Number of intakes into a diversion program;

(2) Number of probationers whose conduct was related to a substance abuse problem;

(3) Number of referrals for treatment programs;

(4) Number of relapses (break in sobriety);

(5) Number of cease-practice orders;

(6) Number of suspensions;

- (7) Number terminated from program for noncompliance;
- (8) Number of successful completions based on uniform standards;
- (9) Number of major violations; nature of violation, and action taken; and
- (10) ~~Number of licensees who successfully returned to practice~~Number of licensees who successfully completed probation.
- (11) Number of patients harmed while in diversion.
- (b) For each reporting category described in subsection (a), the Board shall identify the licensing category and the specific substance abuse problem (e.g., cocaine, alcohol, Demerol, etc.), and whether the licensee is in a diversion program and/or probation program.
- (c) If the reporting 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 terms and conditions of probation. The information may also be used to determine the risk factor when the Board is determining whether a license should be revoked or placed on probation.
- (d) The Board shall use the following criteria to determine if its terms and conditions of probation protect patients from harm and are effective in assisting its licensees in recovering from substance abuse problems in the long term:
 - (1) At least one hundred percent (100%) of licensees whose licenses were placed on probation as a result of a substance abuse problem successfully completed probation, or had their licenses to practice revoked or surrendered on a timely basis based on noncompliance with terms and conditions of probation.
 - (2) At least seventy-five percent (75%) of licensees who successfully completed probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.
- (e) For purposes of measuring outcomes and effectiveness relating to biological fluid testing as described in section 2006.5, subsection (c)(3), the Board shall collect and report historical data (as available) and post-implementation data as follows:
 - (1) Historical Data. The Board should collect the following historical data (as available) for a period of two years prior to implementation of the Uniform Standards for Substance-Abusing Licensees, for each person subject to testing for banned substances, who has done any of the following:
 - (A) Tested positive for a banned substance;
 - (B) Failed to appear or call in for testing on more than three occasions;
 - (C) Failed to pay testing costs; or
 - (D) Given a diluted or invalid specimen.
 - (2) Post-Implementation Data - Three Years. The Board shall collect data annually for a period of three (3) years following implementation of the Uniform Standards for Substance-Abusing Licensees for every licensee subject to testing for banned substances pursuant to section 2006.5, subsection (c)(3). The data collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:
 - (A) Licensee identification;
 - (B) License type;

- (C) Probation effective date;
- (D) General range of testing frequency for each licensee;
- (E) Dates testing requested;
- (F) Dates tested;
- (G) Identity of the entity that performed each test;
- (H) Date(s) licensee tested positive;
- (I) Date(s) Board was informed of positive test(s);
- (J) Date(s) of questionable tests (e.g. dilute, high levels);
- (K) Date(s) Board was notified of questionable test(s);
- (L) Identification of substances detected or questionably detected;
- (M) Date(s) licensee failed to appear for testing;
- (N) Date(s) Board notified of licensee's failure to appear;
- (O) Date(s) licensee failed to call in for testing;
- (P) Date(s) Board was notified that licensee failed to call in for testing;
- (Q) Date(s) licensee failed to pay for testing;
- (R) Date(s) licensee was removed/suspended from practice (identify which); and
- (S) Final outcome and effective date (if applicable).

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, Business and Professions Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code.

Uniform Standards for
Substance-Abusing
Licensees
September 2019

Veterinary Medical Board



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Uniform Standards for Substance-Abusing Licensees
Veterinary Medical Board

September 2019

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California Code of Regulations, Title 16, Division 20, Article 1

§ 2006. Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Veterinary Medical Board Disciplinary Guidelines, November 2018, July 2012 Edition" which are hereby incorporated by reference. Deviation from these guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 2006.5, without deviation, for each individual proven to be a substance-abusing licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 141, 480, 4890, 315, 315.2, 315.4, 4830.5, 4830.7, 4836.2, 4836.5, 4837, 4839.5, 4842, 4845, 4845.5, 4855, 4856, 4857, 4876, 4883, and 4886, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.5. Uniform Standards for Substance-Abusing Licensees.

(a) If, after notice and a hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with section 11500 et seq.), the Board finds that the evidence proves that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards for Substance-Abusing Licensees, July 2019," which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee:

(1) Clinical Diagnostic Evaluations and Reports; Temporary Removal From Practice.

(A) If the Board orders a licensee who is on probation due to a substance abuse problem to undergo a clinical diagnostic evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of health care 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 evaluator shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

4. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem; whether the licensee is a threat to himself or herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

5. In formulating his or her opinion as to whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

a. License type;

b. Licensee's history;

c. Documented length of sobriety/time that has elapsed since substance use;

d. Scope and pattern of substance abuse;

e. Treatment history;

f. Medical history;

g. Current medical condition;

h. Nature, duration, and severity of substance abuse problem; and

i. Whether the licensee is a threat to himself or herself or the public.

6. The cost of an evaluation shall be borne by the licensee.

7. 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. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

(B) Whenever the Board orders a licensee to undergo a clinical diagnostic evaluation, the Board shall order the licensee to cease practice pending the results of the clinical diagnostic evaluation and review by the Board.

(C) While awaiting the results of the clinical diagnostic evaluation, the licensee shall undergo random biological fluid testing at least two (2) times per week.

(D) The Board shall review the clinical diagnostic evaluation report and determine within ten (10) business days of receipt whether the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on the licensee based on the recommendations made by the evaluator. No licensee shall be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that a licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 2006.51, subsection (e).

(E) Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

(2) Notice of Employer or Supervisor Information. If a licensee whose license is on probation has an employer or supervisor, 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 for the Board, the worksite monitor, and his or her employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

(3) Biological Fluid Testing.

(A) The Board shall require biological fluid testing of substance-abusing licensees.

(B) For the purposes of this section, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a licensee's urine, blood, breath, or hair.

(C) The Board may order a licensee to undergo a biological fluid test on any day, at any time, including weekends and holidays. Additionally, the licensee shall be subject to 52-104 random tests per year within the first year of probation, and 36-104 random tests per year during the second year of probation and for the duration of the probationary term, up to five (5) years. If there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, testing may be reduced to one (1) time per month.

(D) Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason, including, but not limited to, if the Board finds or has suspicion that a licensee has committed a violation of the Board's testing program or has committed a violation as identified in section 2006.52, subsection (a), in addition to ordering any other disciplinary action that may be warranted.

(E) The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, except when testing on a specific date is ordered by the Board or its designee.

(F) The licensee shall be required to make daily contact with the Board or its designee to determine if biological fluid testing is required. The licensee shall be tested on the date of the notification as directed by the Board or its designee.

(G) Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements set forth in section 2006.55.

(H) The cost of biological fluid testing shall be borne by the licensee.

(I) Exceptions to Testing Frequency Schedule.

1. Previous Testing Orders/Sobriety. In cases where the 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 Board's own testing schedule so that the combined testing is equivalent to the requirements of this section.

2. Violation(s) Outside of Employment. A licensee 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 the first-year testing frequency requirements and participate in the second-year testing frequency requirements.

3. Not Employed in Health Care Field. The Board may reduce the testing frequency to a minimum of twelve (12) times per year for any licensee 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 Board. Prior to returning to any health care employment, the licensee shall be required to test at the first-year testing frequency requirement for a period of at least sixty (60) days. At such time the person returns to employment in a health care field, if the licensee has not previously met the first-year testing frequency requirement, the licensee shall be required to test at the first-year testing frequency requirement for a full year before he or she may be reduced to testing frequency of at least thirty-six (36) tests per year.

4. Tolling. The Board may postpone all testing for any licensee whose probation is placed in a tolling status while the licensee is not residing in California, provided the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to biological fluid testing as provided in this section. If the licensee returns to employment in a health care field and has not previously met the first-year testing frequency requirements, the licensee shall be subject to completing a full year at the first-year testing frequency requirements, otherwise the second-year testing frequency requirements shall be in effect.

5. Substance Abuse Disorder Not Diagnosed. In cases where no current substance abuse disorder diagnosis is made, a lesser period of monitoring and biological fluid testing may be adopted by the Board, but shall not be less than twenty-four (24) times per year.

(J) Reinstatement of License or Reduction of Penalty. Nothing herein shall limit the Board's authority to reduce or eliminate the penalties herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to section 4887 of the code.

(4) Group Support Meetings. If the Board requires a licensee to participate in group support meetings, the following shall apply:

(A) When determining the frequency of group support meetings to be attended, the Board or the evaluator shall give consideration to the following:

1. The licensee's history;
2. The documented length of sobriety/time that has elapsed since substance use;
3. The recommendation of the clinical evaluator;
4. The scope and pattern of use;
5. The licensee's treatment history; and
6. The nature, duration, and severity of substance abuse.

(B) The facilitator of a group support meeting shall conform to the following requirements:

1. He or she shall 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 nationally certified organizations.
2. He or she shall not have a current or former financial, personal, or business relationship with the licensee within the last five (5) years. A licensee's previous participation in a group support meeting led by the same facilitator does not constitute a current or former financial, personal, or business relationship.
3. He or she 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. He or she shall report a licensee's unexcused absence to the Board within twenty-four (24) hours.

(C) Any costs associated with attending and reporting on group support meetings shall be borne by the licensee.

(5) Worksite Monitor Requirements and Responsibilities.

(A) The Board may require the use of worksite monitors. If the Board determines that a worksite monitor is necessary for a particular licensee, the licensee shall, within 30 calendar days of the effective date of that determination, submit to the Board or its designee for prior approval the name of a worksite monitor. The worksite monitor shall meet the following criteria to be approved by the Board:

1. The worksite monitor shall not have a current or former 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 or supervisee of the licensee.

2. The worksite monitor's scope of practice shall include the scope of practice of the licensee being monitored, be another licensed health care professional if no monitor with a like scope of 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 a licensed professional, the worksite monitor 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 agrees to monitor the licensee as set forth by the Board.

(B) The worksite monitor shall adhere to the following required methods of monitoring the licensee:

1. Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but not less than once per week.

2. Interview other staff in the office regarding the licensee's behavior, if requested by the Board.

3. Review the licensee's work attendance.

(C) Reporting by the worksite monitor to the Board shall comply with the following:

1. The worksite monitor shall verbally report any suspected substance abuse to the Board and the licensee's employer or supervisor as defined in subsection (c)(2) within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; the licensee's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board within forty-eight (48) hours of the occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include the following:

a. The licensee's name and license number;

- b. The worksite monitor's name and signature;
- c. The worksite monitor's license number, if applicable;
- d. The worksite location(s);
- e. The dates the licensee had face-to-face contact with the monitor;
- f. The names of worksite staff interviewed, if applicable;
- g. An attendance report;
- h. Any change in behavior and/or personal habits; and
- i. Any indicators that can lead to suspected substance abuse.

(D) The licensee shall complete any required consent forms and execute agreements with the approved worksite monitor(s) and the Board authorizing the Board and worksite monitor to exchange information.

(E) If the monitor resigns or is no longer available, the licensee shall, within five (5) calendar days of such resignation or unavailability, submit to the Board the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If the licensee fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, the licensee shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The licensee shall cease the practice of veterinary medicine until a replacement monitor is approved and assumes monitoring responsibility.

(F) Worksite monitoring costs shall be borne by the licensee.

(6) The licensee must remain in compliance with all terms and conditions of probation. If the licensee commits a major or minor violation, as defined in section 2006.52, the Board will execute the disciplinary actions required by that section, and impose any additional terms or conditions necessary for public protection or to enhance the rehabilitation of the licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.51. Results of Biological Fluid Tests of Substance-Abusing Licensees.

(a) If the results of a biological fluid test indicate that a licensee has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order the licensee to cease practice and instruct the licensee to leave any place of work where he or she is practicing medicine or providing medical services. The Board shall also immediately notify all of the licensee's employers, and supervisors as defined under section 2006.5, subsection (c)(2), if any, and work site monitor, if any, that the licensee may not provide medical services or practice veterinary medicine while the cease-practice order is in effect.

(b) A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

(c) After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting

with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

(d) If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

(e) For the purposes of this Article, "prohibited substance" means: an illegal drug; a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board; alcohol; or other substance the licensee has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

(f) If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in section 2006.52, and the Board shall impose any or all of the consequences set forth in section 2006.52, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.52. Actions by Substance-Abusing Licensees and Consequences Thereof.

(a) A licensee who does any of the following shall be deemed to have committed a major violation of his or her probation:

(1) Fails to complete a Board-ordered program;

(2) Fails to undergo a required clinical diagnostic evaluation;

(3) Commits multiple minor violations of probation conditions and terms;

(4) Treats a patient or patients while under the influence of a prohibited substance;

(5) Engage in any drug or alcohol related act that is a violation of state or federal law or regulation;

(6) Fails to undergo biological fluid testing when ordered;

(7) Uses, consumes, ingests, or administers to himself or herself a prohibited substance;

(8) Knowingly uses, makes, alters, or possesses any object or product in such a way as to defraud or attempt to defraud a biological fluid test designed to detect the presence of a prohibited substance; or

(9) Fails to comply with any term or condition of his or her probation which presents an immediate threat to the violator or to the public.

(b) If a licensee commits a major violation, the Board will take one or more of the following actions:

(1) Issue an immediate cease-practice order and order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice.

(2) Increase the frequency of biological fluid testing.

(3) Refer the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board.

(c) A licensee who does any of the following shall be deemed to have committed a minor violation of his or her probation:

(1) Fails to submit required documentation to the Board in a timely manner;

(2) Has an unexcused absence at a required meeting;

(3) Fails to contact a worksite monitor as required; or

(4) Fails to comply with any term or condition of his or her probation which does not present an immediate threat to the violator or to the public.

(d) If a licensee commits a minor violation, the Board will take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of licensee;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order the licensee to undergo a clinical diagnostic evaluation at the expense of the licensee;

(7) Take any other action as determined by the Board.

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.53. Request by a Substance-Abusing Licensee to Return to Practice.

(a) Before a licensee may request to return to full time practice after the issuance of a cease-practice order or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board, in conjunction with the evaluator, shall ensure that the licensee meets the following criteria:

(1) Demonstrated sustained compliance with his or her current treatment or recovery program, as applicable;

(2) Demonstrated ability to practice safely as evidenced by current worksite monitor reports (if currently being monitored), evaluations conducted by licensed health care practitioners, and any other information relating to the licensee's substance abuse and recovery therefrom; and

(3) Negative biological fluid tests or biological fluid tests indicating that the licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 2006.51, subsection (e), for at least six (6) months, two

(2) positive worksite monitor reports (if currently being monitored), and complete compliance with other terms and conditions of probation.

(b) Before a substance-abusing licensee may request a full and unrestricted license, the licensee shall demonstrate:

- (1) Sustained compliance with the terms of the disciplinary order, if applicable;
- (2) Successful completion of a treatment or recovery program, if required;
- (3) Consistent and sustained participation in activities that promote and support the licensee's recovery, including, but not limited to, ongoing support meetings, therapy, counseling, a relapse prevention plan, and community activities.
- (4) Ability to practice veterinary medicine safely; and
- (5) Continuous sobriety for three (3) to five (5) years.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.54. Disclosure of Substance-Abusing Licensee Information.

For licensees subject to section 2006.5, 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.

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

Note: Authority cited: Sections 315 and 4808, Business and Professions Code. Reference: Sections 315 and 4871, Business and Professions Code.

§ 2006.55. Requirements for Laboratories/Testing Locations and Specimen Collectors for Testing Substance-Abusing Licensees.

If the Board uses a private-sector vendor that provides laboratories or testing locations or specimen collection for testing substance-abusing licensees, the laboratory, location, or collection service shall meet all the following standards:

- (a) The vendor must report to the Board any major violation, as defined in section 2006.52.
- (b) The vendor must ensure that its laboratory, testing, or specimen collection providers or contractors meet all of the following:
 - (1) Specimen collectors shall either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
 - (2) Specimen collectors shall conform to the current United States Department of Transportation Specimen Collection Guidelines.
 - (3) Testing locations shall comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
 - (4) Specimen collectors shall observe the collection of testing specimens.

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

(6) Testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimen and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The 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.

(7) Specimen collection and testing locations shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which it is responsible on any day of the week.

(8) Testing locations shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(9) Testing sites shall be located throughout California.

(10) Testing sites shall be equipped with:

(A) An automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the licensee to check in daily for testing; and

(B) A secure, HIPAA-compliant website or computer system to allow staff access to drug test results and compliance reporting information that is available twenty-four (24) hours a day.

(11) Testing sites 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 biological fluid test results, medical histories, and any other information relevant to biomedical information.

(c) 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.

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§ 2006.56. Requirements for Diversion Program Vendors.

If the Board uses a private-sector diversion program services vendor, all of the following shall apply:

(a) The vendor shall comply with all of the following:

(1) The vendor is fully responsible for the acts and omissions of its subcontractors and 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, but not limited to any other subcontracted services, the vendor will terminate services of said subcontractor within thirty (30) business days of notification of failure to provide adequate services.

(3) The vendor shall notify the Board within five (5) business days of termination of said subcontractor.

(b) An external audit shall be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the Department of Consumer Affairs with no real or apparent conflict of interest with the vendor providing the monitoring services. The independent reviewer or review team shall consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

(c) The audit in subsection (b) shall 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.

(d) The Board and the Department of Consumer Affairs shall respond to the findings in the audit report.

§ 2006.57. Reporting Requirements Relating to Substance-Abusing Licensees.

(a) The 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 on probation:

- (1) Number of intakes into a diversion program;
- (2) Number of probationers whose conduct was related to a substance abuse problem;
- (3) Number of referrals for treatment programs;
- (4) Number of relapses (break in sobriety);
- (5) Number of cease-practice orders;
- (6) Number of suspensions;
- (7) Number terminated from program for noncompliance;
- (8) Number of successful completions based on uniform standards;
- (9) Number of major violations; nature of violation, and action taken; and
- (10) Number of licensees who successfully completed probation.

(b) For each reporting category described in subsection (a), the Board shall identify the licensing category and the specific substance abuse problem (e.g., cocaine, alcohol, Demerol, etc.), and whether the licensee is in a diversion program and/or probation program.

(c) If the reporting 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 terms and conditions of probation. The information may also be used to determine the risk factor when the Board is determining whether a license should be revoked or placed on probation.

(d) The Board shall use the following criteria to determine if its terms and conditions of probation protect patients from harm and are effective in assisting its licensees in recovering from substance abuse problems in the long term:

- (1) At least one hundred percent (100%) of licensees whose licenses were placed on probation as a result of a substance abuse problem successfully completed probation,

or had their licenses to practice revoked or surrendered on a timely basis based on noncompliance with terms and conditions of probation.

(2) At least seventy-five percent (75%) of licensees who successfully completed probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

(e) For purposes of measuring outcomes and effectiveness relating to biological fluid testing as described in section 2006.5, subsection (c)(3), the Board shall collect and report historical data (as available) and post-implementation data as follows:

(1) Historical Data. The Board should collect the following historical data (as available) for a period of two years prior to implementation of the Uniform Standards for Substance-Abusing Licensees, for each person subject to testing for banned substances, who has done any of the following:

- (A) Tested positive for a banned substance;
- (B) Failed to appear or call in for testing on more than three occasions;
- (C) Failed to pay testing costs; or
- (D) Given a diluted or invalid specimen.

(2) Post-Implementation Data - Three Years. The Board shall collect data annually for a period of three (3) years following implementation of the Uniform Standards for Substance-Abusing Licensees for every licensee subject to testing for banned substances pursuant to section 2006.5, subsection (c)(3). The data collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

- (A) Licensee identification;
- (B) License type;
- (C) Probation effective date;
- (D) General range of testing frequency for each licensee;
- (E) Dates testing requested;
- (F) Dates tested;
- (G) Identity of the entity that performed each test;
- (H) Date(s) licensee tested positive;
- (I) Date(s) Board was informed of positive test(s);
- (J) Date(s) of questionable tests (e.g. dilute, high levels);
- (K) Date(s) Board was notified of questionable test(s);
- (L) Identification of substances detected or questionably detected;
- (M) Date(s) licensee failed to appear for testing;
- (N) Date(s) Board notified of licensee's failure to appear;
- (O) Date(s) licensee failed to call in for testing;
- (P) Date(s) Board was notified that licensee failed to call in for testing;
- (Q) Date(s) licensee failed to pay for testing;
- (R) Date(s) licensee was removed/suspended from practice (identify which); and
- (S) Final outcome and effective date (if applicable).

Note: Authority cited: Sections 315, 315.2, 315.4, 4808, Business and Professions Code. Reference: Sections 315, 315.2, and 315.4, Business and Professions Code.

INTRODUCTION

Pursuant to section 315 of the Business and Professions Code, the Veterinary Medical Board (Board) is directed to use the standards developed by the Department of Consumer Affairs, Substance Abuse Coordination Committee (SACC) for substance-abusing licensees. On April 11, 2011, the SACC developed [uniform standards](#) to be used by all healing arts boards.

The Board's Uniform Standards for Substance-Abusing Licensees, developed in accordance with the SACC uniform standards, shall be used in every case where it has been determined that the individual is a substance-abusing licensee as provided in section 2006.5, article 1, division 20, title 16 of the California Code of Regulations. To implement these terms and conditions of probation, any reference to the Board also means Veterinary Medical Board staff or its designee.

In order to ensure that stipulated settlements and proposed decisions submitted to the Board do not deviate in any way from the Uniform Standards, the following proposed language has been prepared to address the required and optional terms and conditions under the Uniform Standards. The Uniform Standards contain required terms and conditions that must be applied in cases involving substance-abusing licensees, as well as optional terms and conditions that may, at the discretion of the Board, be applied in such cases if warranted. Each of the following probationary terms indicates whether the term is required or optional.

These terms and conditions shall be used in lieu of any similar standard or optional term or condition proposed in the Board's Disciplinary Guidelines, which are incorporated by reference in section 2006, article 1, division 20, title 16 of the California Code of Regulations. However, the Board's Disciplinary Guidelines should still be used in formulating the penalty and in considering additional terms or conditions appropriate for greater public protection (e.g., other standards or optional terms and conditions of probation).

**LANGUAGE TO COMPLY WITH THE UNIFORM STANDARDS
FOR SUBSTANCE-ABUSING LICENSEES**

The Veterinary Medical Board's Uniform Standards for Substance-Abusing Licensees (Cal. Code Regs., tit. 16, § 2006, et seq.) contain new required conditions that must be applied in cases involving substance-abusing licensees, as well as new optional conditions that may, at the discretion of the Board, be applied in such cases. In order to ensure that stipulated settlements submitted to the Board do not deviate in any way from those Uniform Standards, the following proposed language has been prepared to address the new required conditions, and the new optional conditions, under those Uniform Standards.

Required Terms and Conditions:

1. **Notice of Employer or Supervisor Information.** Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

2. **Biological Fluid Testing.** Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing veterinary medicine, Respondent shall select a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing veterinary medicine or providing veterinary medical services. The Board shall immediately notify all of Respondent's employers, supervisors and worksite monitors, if any, that Respondent may not practice veterinary medicine or provide veterinary medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 2006.52, subsection (a), and the Board shall impose any or all of the consequences set forth in section 2006.52, subsection (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

3. **Abstain from the Use of Controlled Substances and Dangerous Drugs.**
Respondent shall abstain completely from personal use, possession, injection, consumption by any route, including inhalation of all controlled substances as

defined in the California Uniform Controlled Substances Act (Health and Safety Code section 11007), dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by a licensed health care practitioner for a bona fide illness or condition and approved by the Board.

Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board or its designee in writing of the following: prescriber's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted to the Board or its designee. Respondent shall provide the Board or its designee with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board, a single physician, nurse practitioner, or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. Respondent's name;
2. Respondent's license number;
3. Physician, nurse practitioner, or physician assistant's name and signature;
4. Physician, nurse practitioner, or physician assistant's license number;
5. Dates Respondent had face-to-face contact or correspondence (written and verbal) with physician, nurse practitioner, or physician assistant;
6. Respondent's compliance with this condition;
7. If any substances have been prescribed, identification of a program for the time-limited use of any substances;
8. Any change in behavior and/or personal habits;
9. Assessment of Respondent's ability to practice safely;
10. Recommendation dependent on Respondent's progress and compliance with this condition on whether to continue with current prescription plan

- and/or treatment, modify plan and/or treatment, or require Respondent to cease practice; and
11. Other relevant information deemed necessary by the physician, nurse practitioner, physician, or the Board.

Respondent is ultimately responsible for ensuring his/her physician, nurse practitioner or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine. Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors, or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut off level shall be reported to each of Respondent's employers.

4. **Abstain from the Use of Alcohol.** Respondent shall abstain completely from the use of products or beverages containing alcohol.
5. **Violation of Probation Condition for Substance-Abusing Licensee.** Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 2006.52, subsection (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 2006.5, subsection (c)(1), of title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may

not resume the practice of veterinary medicine until notified in writing by the Board or its designee that he or she may do so.

- (2) Increase the frequency of biological fluid testing.
- (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined by section 2006.52, subsection (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of Respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 2006.5, subsection (c)(1), of title 16 of the California Code of Regulations, at Respondent's expense;
- (7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Optional Terms and Conditions:

- 6. Clinical Diagnostic Evaluations and Reports; Temporary Removal From Practice.** Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a licensed practitioner approved by the Board. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed practitioner who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and

independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or herself or the public.

For all clinical diagnostic 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. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report and determine within ten (10) business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 2006.51, subsection (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of veterinary medicine until notified by the Board or its designee that he or she is fit to practice veterinary medicine safely. The period of time that Respondent is not practicing veterinary medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week.

while awaiting the notification from the Board if he or she is fit to practice veterinary medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

7. **Substance Abuse Support Group Meetings.** Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall 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 nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

8. **Worksite Monitor for Substance-Abusing Licensee.** Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more individuals, whose scope of practice includes Respondent's scope of practice, is another licensed health care professional if no monitor with a like scope of practice is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and license number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of veterinary medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of veterinary medicine until a replacement monitor is approved and assumes monitoring responsibility.

9. **Drug or Alcohol Use Treatment Program.** Upon order of the Board, Respondent shall successfully complete an inpatient, outpatient or any other type of recovery and relapse prevention treatment program as directed by the Board.

When determining if Respondent should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, Respondent's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether Respondent is a threat to himself or herself or others. All costs associated with completion of a drug or alcohol abuse treatment program shall be paid by Respondent.

The treatment facility staff and services shall meet the following qualifications and requirements:

1. Licensure and/or accreditation by appropriate regulatory agencies;
2. Sufficient resources available to adequately evaluate the physical and mental needs of Respondent, 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; and
5. Means to provide treatment and progress documentation to the provider.

Agenda Item 5. Uniform Standards for Substance-Abusing Licensees

Public Comment from Bonnie Lutz, Esq., Klinedinst Attorneys to July 2019 version of Uniform Standards

1. *“2006.5(c)(1)(A)(1): can we clarify the credentials for the “licensed practitioner”? I have had situations where the VMB Subcommittee person present at the initial probation interview specifically required an MD or PhD when that specification was not required in the regulation.”*

Subcommittee Response:

No. The Substance Abuse Coordination Committee’s (SACC) Uniform Standard No. 1 provides that the clinical diagnostic evaluation (CDE) must be performed by a “licensed practitioner who: holds a valid, unrestricted license, which includes scope of practice to conduct a [CDE]; has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and is approved by the board.” In compliance with this Uniform Standard, the Board could authorize a person other than an MD or PhD to perform the CDE, as long as the person meets the listed criteria.

2. *“2006.5(c)(1) (A) through (D): I would like to see language regarding when the VMB must make a decision following receipt of the clinical evaluator’s report. It is clear that the evaluator must provide a report within 10 days from the time they are assigned (unless they need more time up to 30 days) and the VMB must review the report within 5 business days of receipt. Can we add that the VMB must make a decision based on the report within say another 5 business days? The way it is written, the VMB must review the report within the 5 business days but has limited time to make a decision.”*

Subcommittee Response:

Proposed CCR section 2006.5(c)(1)(D) has been revised to require the Board to review the CDE and decide within 10 days.

3. *“2006.5(c)(1)(D): As discussed below regarding 2006.51(e), I believe we need language that clarifies that if a veterinarian is being treated on an ongoing basis with a controlled substance or dangerous drug by a physician that the extra penalties do not apply. Specifically, I would recommend language to be added to 2006.5(c)(1)(D) that the 30 days does not apply to a legitimate prescription for a dangerous drug or controlled substance such as that administered by an intrathecal pain pump.”*

Subcommittee Response:

The requested revisions would not conform to Uniform Standard No. 2, which prohibits all licensees from returning to practice until he or she has at least 30 days of negative drug tests. Proposed CCR section 2006.5(c)(1)(D) incorporates Uniform Standard No. 2 and would require 30 days of negative biological fluid tests or biological fluid tests indicating that a licensee has not used, consumed, ingested, or administered to himself or herself a prohibited substance. The Subcommittee has provided a definition of “prohibited substance,” which is modeled on the prohibited substance definition used by the Medical Board of California in CCR section 1361.51(e).

Proposed CCR section 2006.51, subsection (e) would define “prohibited substance” to mean an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board, alcohol, or other substance the licensee has been instructed by the Board not to use, consumer, ingest, or administer to himself or herself. This definition incorporates the direction to boards in Uniform Standard No. 8 to communicate with the licensee and/or any physician who is treating the licensee for a medical condition and ensures

that the licensee, who has provided to the Board for its approval information on the prescription, would not be disadvantaged by a positive drug test for a prescribed medication.

A lawfully prescribed and Board-approved substance would not be considered a prohibited substance as defined in the proposed CCR section 2006.51(e). Thus, a positive test indicating the presence of said substance would not be considered a probation violation.

4. *“2006.5(c)(3)(J): reinstatement should reference Business and Professions Code section 4887 rather than Government Code section 11522 because of the difference in the years required before a petition can be filed.”*

Subcommittee Response:

Proposed CCR section 2006.5(c)(3)(J) has been revised to make this change.

5. *“2006.51(b) and (d): If the veterinarian is being treated on an ongoing bases, such as with an intrathecal pain pump where there is a controlled substance in the pain pump, it is patently unfair to consider the positive test for the drug in the pump as a positive test for which the practitioner must be punished by a cease practice order. There are many people who take controlled drugs or dangerous drugs on an ongoing basis for years and they should not be penalized for this use when the information is readily available from the veterinarian and their medical provider. This section should be revised to protect a veterinarian who is unfortunate enough to have to be treated for years with controlled substances for intractable pain that is through no fault of their own.”*

Subcommittee Response:

Uniform Standard No. 13 states that 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.” Accordingly, the Subcommittee is unable to revise proposed CCR section 2006.51(b) and (d) as requested. However, the Subcommittee has provided a definition of “prohibited substance,” which is modeled on the prohibited substance definition used by the Medical Board of California.

Proposed CCR section 2006.51, subsection (e) would define “prohibited substance” to mean an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board, alcohol, or other substance the licensee has been instructed by the Board not to use, consumer, ingest, or administer to himself or herself. This definition incorporates the direction to boards in Uniform Standard No. 8 to communicate with the licensee and/or any physician who is treating the licensee for a medical condition, and ensures that the licensee, who has provided to the Board for its approval information on the prescription, would not be disadvantaged by a positive drug test for a prescribed medication.

In practice, the Board would review the positive test to determine whether the substance was lawfully prescribed and approved by the Board. If so, the positive test indicating the presence of said substance would not be considered a probation violation. If not, as required by Uniform Standard No. 8, the Board would consult the specimen collector and the laboratory; communicate with the licensee and/or any physician who is treating the licensee; and communicate with any treatment provider. As such, the Board is conforming to Uniform Standards Nos. 8 and 13, and no change to proposed CCR section 2006.51(b) and (d) is warranted at this time.

6. *“2006.51(a)(2): is failure to log in a major or minor violation? This often happens when the veterinarian lives in an area with poor cell phone reception.”*

Subcommittee Response:

It appears this comment may be directed at proposed CCR section 2006.52(a)(2), not 2006.51(a)(2), which cannot be found in the Subcommittee’s proposal. First, note that the Medical Board of California’s (MBC) regulations make a major violation failure to comply with any term or condition of probation that impairs public safety; a minor violation is failure to comply that does not impair public safety.

The SACC uses the term “violations that do not present an immediate threat to the violator or to the public,” which is slightly clearer than the MBC version. Revisions have been made to proposed CCR section 2006.52(a)(2) to reflect the SACC wording.

Second, if a licensee fails to log in and, as a result, the licensee fails to submit to testing, the Board would consider this a major violation. If a licensee fails to log in, but did not miss a test, the Board would consider this a minor violation, as it does not pose an immediate threat to the violator and the public. This minor violation may result in a non-compliance letter and/or a citation. If the licensee continues to not log in, the multiple minor violations would be considered a major violation.

7. *“2006.55(9): This is not a complete sentence and do all the testing sites have to be I California”*

Subcommittee Response:

Proposed CCR section 2006.55(b)(9) has been revised to change “Testing sites that are located through California” to read “Testing sites shall be located throughout California.”

8. *“2006.55(10)(11)(12): these should begin with “testing sites shall be equipped with” so that the language is consistent”*

Subcommittee Response:

Proposed CCR section 2006.55(b)(9), (10), and (11) have been revised to resolve this concern.

9. *“2006.55(c): Again a veterinarian with an intrathecal pain pump or who is on drugs on an ongoing basis should not be penalized here. The tests should be considered positive but explained by a valid prescription.”*

Subcommittee Response:

Uniform Standard No. 13 states that 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.” Accordingly, the Subcommittee is unable to revise proposed CCR section 2006.55(c) as requested.

However, the Subcommittee has incorporated, in proposed CCR section 2006.51(e), a definition of “prohibited substance,” modeled on the Medical Board of California’s uniform standards, that provides for lawfully prescribed medications approved by the Board. This definition incorporates the direction to boards in Uniform Standard No. 8 to communicate with the licensee and/or any physician who is treating the licensee for a medical condition, and ensures that the licensee, who

has provided to the Board for its approval information on the prescription, would not be disadvantaged by a positive drug test for a prescribed medication.

In practice, the Board would review the positive test to determine whether the substance was lawfully prescribed and approved by the Board. If so, the positive test indicating the presence of said substance would not be considered a probation violation.. If not, as required by Uniform Standard No. 8, the Board would consult the specimen collector and the laboratory; communicate with the licensee and/or any physician who is treating the licensee; and communicate with any treatment provider. As such, the Board is conforming to Uniform Standards Nos. 8 and 13, and no change to proposed CCR section 2006.55(c) is warranted at this time.

10. *Condition “2. page 18 last paragraph: Is it true that the veterinarian will select the test laboratory?”*

Subcommittee Response:

The drug testing vendor contracts with and approves multiple laboratories throughout California and the United States. The probationer selects the laboratory from the approved list provided by the vendor.

11. *Condition “2. page 19 paragraph 3, 4, 5: Again, if a veterinarian is taking an ongoing prescription or has controlled drugs in an intrathecal pain pump, these provisions should not apply. It is patently unfair for that person to be penalized. Language should be added to clarify that these provisions do not apply to a known prescription written by a medical provider when the VMB has information about that prescription.”*

Subcommittee Response:

Condition 3 has been revised to add clarifying language. The Subcommittee does not believe additional clarification is needed, as the standards are clear that prescription medication for a bona fide illness is not a prohibited substance.

12. *Condition “3. page 20 paragraph 2: If a veterinarian has an intrathecal pain pump, the medication is ongoing. How should this be handled?”*

Subcommittee Response:

An intrathecal pain pump would have been prescribed through a licensed health care practitioner. Thus, it would be handled just like any other prescribed medication.

13. *Condition “3. page 20 paragraphs 3 and 4: What if the physician refuses to provide these reports? That should not be held against the veterinarian.”*

Subcommittee Response:

Just like the supervisor, worksite monitor, or evaluator reports, the probationer is responsible for ensuring these reports are submitted. If the probationer’s physician refuses to submit reports, the probationer should contact the Board to discuss a replacement physician.

14. *Condition “3. page 21 paragraph 4: I understand the reason for this however, suggest rewording, “Respondent shall ensure to the best of his/her ability that he/she is not in the presence or in the same location”*

Subcommittee Response:

The Subcommittee does not believe this revision is necessary.

15. *Condition “3. paragraph 5: Positive results should not be reported when they are due to prescription drugs pursuant to a legal prescription, this is a violation of the veterinarians’ right to medical privacy.*

Subcommittee Response:

When a licensee tests positive for a banned substance, Uniform Standard No. 8 requires a board to order the licensee to cease practice, contact the licensee and instruct the licensee to leave work, and notify the licensee’s employer, if any, and worksite monitor, if any, that the licensee may not work.

In practice, the Board would review the positive test to determine whether the substance was lawfully prescribed and approved by the Board in accordance with proposed CCR section 2006.51(e), which defines “prohibited substance.” If the substance identified in the positive test is not a “prohibited substance,” no report to the licensee’s employer would be made.

16. *Condition “6. page 22 need to change “board-certified physician and surgeon”, “licensed physician and surgeon” and “physicians and surgeons” to language similar to section 2006.5”*

Subcommittee Response:

Revisions have been made to conform Optional term and condition No. 6 to proposed CCR section 2006.5(c)(1).

17. *Condition “6 page 23 paragraph 4: need to add language about a drug taken or administered pursuant to a legally obtained prescription.”*

Subcommittee Response:

Uniform Standard No. 2 prohibits all licensees from returning to practice until he or she has at least 30 days of negative drug tests. The Subcommittee has provided a definition of “prohibited substance,” which is modeled on the prohibited substance definition used by the Medical Board of California.

Proposed CCR section 2006.51, subsection (e) would define “prohibited substance” to mean an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by the licensee and approved by the Board, alcohol, or other substance the licensee has been instructed by the Board not to use, consume, ingest, or administer to himself or herself. This definition incorporates the direction to boards in Uniform Standard No. 8 to communicate with the licensee and/or any physician who is treating the licensee for a medical condition and ensures that the licensee, who has provided to the Board for its approval information on the prescription, would not be disadvantaged by a positive drug test for a prescribed medication.

A lawfully prescribed and Board-approved substance would not be considered a prohibited substance as defined in the proposed CCR section 2006.51(e). Thus, a positive test indicating the presence of said substance would not be considered a probation violation.

18. *Condition “6 page 24 paragraph 2: I cannot find anything about the 15 days in the applicable regulation”*

Subcommittee Response:

Proposed CCR section 2006.5(c)(1)(E) has been revised to add the 15-day requirement language.

19. *Condition "8 page 24: need to change "physician and surgeon"*

Subcommittee Response:

This condition has been revised.

20. *Condition "8 page 25 Paragraph 5: need to replace "Physician's and Surgeon's Certificate"*

Subcommittee Response:

This condition has been revised.