

**BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: August 22, 2014

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

Section(s) Affected: 16 CCR Section 1397.12 to be renumbered as Section 1395.2, and amend and retitle 16 CCR Section 1395.2 to now include within Article 7, Standards Related to Denial, Discipline, and Reinstatement of Licenses or Registrations.

Introduction

On September 28, 2008, Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) was enacted, and required the Department of Consumer Affairs (DCA) to establish a Substance Abuse Coordination Committee (SACC) comprised of the Executive Officers of the DCA's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of DCA. The SACC was charged with the task of developing consistent and uniform standards in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a healing arts board chooses to have a formal diversion program. The SACC developed its initial set of uniform standards in April 2010 and revised those initial standards in April 2011. The document titled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011)" lists the sixteen uniform standards that all DCA healing arts boards must use in dealing with substance abusing licensees.

On April 5, 2012, the DCA's Division of Legal Affairs provided DCA healing arts boards with an opinion in respect to the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Uniform Standards) and whether or not healing arts boards have the discretion to modify the Uniform Standards. Two opinions, one issued by the Legislative Counsel Bureau (Legislative Counsel) dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General (Attorney General), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards.

In the April 5, 2012 opinion issued by the DCA's Division of Legal Affairs, the Deputy Director opined that: 1) healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards; 2) healing arts boards do not have the discretion to determine which of the Uniform Standards apply in a particular case; and 3) the authority to promulgate regulations necessary to implement the Uniform Standards, lies with the individual

boards that implement, interpret or make specific, the laws administered by those boards, and that the SACC is limited to the creation or formulation of the uniform standards.

The DCA is committed to ensuring that licensees, who are confirmed to be abusing drugs and / or alcohol, and who pose a risk to the public, are not diverted from an enforcement action or public disclosure of that action. The DCA is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

The Board considered the following three options that would result in a finding that a licensee is a “substance-abusing licensee” within the meaning of the statute, and trigger the application of the uniform standards:

Option 1 – creates a rebuttable presumption that the licensee is a substance-abusing licensee. Once grounds are established that involve drugs or alcohol, the licensee is considered to be a substance abuser unless evidence rebuts that presumption (e.g. sobriety for a certain number of years);

Option 2 – allows for a determination to be made after a clinical diagnostic evaluation that the licensee is a substance-abusing licensee;

Option 3 – requires the Board to prove at the hearing that the licensee is a substance abuser.

The Board chose to implement option #1 to create a presumption that the licensee is a substance-abusing licensee which in turn will give notice to the licensee that they have the burden of rebutting that presumption. Option #2 was rejected because it relies on a clinical diagnostic evaluation which may create a lack of clarity. Option #3 was rejected due to the obligation of the Board to prove that a licensee is a substance abuser may be difficult to prove. Any of the three options considered would not impact the content of each standard once it is applied’;, however, the Board believes option #1 is the most reasonable option in that it puts everyone on notice before a hearing that this is going to be the issue and that way the licensee can choose to present evidence to rebut the presumption. If the presumption is not rebutted, then the issue becomes only about the consequences once the licensee has been determined to be subject to discipline.

The proposed text clarifies that the Disciplinary Guidelines apply to all disciplinary matters, and the Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee and must be applied as written, except that the Board may impose more restrictive conditions if necessary to protect the public.

The Board is hereby proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines. Uniform Standards 13, 14, and 15 are not included in this proposal since these standards only apply to Boards with a formal diversion program, and the Board does not have a diversion program. Uniform Standard #16 is also omitted because it

relates to reporting to the Legislature; and portions of Uniform Standard #4, related to specimen collection, are implemented by contract and not included within the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees. The testing frequency was implemented in 2012 and the testing is done by a company (Phamatech) in compliance with the established standards. The tests are done on a random basis (computerized) and all tests are observed. The current testing company adheres to the current U.S. Department of Transportation Specimen Guidelines. The Phamatech contract was written to require that they meet all the requirements and standards as outlined in Uniform Standard #4.

The Board has not updated the standard and optional terms and conditions of probation in its Disciplinary Guidelines since February 2007. In addition to incorporating Uniform Standards 1-12, this proposal will update the Board's existing disciplinary guidelines pertaining to the practice of psychology to provide greater consumer protection standards for the discipline of licensees who have violated specified provisions of law contained therein. Many of the changes are based on best practices exemplified by the DCAs' various boards and bureaus that have proven to be effective and in the best interest for consumers and the licensees receiving discipline.

Identification of the Problem

Specific Purpose of each Adoption, Amendment or Repeal:

This proposal would renumber Title 16, California Code of Regulations Section 1397.12 titled "Disciplinary Guidelines" as Section 1395.2, and amend section 1395.2 to reference a revised version of the Board's existing "Disciplinary Guidelines," and will rename this section "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees."

The current *Disciplinary Guidelines (Amended 2/07)* referenced in existing regulation must be amended to be made consistent with current law. This proposal incorporates Uniform Standards 1-12 in the Board's proposed "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Amended 2/14)" to describe the mandatory conditions that apply to a substance abusing applicant or licensee, and updates the standard and optional terms and conditions of probation, and adopts uniform and specific standards that the Board must use in dealing with substance-abusing licensees, registrants or applicants to increase consumer protection.

The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public.

Anticipated benefits from this regulatory action:

The Board has determined that this regulatory proposal will provide increased consumer protection for consumers of psychological services, and to ensure that minimum

standards are met and to ensure uniformity among the standards established by the SACC for the healing arts licensing boards under the DCA.

The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. This proposal requires an Administrative Law Judge (ALJ) to apply the mandatory conditions in the Uniform Standards Related to Substance Abusing Licensees when an applicant or licensee has a substance abuse disorder and to also consider the disciplinary guidelines for all other disciplinary matters. This proposal would allow the Board to impose more restrictive conditions if necessary to protect the public from unsafe, incompetent, or negligent practitioners when exercising its licensing, regulatory, and disciplinary functions, unless a specific order is required by statute.

Existing Law

Business and Professions Code (BPC) section 2920.1 requires that protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions.

BPC section 2960 allows the Board to deny an applicant or discipline a licensee or registrant found guilty of unprofessional conduct, which includes but is not limited to: incompetence, or gross negligence, in providing psychological services. This section also includes specified drug-related transgressions in the definition of unprofessional conduct, e.g., unlawful use or possession of any controlled substance, dangerous drug or device, or alcoholic beverages that impair a psychologist's ability to safely perform services to consumers.

BPC section 2961 allows the Board to deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after an administrative hearing as provided in section 2965.

The Board proposes to add the uniform standards related to substance abusing licensees into the Disciplinary Guidelines, and incorporate them by reference into 16 CCR section 1395.2. This proposal updates the Board's existing standards and optional terms of probation, adopts the uniform standards that describe the mandatory conditions that shall apply to a substance abusing licensee, and makes other clarifying and minor changes.

The following describes the proposed amendments to 16 CCR Section 1395.2, the proposed changes to the existing Disciplinary Guidelines to incorporate the Uniform Standards Related to Substance Abusing Licensees, and also includes clarifying updates to the existing Disciplinary Guidelines.

Specific Changes and Factual Basis/Rationale:

- 1) **16 CCR Section 1397.12 renumbered as 16 CCR Section 1395.2**

Section 1397.12 is amended as follows:

- California Code of Regulations (CCR) Section 1397.12 titled Disciplinary Guidelines, contained within Article 8, Rules of Professional Conduct, is renumbered as 16 CCR Section 1395.2 and retitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees.”

2) 16 CCR section 1395.2

Section 1395.2 is now included within Article 7, instead of Article 8:

- 16 CCR Section 1395.2 is contained within Article 7, Standards Related to Denial, Discipline, and Reinstatement of Licenses or Registrations.

Section 1395.2 is amended as follows:

- 16 CCR Section 1395.2 is amended to incorporate by reference a revised version of the Board’s existing “Disciplinary Guidelines” and renames them “Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, (Amended 6/13).” The language contained within this section has been amended to reflect the title change of the regulation.
- Amends the language to require that the Board shall apply the uniform standards as required by SB 1441, and incorporates the DCA’s Substance Abuse Coordination Committee’s Uniform Standards Regarding Substance Abusing Licensees (April 2011) document for reference.
- Amends the language to allow the Board to impose more restrictive terms and conditions if necessary to protect the public from unsafe, incompetent, or negligent practitioners.
- Adds a new subsection (b) in order to clarify further that in addition to any relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards are to be applied when grounds for discipline involves drugs and/or alcohol and must be applied as written and be used in the order placing the license on probation. Specifically, the Uniform Standards must be used when a licensee is able to establish that his or her situation warrants omission of a specific standard as a term of probation. If conduct found to be grounds for discipline involves drugs and/or alcohol, it creates a presumption that the licensee is a substance-abusing licensee unless that presumption is rebutted.
- Adds subsection (c), to amend the previous subsection (b) to add “aggravating” to the list of factors that could warrant deviation from the guidelines.

Specific Changes and Factual Basis/Rationale:

DISCIPLINARY GUIDELINES (2/07) are amended as follows:

Title Page

Proposed Change: Amends the title page with the new title of the regulation, “Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees,” updates the revision date of the document, and adds the Board’s contact information.

Problem: The Board needs to clearly identify the document incorporated by reference, and the date, so there is no confusion as to the correct version being used if it is amended in the future.

Anticipated Benefits: Licensees, the public, and the Board benefit by having a reference document clearly labeled and dated with the current revision date, so there is no mistaking which document must be used in psychology disciplinary cases.

Table of Contents (pg. 1)

Proposed Change: A Table of Contents is added for organizational purposes and for accessibility to assist users in locating pertinent information contained within the document. The reference to page numbers, to correspond with the respective subject matter, may be updated upon reproduction of this document due to formatting.

Problem: Information within the document incorporated by reference needs to be easily accessible to its users.

Anticipated Benefits: Licensees, the public, and the Board benefit by the ability to readily identify and locate information contained within the document without having to peruse the document in its entirety.

California Code of Regulations Section 1395.2 (pg. 2)

Proposed Change: The Board is proposing to include the proposed regulatory text of 16 CCR Section 1395.2 within the document for reference and authority.

Problem: Without the inclusion of the regulation itself into the document, users would have to refer to a different document to locate the regulation.

Anticipated Benefits: By including the regulatory text within the document “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines,” users have complete information within a single document to reference.

I. Introduction (previously pg. 2, now pg. 3)

Proposed Change: A numeral has been added before the heading. Amends the introduction to describe: the function of the Board as a disciplinary entity; the purpose of the disciplinary guidelines and uniform standards, who they are designed to be used by; and how they are meant to be used. This section is now numbered as section one (I) of the guidelines.

The proposed changes define the terms, standard conditions, and optional conditions, for purposes of this document. The term “license” is defined to include a psychologist, psychological assistant, and a registered psychologist. The term “standard conditions” is defined as those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and the term “optional conditions” is defined as those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

This proposal requires that any departure from these guidelines, except as provided in the Uniform Standards Related to Substance Abusing Licensees, include the mitigating or aggravating circumstances detailed in the Finding of Fact portion of the proposed decision to assist the Board in adopting a final decision.

Board Contact Information, including: name and address; telephone and facsimile numbers; and web site address, have been moved to the Title Page. The names of staff with authority to negotiate settlements also have been eliminated.

Problem: Without an introductory overview of its provisions, users may not know how to use the document.

Anticipated Benefits: The Introduction contains definitions of important terms and removes the outdated contact information. This introduction is necessary to eliminate any confusion on the part document users.

II. DISCIPLINARY GUIDELINES (pgs. 4-5)

A new section has been added to the existing guidelines titled “Disciplinary Guidelines” and is numbered as section two (II). Subsection A titled “General Considerations” also has been added. The General Considerations include eleven specific factors to be considered in determining whether revocation, suspension, or probation is to be imposed in a given case.

A. GENERAL CONSIDERATIONS (pgs. 4-5)

Proposed Change: The eleven factors to be considered in determining whether a license or registration should be revoked, suspended or placed on probation include:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior record of discipline or citation.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence;
7. In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probations.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board’s investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

In addition to consideration of these eleven factors, reference to Business & Professions Code (BPC) section 2960.1 has been added to specify the requirement that any proposed decision or decision that contains any finding of fact that a licensee or registrant engaged in any act of sexual contact with a patient, or with a former patient within two years following termination of therapy shall contain an order of revocation and the order of revocation shall not be stayed by an Administrative Law Judge (ALJ). Reference to BPC section 2964.3 also has been added to clarify that any person

required to register as a sex offender pursuant to section 290 of the Penal Code, is not eligible for licensure or registration by the Board.

Problem: Pursuant to language proposed in 16 CCR Section 1395.2, the “General Considerations” section adds conclusive language to clarify that except where an order is required by statute, deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board determines that the facts of the particular case warrant such a deviation and specifies that the Board may impose more restrictive conditions if necessary to protect the public. These are explained below:

1. The nature and severity of the act(s), crime(s) or violation(s) need to be considered since some acts, crimes, or violations are major and heinous, necessitating a more stringent penalty than lesser or minor violations, which would logically incur a lesser penalty.
2. Actual or potential harm to the public must be considered since the Board’s primary mission is protection of the public, and members of the public other than patients can be subject to actual or potential harm due to the actions of a psychologist, registered psychologist, or psychological assistant.
3. Prior disciplinary records need to be considered, particularly in cases where the licensee has previously been disciplined for the same act, crime or violation, which would indicate a pattern of misconduct.
4. The number and variety of current violations must be considered when making any decision, since the penalty imposed for a single violation would logically be less than the penalty for multiple and different violations.
5. Evidence of mitigation, or conversely, aggravation should be considered as it indicates the intent and any remorse, or lack of remorse on the part of the licensee, which would affect the severity and nature of the penalty imposed.
6. Similarly, evidence of rehabilitation should be considered. If the cause of the violation has been addressed, less monitoring may be needed.
7. In cases where the licensee has been convicted of a crime, whether or not the licensee has complied with the sentence or the terms of probation, should be considered. If so, it indicates good faith. If not, it indicates that the licensee may not comply with any penalty or terms of probation imposed by the ALJ, which would warrant closer monitoring or revocation.
8. The licensee’s overall criminal record must be considered, along with other factors listed above, as well as when any other crimes took place. Criminal activity in the distant past may indicate rehabilitation, while recent criminal activity may indicate a substance abuse problem or other factors which should be weighed in any decision regarding penalties. The nature, number, severity, and age of convictions will dictate what, if any, probationary terms are appropriate.
9. The amount of time which has passed since the act(s) or offense(s) occurred must be considered because an act or offense which occurred recently likely indicates the current state of the licensee’s conduct and judgment. An act occurring in the past may indicate a single lapse of judgment that may call for monitoring and a lesser penalty, while more recent acts or offenses may require stricter monitoring and more stringent penalties for public protection.

10. Cooperation with the Board's investigation, other law enforcement and regulatory agencies, and/ or injured parties can indicate rehabilitation and/or
11. an ability and willingness to understand the severity of the infraction.
12. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence is an indicator of contrition and desire for rehabilitation.

Anticipated Benefits: These guidelines will provide a clear and consistent basis for all disciplinary action decisions for the Board and for ALJs who subsequently receive such cases. Licensees and the public can be informed as to the criteria for the decision. These factors are consistent with those considered by other healing arts boards in disciplinary cases. These general considerations have been added to provide a clear and consistent basis for all disciplinary action decisions considered by the Board and for the ALJs who review and issue decisions and orders on such cases. Licensees and consumers can also be informed as to the criteria used in reaching such decisions.

B. PENALTY GUIDELINES FOR DISCIPLINARY ACTIONS (Pg. 5)

The Penalty Guidelines for Disciplinary Action section has been amended to reflect that the Penalty Guidelines for Disciplinary Actions provide the general bases for discipline pursuant to statutes contained in the Business & Professions Code (BPC). Additionally, violations of other related statutes or regulations may also be alleged in an accusation, statement of issues, or other charging document. This section includes the statutory bases for discipline, followed by the Board-determined maximum and minimum penalties, including the respective names and numbers for the optional terms and conditions (1-14) that apply. Standard Terms and Conditions of probation (15-31) shall be included in all decisions and orders as prescribed within this section. This section is now included in the Disciplinary Guidelines, Section II, as subsection B. Changes included in this section are described below.

Business and Professions Code section 2960 (Pgs. 5-11)

Amends the reference(s) to BPC section 2960, subsections (a-r) to omit enactment and revision dates for each respective code section, and re-works the descriptions to delete the "Penalty" sections and incorporates and amends existing definitions to describe the maximum and minimum penalties. Each section now reflects only the recommended penalties, rather than the grounds for discipline which is also referenced in the title of each code section.

Specific changes to the Optional and Standard Terms and Conditions are described in detail in section III, Terms and Conditions. A brief summary of the changes are explained below.

Existing Optional Terms and Conditions are numbered 1-14. This rulemaking file: deletes "application" from the maximum penalty definition since the guidelines only apply to licensees and registrants subject to discipline, and applicants for licensure or

registration would be denied if found to be in violation of this section; amends Optional Term and Condition #8 to require the California Psychology Law and Ethics Examination (CPLEE) or the Examination for the Professional Practice in Psychology (EPPP) be taken instead of the California Psychology Supplemental Examination (CPSE); adds a new Optional Term and Condition #10, regarding Clinical Diagnostic Evaluations; deletes Optional Term and Condition #14; re-numbers Optional Terms and Conditions 10-14 as 11-14; amends the rationale in some sections to clarify whether the standard is mandatory or discretionary; makes clarifying changes; and incorporates the Uniform Standards for Substance Abusing Licensees.

The CPSE requirement has been replaced with the CPLEE in Optional Term and Condition #8. The CPLEE is the examination given to test the level of knowledge for laws related to the practice of psychology and ethical principles. The CPSE is the examination given to applicants who've never been licensed as a psychologist in California or another state, Canadian province, or U.S. territory for at least five years. The Board has determined that the CPLEE is the appropriate examination to be given to probationers to ensure competency with the skills and knowledge required to practice ethically to avoid consumer harm. The EPPP tests subject matter competence and is administered to all those seeking a license as a psychologist. The Board has determined that the EPPP is the appropriate examination to be given to probationers to ensure competency required to practice safely to avoid consumer harm

The Board has determined that Optional Term and Condition #14, Community Service – Free Services, is an inappropriate term and condition for a licensee on probation. If a licensee has been deemed unsafe to practice, providing free psychological services prior to proof of rehabilitation is not in the best interest of consumers.

Existing Standard Terms and Conditions numbered 15-31 are to be included in all proposed decisions and stipulations, numbers 32-33 are to be included in all stipulations for surrender or revocation. This rulemaking file adds two new Standard Term and Conditions to be included in all proposed decisions and stipulations: #26, regarding "Instruction of Coursework Qualifying for Continuing Education;" and #28, regarding "Request for Modification". Existing Standard Terms and Conditions 15-33 have been amended to make clarifying changes and to incorporate the Uniform Standards for Substance Abusing Licensees, and numbers 26-33 have been re-numbered as reflected in this rulemaking file.

Clarifying changes referenced above are as follows:

2960: Amends the title to add the word "General" before Unprofessional Conduct, deletes the enactment date, adds "revocation stayed" to the definition for minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(a): Deletes the enactment and amendment dates, deletes “application” from the maximum penalty, adds “revocation stayed” to the definition for minimum penalty, amends the required examination title for Optional Term and Condition #8, deletes existing optional term and condition #14 regarding community service, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(b): Deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, re-numbers and amends the reference to optional terms and conditions 10 –13 as revised in this rulemaking file, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(c): Deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, deletes existing optional term and condition #14 regarding community service, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(d): Deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, amends the required examination title for Optional Term and Condition #8, deletes existing optional term and condition number 14 regarding community service, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(e): No changes.

2960(f): Deletes the enactment date and reference to former subdivision, adds a semi-colon after “Revocation,” deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(g): Adds “revocation stayed” under penalty, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(h): Deletes the enactment and amendment date, adds a semi-colon after “Revocation,” deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(i): Deletes the example provided within the title, deletes the enactment date and reference to former subdivision, deletes reference to BPC section 2960, amends the required examination title for Optional Term and Condition #8, and adds the maximum and minimum penalties to be applied.

2960(j): Deletes the enactment date and reference to former subdivision, deletes “application” from the maximum penalty, adds “revocation stayed” under minimum

penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(k): Deletes the enactment date and reference to former subdivision, deletes the language “No guidelines” from the penalty definition, and now refers only to the underlying statute or regulation for violating any provision of this chapter or any regulations duly adopted thereunder.

2960(l): Deletes “application” from the maximum penalty, adds “revocation stayed” under minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(m): No changes

2960(n): Deletes the enactment date, deletes “application” from the maximum penalty, adds “revocation stayed” to the definition for minimum penalty, amends the required examination title for Optional Term and Condition #8, deletes existing optional term and condition #14 regarding community service, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(o); 726: Updates existing language regarding sexual misconduct to clarify the maximum penalties that must be ordered by an “Administrative Law Judge” whenever there is a finding of sexual abuse, relations, or misconduct. The word application has been deleted since the guidelines apply to licensees and registrants subject to discipline; applicants for licensure or registration would be denied if found to be in violation of this section.

2960(p): Deletes the enactment date and reference to former subdivision, deletes “application” from the maximum penalty, adds “revocation stayed” to the definition for minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(q): Adds “revocation stayed” under penalty, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

2960(r): Deletes the enactment date, deletes “application” from the maximum penalty, adds “revocation stayed” to the definition for minimum penalty, amends the required examination title for Optional Term and Condition #8, and amends the reference to standard terms and conditions that shall apply from (15-29) to (14-31).

III. TERMS AND CONDITIONS OF PROBATION (Pg. 12)

The language regarding proposed stipulated agreements is deleted and Stipulated Settlements is added. The amendments reference optional conditions that shall apply from (1-14) to (1-13), and standard terms and conditions that shall apply from (15-29) to (14-31). No other amendments to the language are included in this section.

A. OPTIONAL TERMS AND CONDITIONS (Pgs. 13-25)

The existing Disciplinary Guidelines (02/07) include Optional Terms and Conditions 1-14, which are the optional conditions of probation that the Board would expect to be included in any Proposed Decision or Stipulation as appropriate. These conditions have been amended to incorporate the uniform standards and to make clarifying changes. The “Note” section had been renamed “Rationale” and describes when each term and condition is mandatory or discretionary. Amendments made to Optional Terms and Conditions 1-13 are as follows:

Proposed Change:

1. **Actual Suspension:** Added the “Rationale” to describe when this term is appropriate. The Board believes that a suspension longer than six months is not effective, and a violation or violations warranting a longer suspension should result in revocation, not stayed.

Problem: If a probationer is reported to be using drugs or alcohol the individual must not be allowed to continue practicing. Suspension would also be warranted in some cases which involve a lack of skills or knowledge that places patients at risk and must be remediated prior to resuming any practice.

Anticipated Benefits: This section provides a mechanism to allow for suspension of practice of impaired or otherwise unqualified licensees in order to protect the public. This text conforms to BPC section 315 requirements for all healing arts boards.

Proposed Change:

2. **Psychological Evaluation:** Adds language to clarify that when the Board concludes from the results of an evaluation that the respondent is unable to practice independently and safely, that they shall immediately cease practice “upon written notice from the Board.” Amends the language regarding “tolling” to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice. This ensures that licensees serve the required probation period when the probation period is interrupted by a cease practice order.

Adds language regarding the psychological evaluation as a condition precedent

Problem: If a licensee commits an offense that calls into question his or her judgment, emotional condition or mental condition, or where there is a history of abuse or dependency on alcohol or controlled substances, the Board needs a standardized

mechanism by which it may require psychological evaluation or testing, and a timetable within which it must be done.

Anticipated Benefits: This section allows the Board to require a psychological evaluation and testing of a licensee who has committed an offense that could affect that person's ability to practice safely or have the potential to cause public harm or where there is a history of abuse or dependency. This Section conforms to the requirements of BPC section 315 for all healing arts boards. The regulation allows the probationer a reasonable timeframe to obtain an appropriate psychologist to complete the evaluation, and transmit the resulting report to the Board.

Proposed Change:

3. **Physical Evaluation:** Adds stipulation that the physician or surgeon physician must be licensed to practice in California. The addition that the physical examination be conducted by a California licensed physician adds clarity to the requirement that the physician simply be licensed. The evaluating physician must notify the Board of any condition that prevents safe practice within five working days. This addition provides a quick turnaround and will help protect consumers as the Board must act on the physical evaluation recommendation within one working week. The statement that the respondent will comply with any order of restriction of practice or to cease practice makes clear his or her duties upon reception of such an order from the Board. The respondent can only begin practicing again after the Board receives notice of a physical evaluation that recommends he or she is now fit for work and notifies the respondent in writing. This adds a clarifying note to the existing regulation that receiving the notice from a physician will allow practice to be resumed. This section has amended language on the tolling and makes this clearer for the licensee or registrant on probation.

Problem: A probationer may have physical limitations, disabilities, or substance abuse issues that affect his or her ability to practice safely. The additional language makes the responsibilities of the respondent clearer and expands upon the existing Physical Examination optional guidelines.

Anticipated Benefits: Probationers will receive a physical examination from and monitoring by a physician licensed in California. The Board must now have the results of the physical examination within five working days. The requirement that the physician be licensed in California ensures that he or she conforms to the appropriate laws and regulations.

Proposed Change:

4. **Practice Monitor/Billing Monitor/ Worksite Monitor:** Language from Uniform Standard #7 with the Worksite Monitor has been added to the existing probation criteria. This permits a billing/practice monitor to also perform the duties of a worksite monitor if ordered for a substance-abusing licensee. Adds language to clarify that monitoring shall continue for entire probationary period unless modified or terminated by the Board or its designee. Language from Uniform Standard #7 subsection 1 has been added stating that worksite monitor can have no pre-existing relationship with the licensee unless this requirement is waived by the board. Guidelines for the worksite monitors monthly report have been

added incorporating language from Uniform Standard #7. Adds the stipulation that a licensee must notify the Board ten (10) days after a monitor is no longer available. Language is added in the “Rationale” to include the worksite monitor. Amends the language regarding “tolling” to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice or periods of non-practice. This ensures that licensees serve the required probation period when the probation period is interrupted by a cease practice order.

Problem: Adds Specific language regarding Worksite Monitors from Uniform Standard #7 mandated in SB 1441 into the Board’s existing reinstatement guidelines.

Anticipated Benefits: The requirement of a worksite monitor is contained in SB 1441 and the requirements for substance abusing licensees promulgated by the SACC. The worksite monitor will alert the Board to any evidence of continued substance abuse by the probationer.

Proposed Change

5. Notification to Employer: This has been deleted from the Optional Terms and Conditions of Probation and been placed in the Standard Terms and Conditions of Probation (Pg. 24). The new language under the Notification to employer is taken from Uniform Standard #3.

Problem: Notification of Employer is not an optional term or condition and therefore must be moved to the Standard Terms and Conditions section of the Disciplinary Guidelines. The language regarding employer notification is required in all decisions.

Anticipated Benefits: Notification to Employer shall be moved to the appropriate section of the Disciplinary Guidelines and will be included in all proposed decisions and stipulations.

Proposed Change:

6. Adds language to the Restriction of Patient Population section of the Optional Terms and Conditions. The section is now numbered 5 due to the deletion of the Notification to Employer option. The new language clearly outlines the timeline and responsibilities of the licensee or registrant when this optional condition is applied to his or her case. The respondent must present a plan for limiting his or her patient population within 30 days of the decision and proof that it has been carried out. In the “Rationale” practice setting is added to the examples of factors that can be considered that could put patients at risk if they are in therapy with the respondent.

Problem: In the current Disciplinary Guidelines there are no clearly defined requirements that a respondent must follow if Restriction of Patient Population is a condition of their probation. The additional language makes the responsibilities of the

respondent clearer and expands upon the existing Restriction of Patient Population optional guidelines.

Anticipated Benefits: The Board must have the plan for the patient restriction within 30 days of the disciplinary decision. Proof that the plan has been carried out must now be submitted as proof of compliance.

Proposed Change:

7. The section is now numbered 6 due to the deletion of the Notification to Employer option. Amends this condition with non-substantial grammatical changes and adds that if a therapist determines that a respondent is unfit to safely render services they are to cease practice immediately upon notification from the board. Written approval from the Board must also be received before Psychotherapy can cease. Amends the language regarding “tolling” to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice. A spelling error is corrected in the “Rationale” section.

Problem: Two areas of the Psychotherapy what??? have had editions that add clarity as to what notifications the respondent or the Board should receive in the event of a therapist recommending psychotherapy be discontinued or the respondent cannot safely treat patients. Prior to these additions how the Board or the respondent was to be notified was not specified.

Anticipated Benefits: The clarified language will help the Board, respondents, therapists and the public to better understand the requirements of this optional term and condition for probationers.

Proposed Change:

8. The section is now numbered 7 due to the deletion of the Notification to Employer option. The proposed text changes the examination that a respondent on probation may have to take in order to determine subject matter competence from the California Psychology Supplemental Examination (CPSE) to the Examination for Professional Practice in Psychology (EPPP). The term of this probation must include one of the two options with laws and ethics violators continuing to retake the California Law and Ethics Examination (CPLLE). Amends the language regarding “tolling” to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice. Should a candidate fail the examinations, regulatory language relating to reexamination has been added to the two options. This refers to our existing regulations on reexamination located at 16 CCR Section 1388 (f), and any applicable sections of the Business & Professions Code. The Board is planning to stop utilizing the CPSE, and the EPPP covers all of the subject knowledge to practice psychology competently. There is also additional language that will allow the Board to change the

status of a probationer's license to "suspended" if the probationer fails to take and pass an exam within the time required in the order.

Problem: The CPSE will no longer be an examination that our licensees take, and the transition to EPPP will ensure that a licensee who has performed a violation that indicates incompetence with subject material can still be tested to ensure subject matter mastery. A licensee who fails to take and pass an examination as part of his or her probation is currently listed as active when his or her status is viewed by a member of the public.

Anticipated Benefits: This Section provides a mechanism for the Board to address problems directly related to the licensee's knowledge of the law, of ethical practices, or competency and it allows a probationer the opportunity to become educated toward lawful ethical practices and subject competence. This provision directly addresses a probationer's ethical and knowledge deficiencies that may have led to the violation. The relevant Code of Regulations is also cited for those licensees who fail the examination. This clearly outlines the reexamination guidelines for probationers. The ability to suspend a license of a probationer if he or she fails to pass to take an examination in the allotted time will aid the public in understanding the status of particular license. Currently, a probationer who fails to take and pass the exam would have a "valid" license, but with a cease practice order.

Proposed Change:

9. The section is now numbered 8 due to the deletion of the Notification to Employer option. The Restitution section is amended with non-substantial formatting changes to maintain consistency within the document (numbers spelled out). The underlining is extended by two spaces for visual reasons.

Proposed Change:

10. The section is inserted as number 9 due to the deletion of the Notification to Employer option. In consideration of Uniform Standard #1, the Board proposes this text to require that if a licensee is ordered to undergo a Clinical Diagnostic Evaluation, the evaluator must be a licensed practitioner who holds a valid, unrestricted license which authorizes the practitioner to conduct clinical diagnostic evaluations, has three years' experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. The text specifies that clinical diagnostic evaluations must be conducted in accordance with accepted professional standards for such evaluations. The text specifies that the probationer must cease any practice of psychology beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation, and specifies that during this time the probationer must submit to random drug testing at least two times per week. The language clarifies that if the probationer is ordered to undergo a clinical diagnostic evaluation at any other time, he or she will be ordered to cease practice for a minimum of one month pending the results of the

evaluation and submit to random drug testing at least twice a week. This language is contained in Uniform Standard #2.

Problem: A clinical diagnostic evaluator and the requirements for the evaluator are new conditions that bring the board into compliance with SB 1441. Clinical evaluations are necessary to determine whether a licensee is a substance abusing licensee, whether or not a licensee is safe to return to either part-time or full-time practice, whether the licensee is a threat to himself or others, and whether any recommendations or restrictions should be imposed.

Anticipated Benefits: This text was developed by the SACC in accordance with the requirements of SB 1441 and ensures that evaluators meet specific criteria and that their evaluations are conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. This provides a mechanism by which the Board can determine if a licensee should be suspended or may safely return to practice, allowing for better consumer protection by:

Requiring that a clinical diagnostic evaluation provider meet specified qualifications.

Providing the Board with a professional opinion of whether the licensee has a substance abuse problem.

Specifying that the evaluator must be approved by the Board.

The text of this probationary term reflects the clinical diagnostic evaluation language of the SACC's Uniform Standards. This language is necessary to effectuate Uniform Standards #1 and #2.

Proposed Change:

11. The section is inserted as #10 due to the deletion of the Notification to Employer option. The Board has added language to the existing optional terms and conditions for the respondent to undergo a treatment program. The word "or" has been added to the title of the section as an alcohol abuser may not need drug counseling. Uniform Standard #6 outlines standards used in determining what type of treatment is necessary. The treatment program should be relevant to the violation and language has been added to allow more discretion from the Board if a respondent is in recovery of rehabilitation. If a respondent is expelled or leaves a treatment program the Board will issue a cease practice order immediately. Language has been added regarding to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice. The respondent shall pay all costs and failure to do so will be considered a violation. This clarifies the existing language. The "Rationale" explains that this term must be considered in the case of a substance abusing licensee.

Problem: Language has been added that makes this optional term and condition correspond to the requirements of Uniform standard #6. Existing language does not clearly state that treatment program will correspond to the nature of the violation.

Anticipated Benefits: The changes add clarity with regard to expectations of a respondent on probation. The criteria will guide the Board in considering all aspects of the Respondent's drug or alcohol condition and professional circumstance in order to determine the appropriate treatment. Establishing criteria also ensures that each person whose license is placed on probation or in a diversion program due to substance use will receive the same standard considerations while allowing for flexibility on a case-by-case basis.

Proposed Change:

12. The section is inserted as # 11 due to the deletion of the Notification to Employer option. Requires the Board to follow criteria in compliance with SB 1441 in order to determine the frequency of group meeting attendance and to verify that the meeting facilitator is an experienced, mental health professional. These requirements will ensure recovery and include communication with the Board, as needed, to keep the Respondent on track. If a facilitated group support meeting is ordered, the group facilitator would be required to meet the following qualifications and requirements:

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

This condition would be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations. Alcohol and/or drug abuse treatment should be required in addition to other terms of probation in cases where the use of alcohol or other drugs by the Respondent has impaired the Respondent's ability to safely practice.

The "rationale" for this Section has had language added which states that this Section is to be included for a substance abusing licensee, and that the Board has the option of a non-facilitated group meeting where the standards do not apply.

Problem: Existing language in this Section of the optional terms and conditions does not include detailed instructions on what is to be considered when determining the type and frequency of group support meeting. Also, language is added that details what is expected of the facilitator in terms of qualifications and conduct.

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

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

Proposed Change:

13. The section is inserted as #12 due to the deletion of the Notification to Employer option. The proposed text incorporates language from Uniform Standard #4 into the optional terms and conditions. The Board is proposing this language to specify that a probationer completely abstain from the personal use or possession of controlled substances and alcohol as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed mental health professional for a bona fide illness. This text allows the Board to include this provision when a probationer has a substance abuse problem.

Problem: The additional text was developed by the SACC in accordance with the requirements of SB 1441. Language from the SACC must be included in terms for substance abusing licensees. This is a problem because alcohol and controlled substances impair a licensee's ability to practice safely. Additionally, the Committee is required to comply with the Uniform Standards developed by the SACC and this condition meets that requirement for cases involving substance abuse.

Anticipated Benefits: This regulation protects the public from probationers who abuse alcohol and/ or controlled substances by prohibiting probationers' use of alcohol or controlled substances as a condition of their probation, and complies with the Uniform Standards developed by the SACC that are required to be used by all healing arts boards. This regulation protects the public from probationers who are substance abusers by prohibiting probationers' use of controlled substances and complies with the Uniform Standards developed by the SACC required to be used by all healing arts boards.

Proposed Change:

14. Optional term and condition 13 has been amended in the following way: Inserts language in the "Rationale" section that states that in cases where subject matter knowledge may be lacking an educational review may be ordered.

Problem: This optional term and condition does not have a “Rationale” explaining why, in certain circumstances, an educational review may be necessary.

Anticipated Benefits: This section provides a mechanism for the Board to address problems directly related to the licensee’s mastery of subject matter and knowledge and it allows a probationer the opportunity to become educated toward subject competence. This provision directly addresses a probationer’s ethical and knowledge deficiencies that may have led to the violation.

Proposed Change:

15. Optional term and condition 14 ‘Community Service – Free Services’ has been deleted completely from the Disciplinary Guidelines.

Problem: The ‘Community Service – Free Services’ has not been used as a term of probation for a long time. The Board does not believe it is in the best interest of the public, or the respondent, for community service to be ordered when complete rehabilitation has not occurred.

Anticipated Benefit: Removes an obsolete term and condition from the Board’s Disciplinary Guidelines.

**B. STANDARD TERMS AND CONDITIONS (Pgs. 24-29)
(To be included in ALL Proposed Decisions and Stipulations)**

Proposed Change:

16. The Board proposes insertion of standard probation condition (14) Notification to Employer in consideration of the SACC’s uniform standards, and to specify that licensees on probation are required to provide a copy of the Decision and Accusation or Statement of Issues to their employer, supervisor, or prospective employer or contractor and at any other facility where the licensee engages in the practice of psychology before accepting or continuing employment.

In addition, the licensee would be required to provide the Board with the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors. The licensee would be required to inform the Board in writing of the facility or facilities at which the person engages in the practice of psychology. Additionally, the licensee would be required to complete consent forms and sign an agreement with their employer and supervisor, and the Board to communicate with the employer or supervisor regarding the licensee’s work status, performance, and monitoring.

Problem: Language from the Uniform Standards #3 was not present in the standard terms and conditions section of the disciplinary guidelines.

Anticipated Benefit: This condition provides the Board with a mechanism for ensuring that the employer is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

Proposed Change:

17. Proposed change to standard term and condition (15) is a minor, non-substantial spelling out of the numeric value, i.e., 90 to ninety.

Problem: Not making change would not be in keeping with the formatting of the rest of the document

Anticipated Benefit: Maintains formatting of the rest of the Disciplinary Guidelines.

Proposed Change:

18. Proposed change to standard term and condition (16) is a minor, non-substantial spelling out of the numeric value, i.e., 90 to ninety.

Problem: Not making change would not be in keeping with the formatting of the rest of the document

Anticipated Benefit: Maintains formatting of the rest of the Disciplinary Guidelines.

Proposed Change:

19. Addition of language regarding cost recovery to standard term and condition (17). The new language inserted as the second paragraph created the option of a payment plan and sets the condition that if such a plan is agreed then full payment must be received six months prior to the scheduled termination of the period of probation.

Problem: Investigation and enforcement cost recovery can be challenging for some licensees who are on probation. The additional language is a reasonable accommodation that does not reduce the severity of this term for the licensee.

Anticipated Benefit: The cost of an investigation and the enforcement of any findings by the Board can be high. The option of a payment plan will allow more registrants on probation to cope with financial burdens that cost recovery creates, without undermining the requirement that they pay all costs associated with the investigation and enforcement of their case. The requirement that all costs are completed at least six months prior to the end of probation date allows the board adequate time for processing and is an indicator of good will on the part of the probation.

Proposed Change:

20. Removal of a reference to the Business and Professions Code section 2964.6 in standard term and condition (18). This is the only change to this section.

Problem: The citation of the code section that provides the authority to the Board is not necessary in the disciplinary guidelines. The relevant code section(s) are not cited anywhere else in the document and their removal in standard term and condition 18 will maintain the format of the document.

Anticipated Benefit: The removal of an unnecessary code section citation will add clarity and create a uniform format in the Disciplinary Guidelines.

Proposed Change:

21. Addition of language regarding criminal court orders and other board or regulatory agency orders to standard term and condition (19). Two additional paragraphs are to be inserted into standard term and condition 19, "Obey All Laws." The first paragraph clearly outlines that a respondent must obey any orders by a government agency, including probation or parole, and that failure to do so will be deemed a violation of his or her probation by the Board. The second paragraph clearly outlines that the respondent must obey orders that they are subject to by another board or regulatory agency and that if he or she does not this will be determined to be a violation of probation by the Board.

Problem: The current Disciplinary Guidelines contain clear language regarding a case where a respondent breaks federal, state, or local laws. The new language covers violation of criminal court orders and the orders of another board or regulatory agency. A respondent's failure to comply with these orders is an indication of a lack of rehabilitation and may directly impact his or her ability to practice psychology in an ethical and/ or competent way. There is currently no language concerning these additional probationary violations in the Disciplinary Guidelines.

Anticipated Benefit: The Board will now clearly be able to refer to this section of the Disciplinary Guidelines when a respondent does not comply with a probation or parole order mandated by a criminal court, other board, or regulatory agency. This increases the oversight of the Board and will help ensure that those on probation are striving to become rehabilitated.

Proposed Change:

22. Addition of language regarding Quarterly Reports to standard term and condition (20). The added sentence covers the time within which a mandated quarterly report must be submitted. The respondent must submit the report no more than seven days after the beginning of the assigned quarter.

Problem: The time that a respondent has to submit his or her quarterly reports is not explicitly outlined in the Disciplinary Guidelines. The addition of the seven days requirement adds clarity and outlines the expectations that must be followed.

Anticipated Benefit: The Board anticipates that the new language will make the reception of the mandated quarterly reports occur in a timelier manner. The respondents will also have a better understanding of within what timeframe the reports must be submitted to the Board.

Proposed Change:

23. Proposed changes to standard term and condition (21) are minor, non-substantial stylistic changes adding an additional space before the parentheses for each of the three numbers in the disciplinary guideline.

Problem: Not making change would not be in keeping with the formatting in the rest of the document.

Anticipated Benefit: Maintains the same formatting as the rest of the Disciplinary Guidelines.

Proposed Change:

24. Proposed changes to standard term and condition (23) are that the Board must be notified of any changes to the respondent's business and residence addresses. There is also a minor, non-substantial change with the spelling out of 30 to thirty.

Problem: While respondents are required to report within thirty days any and all changes of employment, location, and address, the language is not absolutely clear that this also covers residence address. The added sentence makes the requirement that the Board be informed of the business and residence address of the probationer absolutely clear.

Anticipated Benefit: The clarity provided by the added language will aid respondents with complying with the terms of their probation. The Board will also benefit because it is essential that the business and residential address of a respondent be known at all times. It is essential for communication and enforcement purposes.

Proposed Change:

25. Addition, deletion, and amending of language regarding tolling for out-of-state practice, residence, or extension of probation for in-state non-practice in standard term and condition (24). Extension of probation has been added to the title as this specific terminology has been added to the section. The existing language regarding cost recovery and restitution has been deleted as it is duplicative of standard term and condition 17. Language has been added that outlines which specific terms and

conditions cannot be deferred or delayed by extending/tolling and these are quarterly report requirements, restitution, cost recovery, and coursework.

Problem: The language regarding tolling has been reworked as extension of probation has been used elsewhere in the Disciplinary Guidelines. The exact provisions of probation that cannot be tolled or extended were added for clarity when reading the standard terms and conditions.

Anticipated Benefit: The clarity provided by the added language will aid respondents with complying with the terms of their probation. The alterations in the language will allow respondents to know which terms of probation they must comply with whilst out-of-state, not practicing in-state.

Proposed Change:

26. Proposed changes to standard term and condition (25) are that the language specifically mentioning probation has been deleted and decision and order has been added.

Problem: Including the word probation in standard term and condition 25 for respondents has been determined to be redundant as the entire standard already applies to that. The decision and order language that has been added is the official start of the probation period. The exact start date of the probation period is now absolutely clear.

Anticipated Benefit: The clarity provided by the added language will aid respondents with complying with the terms of their probation. The language is stronger where it orders that absolutely no supervisory relationship is to take place, and that this requirement would be effective as soon as the decision and order are received.

Proposed Change:

27. New standard term and condition 26 has been inserted into the Disciplinary Guidelines. The new term and condition is titled "Instruction of Coursework Qualifying for Continuing Education." The term states that respondent may not be an instructor of any coursework for continuing education credit for the Board. This section is not present in current guidelines.

Problem: The Disciplinary Guidelines do not have a standard term and condition that prevents a respondent from being an instructor on a course that another licensee could use as part of their continuing education requirement for license renewal. This is a problem because a respondent on probation may have severe defects in knowledge of subject matter and or ethical issues which should preclude him or her from supervising a course to other licensees.

Anticipated Benefit: Preventing a respondent who is on probation from instructing a continuing education course to other licensees will protect consumers. Instructors should not have committed an ethical, or practice violation. Respondents on probation will be unable to instruct continuing education coursework.

Proposed Change:

28. The only change to standard term and condition 27 is renumbering due to the addition of "Instruction of Coursework Qualifying for Continuing Education."

Problem: Incorrect numbering due to addition of standard term and condition 26.

Anticipated Benefit: Maintains correct numbering of the standards within Disciplinary Guidelines.

Proposed Change:

29. New standard term and condition 28 has been inserted into the Disciplinary Guidelines. This standard incorporates language from Uniform Standard #11. The language covers what a respondent must demonstrate before he or she will be considered for a modification of probation and a return to practice.

The Board is proposing text to specify that certain factors be considered in determining whether a license will be reinstated, or if penalty relief in the form of modification of probationary terms or length of probation will be allowed. The three factors and the necessity for each one follow:

- Sustained compliance with the recovery program
- Clear ability to work safely as communicated by worksite monitors, evaluations, and any other information relating to licensees substance abuse.
- Negative drug screenings for six months, two positive work site monitor reports, and the adherence to all terms and conditions.

Problem: The Board currently has no guidelines to use or factors to consider when considering petitions for modification of probationary terms or practice restrictions.

Anticipated Benefits: These regulations benefit the Respondent and the Board by specifying the factors that will be considered before any modification of a petitioner's probationary terms. The Respondent knows what evidence to submit and demonstrate, and the Board is able to consider these specific factors which illustrate a petitioner's desire and ability to practice safely. Sustained compliance with probation terms indicate willingness to change and recognition of the existing problems. Clear drug screenings for a six month period demonstrates sustained sobriety. Work site monitor reports will indicate whether respondent can practice safely and competently according to the rigorous standards of the profession.

Proposed Change:

30. Change to standard term and condition 29 is renumbering due to the addition of “Instruction of Coursework Qualifying for Continuing Education” (26) and “Request for Modification” (28). Period has been deleted and replaced with term.

Problem: Incorrect numbering due to additional of standard terms and conditions. Term is used to describe the length of time probation will last throughout the Disciplinary Guidelines.

Anticipated Benefit: Maintains correct numbering of the standards within the Disciplinary Guidelines. Term is used throughout document rather than probations; this will maintain consistency and clarity in the document.

Proposed Change:

31. The only change to standard term and condition 30 is renumbering due to the addition of Instruction of “Coursework Qualifying for Continuing Education” (26) and “Request for Modification” (28).

Problem: Incorrect numbering due to additional standard terms and conditions.

Anticipated Benefit: Maintains correct numbering of the standards within Disciplinary Guidelines.

Proposed Change:

32. Change to standard term and condition 31 is renumbering due to the addition of “Instruction of Coursework Qualifying for Continuing Education” (26) and “Request for Modification” (28). Minor non-substantial changes are that fifteen has been spelled out as well as written numerically (15). Reapplies has been changed to be spelled as one word.

Problem: Incorrect numbering due to additional standard terms and conditions. Numerical value only for 15 and reapplies is spelled incorrectly.

Anticipated Benefit: Maintains correct numbering of the standards within Disciplinary Guidelines. Maintains style with the rest of the document and corrects spelling error.

C. STANDARD TERMS AND CONDITIONS (Pgs. 29-30)
(To be included in ALL Stipulations for Surrender or Revocation)

Proposed Change:

33. Change to standard term and condition 32 is renumbering due to the addition of “Instruction of Coursework Qualifying for Continuing Education” (26) and “Request for

Modification” (28). Minor non-substantial change is that three has been written numerically (3) as well spelled out.

Problem: Incorrect numbering due to additional standard terms and conditions. Three has been represented numerically (3) as well as spelled out.

Anticipated Benefit: Maintains correct numbering of the standards within Disciplinary Guidelines as well as the same and format style with the rest of the document.

Proposed Change:

34. The only change to standard term and condition 33 is renumbering due to the addition of “Instruction of Coursework Qualifying for Continuing Education” (26) and “Request for Modification” (28).

Problem: Incorrect numbering due to addition of standard term and condition 26 and 28.

Anticipated Benefit: Maintains correct numbering of the standards within Disciplinary Guidelines.

Proposed Change:

35. The Accusations section of the Disciplinary Guidelines has been deleted in its entirety.

Problem: The section cited the code sections that gave the Board authority to recover cost of investigation and probation monitoring. Accusations are filed before the Disciplinary Guidelines take effect and are, therefore, not needed.

Anticipated Benefit: The Accusations section of the Disciplinary Guidelines is not necessary and the deletion helps make the document cleaner with only relevant information.

Proposed Change:

36. The Statement of Issues section of the Disciplinary Guidelines has been deleted in its entirety.

Problem: The Statement of Issues occurs at the very beginning of the disciplinary process is not applicable to registrants who are on probation.

Anticipated Benefit: The Statement of Issues section of the Disciplinary Guidelines is not necessary and the deletion helps make the document cleaner with only relevant information.

Proposed Change:

37. The Stipulated Settlements section of the Disciplinary Guidelines has been deleted in its entirety.

Problem: The Stipulated Settlements section applies to a registrant after an accusation and defense motion have been filed. The conditions and what is required for a respondent to stipulate a settlement with the Board are not necessary within the Disciplinary Guidelines.

Anticipated Benefit: The Stipulated Settlements section of the Disciplinary Guidelines is not necessary and the deletion helps make the document cleaner with only relevant information.

IV. Proposed Decisions

Proposed Change:

38. A roman numeral IV (four) has been added to the subheading of this section.

Problem: Not including the Roman numeral before the heading would be in keeping with the format contained in the document.

Anticipate Benefit: A uniform order and formatting will make the document easier to navigate and utilize.

Proposed Change:

39. Contents has been added to the heading of the newly delineated A section. The list of items to be included has been amended with the deletion of the subsection "a." The remaining subheadings have been retitled as a result. In the text the Optional Terms and Conditions and the Standard Terms and conditions are referenced. These references have been altered due to the deletion and addition of terms earlier in the Disciplinary Guidelines.

Problem: Additional words in the subheading make the contents clearer. Subsection A has been deleted because the Board does not require the names and addresses of all parties in the action. This information does not need to be in the decision. The addressee of all parties also is subject to frequent change. The existing numbering of the Optional Terms and Conditions and the Standard Terms and conditions has been altered to due amendment to the Disciplinary Guidelines. This has been corrected.

Anticipated Benefit: Adding Contents to the heading makes it clearer what is contained within the section. The requirement that addresses of all parties involved has been removed; this will stop respondents gathering unnecessary information. The numbering of the Optional Terms and Conditions and the Standard Terms and Conditions has been corrected to incorporate the changes to the Disciplinary Guidelines.

Proposed Change:

40. Section B has been added and is titled “Recommended Language for Issuance and Placement of a License on Probation, Reinstatement of a License.” This section includes examples that the ALJ can use when issuing a decision for a probation, or reinstatement of a license.

The examples are guidelines that include everything that is necessary to inform a respondent of the decision that has been reached after the hearing.

Problem: Currently there is no example of what a decision should look like in the Disciplinary Guidelines. These clear examples will aid ALJs in their writing of a decision.

Anticipated Benefit: Provide respondents and ALJs with examples of what a decision will look like in writing. The section provides a template for the decision that includes all of the necessary information.

V. Rehabilitation Criteria for Reinstatement/Penalty Relief Hearings

Proposed Change:

41. “Rehabilitation Criteria for” has been added under the title “Reinstatement/Penalty Relief Hearings.” An additional space has been placed before all of the numbers which appear in parentheses. His or her has been added to ensure pronoun agreement and clear grammar to subsection 5c. A paragraph has been added after subsection 5f that contains language that describes the internal subjective attitude and the external objective measure of conduct of the respondent. The final change to this section is the addition of numbers to the written words three and one.

Problem: The title of the section is not completely clear and the addition of “Rehabilitation Criteria for” will make the title clear. Formatting and stylistic changes also occur in this section that maintain the uniform style of the document. The substantial addition is the paragraph regarding what conditions are evaluated for rehabilitation. The Disciplinary Guidelines do not contain a guide for the Board to use when assessing internal subjective attitude and external objective conduct. The added language provides this guidance.

Anticipated Benefit: The changes add clarity and uniform formatting and style within the Disciplinary Guidelines. The Board has also been provided with information for how to apply information at rehabilitation hearings.

VI. Uniform Standard Related to Substance Abusing Licensees

Clinical Diagnostic Evaluations [Uniform Standard # 1]:

Proposed Change:

42. In consideration of Uniform Standard #1, the Board proposes this text to require that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator must be a licensed practitioner who holds a valid, unrestricted license which authorizes the practitioner to conduct clinical diagnostic evaluations; has three (3) years' experience in providing evaluations of health care professionals with substance abuse disorders; and is approved by the Board. The text specifies that clinical diagnostic evaluations must be conducted in accordance with accepted professional standards for such evaluations.

Problem: The Board currently does not have any requirement in place that evaluators must meet any criteria or produce any outcome in instances where a licensee is ordered to undergo a clinical diagnostic evaluation. Clinical evaluations are necessary to determine whether a licensee is a substance abusing licensee, whether or not a licensee is safe to return to either part-time or full-time practice, whether the licensee is a threat to himself or others, and whether any recommendations or restrictions should be imposed.

Anticipated Benefits: This text was developed by the SACC in accordance with the requirements of SB 1441 and ensures that evaluators meet specific criteria and that their evaluations are conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. This provides a mechanism by which the Board can determine if a licensee should be suspended or may safely return to practice, allowing for better consumer protection by:

- Requiring that a clinical diagnostic evaluation provider meet specified qualifications.
- Providing the Board with a professional opinion of whether the licensee has a substance abuse problem.
- Specifying that the evaluator must be approved by the Board.

This text is needed to provide the Board and respondents with clear written specifications for evaluators' qualifications and mirrors Uniform Standard #1.

Clinical Diagnostic Evaluation/Cease Practice Order [Uniform Standard # 2]

Proposed Change:

43. Incorporates language from Uniform Standard #2. This language has the language from this standard that states a respondent shall cease practice while the Clinical Diagnostic Evaluation is being carried out.

Problem: Language from the SACC regarding cessation of practice for substance abusing licensees while a Clinical diagnostic Evaluation is conducted had not been included in the Disciplinary Guidelines. The clinical diagnostic evaluation is a requirement from the passage of SB 1441. This will bring the Board into compliance with the statutory requirements.

Anticipated Benefit: It is necessary that in the interests of public safety a respondent cease practice while the clinical diagnostic evaluation is carried out. A respondent may only resume practice once it has been determined that no danger to the public is evident.

Clinical Diagnostic Evaluation Report [Uniform Standard #s 1, 6]:

Proposed Change:

44. In consideration of Uniform Standards #1 and #6, set by the SACC, the Board proposes to require the Clinical Diagnostic Evaluation Report contain, but not be limited to, the evaluator's opinion of whether the licensee is a threat to him or herself or others and recommendations for substance abuse treatment.

Problem: The Board has statutory authority over respondents and a mandate to protect the public. Due to the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a respondent's ability to practice. An evaluation by a professional, experienced in substance abuse and approved by the Board, can provide valuable information to assist the Board in evaluating a case. The Board needs the opinion of professional evaluators to help it determine the possible basis for the identified behavior. Many individuals who have substance abuse issues also have other mental health problems. The evaluator can present recommendations for a therapeutic plan. Any disciplinary action should be based on the behavior and the resulting harm or risk of harm.

Anticipated Benefits: This standard would increase consumer protection by:

- Requiring that the evaluator not have any financial, personal, familial or business relationship with the licensee, to ensure that evaluators provide fair and unbiased reports to the Board;
- Requiring that 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 Committee within 24 hours of such a determination so that the Board may swiftly take action in such instances to prevent harm from occurring;
- Requiring that a final written clinical diagnostic evaluation report must be provided to the Board no later than 10 days from the date the evaluator is assigned the matter, unless the evaluator requests additional information to complete the evaluation, which may not exceed 30 days. This timeframe would enable the Board to receive information on a timely basis, while allowing the evaluator time to make a considered evaluation; and
- Requiring the Board review the evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the respondent based on the specified criteria that includes, but is not limited to, license type, history, documented length of sobriety, scope and pattern of substance abuse, treatment history and medical history. This requirement would enable the Board to reach an informed decision regarding the respondent's ability to practice safely. In addition, the Board proposes to specify that the

Board consider the recommendations of the clinical diagnostic evaluation, while taking into account the license type, 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 the respondent is a threat to himself or herself or others when considering disciplinary actions against respondents. Each factor and all factors considered collectively will assist the Board in determining the appropriate action to be taken for a particular licensee. By requiring that the Board be provided with expert recommendations for treatment and practice restrictions according to language contained in Uniform Standards #1 and #6, this standard would ensure that licensees who continue to have substance abuse problems cannot practice on patients, and licensees, who have undergone treatment and have made steps towards recovery, have a means by which to safely return to practice.

Communication with Employer [Uniform Standard # 3]

Proposed Change:

45. Notification to Employer: This Uniform Standard language is added to require a respondent to provide the Board the names, addresses, and telephone numbers of all employers, supervisors, and contractors. The new language also requires the respondent to sign an agreement with the employer to allow the Board to communicate with the employer regarding his or her work status and monitoring.

Problem: Language from the SACC regarding Board communication with an employer is reflected in Optional Term and Condition #14. This language is mandatory if the respondent is a substance abusing licensee.

Anticipated Benefit: The purpose of this amendment is to make sure the Board is able to contact the licensee/registrant's employer to make sure that the licensee/registrant is complying with his or her probation. Having open channels of communication, in the case of a substance abusing licensee on probation, will give the Board the ability to quickly intervene if needed to protect the public, if it finds that the licensee has resumed using alcohol or controlled substances.

Facilitated Group Support Meetings [Uniform Standard # 5]

Proposed Change:

46. This subsection requires that the Board must take certain information into consideration when determining the required frequency of group support recovery meetings. This includes considering the recommendation of the clinical diagnostic evaluator, the history of the licensee/registrant's case, and the length of sobriety. It also requires that the facilitator of the group support recovery meeting group have certain qualifications, including three years' experience and a license in providing recovery services. The standard is also reflected in Optional Term #11.

Problem: Language from the SACC regarding Board communication with an employer is reflected in Optional Term and Condition #11. This language is mandatory if the respondent is a substance abusing licensee

Anticipated Benefit: These requirements will enhance public protection because it is essential to their recovery that licensees/registrants are receiving a level of group support that is sufficient for their particular needs, These requirements will also help ensure that this treatment is effective by making sure the group leader has certain qualifications and experience, and is therefore equipped to assist the licensee/registrant in his or her recovery.

Worksite Monitor Requirements [Uniform Standard # 7]

Proposed Change:

47. Worksite Monitor: Language from Uniform Standard #7 with the Worksite Monitor has been added to the existing probation criteria. Language from Uniform Standard #7 subsection 1 has been added stating that worksite monitor can have no pre-existing relationship with the licensee unless this requirement is waived by the Board. Guidelines for the worksite monitor's monthly report have been added incorporating language from Uniform Standard #7. Adds the stipulation that a licensee must notify the Board 10 days after a monitor is no longer available. Language is added in the "Rationale" to include the worksite monitor. Amends the language regarding "tolling" to explain that the term of probation shall be extended by the period of time that the practitioner was ordered to cease practice. This ensures that licensees serve the required probation period when the probation period is interrupted by a cease practice order. The language reflects that and is contained in Optional Term and condition 4.

Problem: Adds specific language regarding Worksite Monitors from Uniform Standard #7 mandated in SB 1441 into the Board's existing reinstatement guidelines.

Anticipated Benefits: This regulation benefits the respondent and the Board by specifying the factors that will be considered before the reinstatement of a revoked or surrendered license, or any modification of a petitioner's probationary terms. The Respondent and worksite monitor know what specific criteria to follow, and the Board is able to consider these specific factors which illustrate a petitioner's desire and ability to practice safely.

Major and Minor Violations [Uniform Standards #s 9, 10]

Proposed Change:

48. Major and Minor Violations: This subsection defines both major and minor violations, and also defines the consequences if a substance abusing licensee or registrant commits a major or minor violation, as required by SB 1441. It also states if a major violation is committed, the Board shall automatically suspend the license or registration.

Problem: Adds Specific language regarding Major and Minor Violations from Uniform Standards # 9, and # 10 mandated in SB 1441 into the Board's existing reinstatement guidelines.

Anticipated Benefits: By specifically defining major and minor violations and their consequences, the Board is ensuring public protection by requiring consistent discipline for specified types of violations. The public benefits through increased protection, and licensees also benefit because types of violations and their required consequences are uniform and specifically outlined; licensees will know in advance that certain actions will bring certain discipline.

Drug Testing Standards [Uniform Standards #4, 8, 9,]

Proposed Change:

49. This subsection outlines the actions that the Board must take if a licensee/registrant tests positive for alcohol and/or a controlled substance. This includes automatic suspension of the license/registration, immediately contacting the licensee/registrant to inform them of the suspension, and immediately notifying the employer of the suspension. It also requires the Board to take certain steps to ensure that a positive test indicates prohibited substance use. This subsection specifies a set of standards that will apply to each licensee/registrant subject to drug testing. It outlines the following requirements: randomness of tests, required daily contact to determine if a test is required, and requirements for specimen collectors and testing locations. The subsection also specifies how often a substance-abusing licensee or registrant must drug test. The language also gives the Board discretion to increase the number of tests at its discretion if it believes this is necessary for public protection. It also allows the Board to make exceptions to the drug testing frequency schedule in certain circumstances, such as when a licensee has already been participating in a treatment program requiring testing or if the licensee is not currently practicing.

Problem: Adds Specific language regarding Drug Testing Uniform Standards # 4, # 8, and # 9 mandated in SB 1441 into the Board's existing reinstatement guidelines. This language reflects that in Optional Term # 3. In the case of substance abusing licensees the testing is mandatory.

Anticipated Benefit: The Board is mandated with the task of public protection. This language will protect the public by allowing the Board to immediately suspend a licensee/registrant if he or she tests positive for alcohol or a controlled substance. The language also allows the Board to immediately notify the employer so that there is no confusion about whether or not the licensee/registrant may practice during this time. Testing positive for a banned substance is a violation of probation and in the past, licensees have sometimes continued to work until the Board could pursue disciplinary action based on the probation violation. This section also includes some safeguards to benefit and protect licensees/registrants by requiring the Board to take certain steps to

ensure that a positive test indicates prohibited use. The section also specifies that drug testing must be random. Randomness is very important in drug testing because the person being tested should not be able to predict when they might be tested, because this could allow them to strategically refrain from the prohibited behavior at certain times. A prescribed schedule of frequency of drug testing ensures that licensees are treated equally in terms of how often they must drug test.

Petitioning for Modification to Return to Full Time Practice [Uniform Standard # 11]

Proposed Change:

50. This subsection sets specific criteria that a licensee or registrant must meet before he or she may petition the Board to return to full time practice. This includes sustained compliance with the recovery program, ability to practice safely as evidenced by two work site reports and evaluations, and six months of negative drug tests.

Problem: Adds Specific language regarding Drug Testing Uniform Standard # 11 mandated in SB 1441 into the Board's existing reinstatement guidelines. This language reflects that in Optional Term #28. In the case of substance abusing licensees the standard is mandatory.

Anticipated Benefit: The purpose of this section is to set forth a specific set of standards the licensee or registrant must demonstrate he or she meets before he or she may ask the Board to consider allowing him or her to practice again. It protects the public because the licensee/registrant must demonstrate compliance with each standard in order to return to practice. It also ensures that all licensees/registrants will be evaluated according to the same criteria.

Petitioning for Modification for Reinstatement of a Full and Unrestricted License [Uniform Standard # 12]

51. This subsection sets specific criteria that a licensee or registrant must meet before he or she may petition to return to unrestricted practice. This includes sustained compliance with the terms of the disciplinary order, demonstration of consistent and sustained participation in activities that support recovery, including ongoing support meetings and therapy, and continuous sobriety of at least three to five years.

Problem: Adds Specific language regarding Drug Testing Uniform Standard # 12 mandated in SB 1441 into the Board's existing reinstatement guidelines. This language reflects that in Optional Term #12. In the case of substance abusing licensees the standard is mandatory.

Anticipated Benefits: This purpose of this section is to set forth a specific set of standards the licensee or registrant must demonstrate he or she meets before he or she may ask the Board to consider allowing an unrestricted license or registration. It

protects the public because the licensee/registrant must demonstrate compliance with each standard in order to return. It also ensures that all licensees/registrants will be evaluated according to the same criteria.

Underlying Data

1. Legislative Counsel Bureau Opinion, October 27, 2011
2. Office of the Attorney General Informal Legal Opinion, February 29, 2012
3. Department of Consumer Affairs Legal Opinion, April 5, 2012
4. Disciplinary Guidelines (02/07)

Business Impact

This regulation will not have a significant adverse economic impact on businesses. The Board only has authority to take administrative and disciplinary action against a licensee, not a business where psychological services are performed. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not regulate businesses where psychological services are performed and does not maintain data relating to the number or percentage of licensees who own a business; therefore, the actual number or percentage of businesses that may be impacted is not known.

Accordingly, the initial or ongoing costs for a business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law, as well as licensees employed by these businesses who are in compliance with the law, will not incur any fiscal impact.

Costs only affect licensees or registrants disciplined by the Board. Probationers are responsible for paying all costs during their probation, including, but not limited to: probation monitoring fees, clinical diagnostic evaluations, biological testing, psychotherapy sessions, and any examination or educational requirements ordered. The average salary of a practicing psychologist in California can vary greatly depending on the type of practice and the number of clients served. Psychologists can be employed in a variety of settings including but not limited to: health care facilities, educational institutions, clinical settings, governmental settings (Correctional Facilities, Mental Health Agencies, etc.) as well as being self-employed in their own practice. The average psychologist salary in California is \$81,120 per year.

The Board enforces probation whenever the actions of a psychologist indicate that the licensee may pose an immediate threat to the public. A licensee could be placed on probation at a minimum of three years. The chart below shows estimated probationary costs. Probation costs vary depending on the type of violation committed and terms in the probationary order. Actual costs can vary depending on the terms and conditions ordered for the individual probationer; all fees listed may not apply.

Misc. Probation Fees	Monthly Cost	Annual Cost	3 year term	5 year term
Probation Monitoring Fee	\$96	\$1,152	\$3,456	\$5,760
CA Psychology Supplemental Examination (CPSE); or CA Psychologist Laws & Ethics Examination (CPLEE)		\$129 Per Exam		
Additional CE Courses		\$50 - \$2,000	Varies	Varies
Biological Fluid Test Year 1 = 52-104 Year 2 = 36-104	\$280 - \$560 *	\$3360 - \$6720 *	\$	\$
Clinical Diagnostic Evaluation		\$1,000 - \$4,000 per evaluation		
License Revocation/Lost Wages	\$6,833	\$82,000	\$246,000	\$410,000
Group Support Meeting	\$50 - \$100	Varies	Varies	Varies
Cost Recovery AG \$3,500 + OAH \$750 + Evidence/Witness \$750 **		\$5,000 per case on average		
Counseling Program		Varies \$100 - \$2,000		
Mental Health Evaluation		Varies \$100 - \$2,000		
Medical Treatment		Varies \$100 - \$5,000		

* Testing 4 – 8 times per month

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

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

The Board anticipates up to 11 new probationers established each year who will be subject to the new Biological Fluid Testing requirements. The number of probationers that will not be able to afford the cost of the testing frequency is not known.

EFFECT ON SMALL BUSINESS:

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. This proposal could eliminate a business's ability to employ an individual who has been disciplined by the Board, but should not eliminate the position itself or any new businesses. However, the Board is unable to determine the impact, if any, on the creation of jobs or new businesses. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. Licensees who are in compliance with the law will not incur any fiscal impact.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, and worker safety: increased consumer protection for consumers of psychological services, ensure that minimum standards are met, including uniformity among the standards established by the SACC for the healing arts licensing boards under the Department of Consumer Affairs.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Board is required by statute, SB 1441, to use the Uniform Standards developed by the SACC when dealing with substance abusing licensees.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Board's current Disciplinary Guidelines do not incorporate all the required standards established by the SACC and SB 1441. One alternative might be not to pursue this regulation. If the Board chooses this alternative, the Board, the Office of the Attorney General, and the Office of Administrative Law will be making decisions on disciplinary actions regarding psychologists, registered psychologists, and psychological assistants without the benefit of disciplinary guidelines which reflect current law. Using these guidelines will maximize protection for the consumers of California. In addition, the Board would be out of compliance with the statutory requirements of SB 1441 that mandate the use of the Uniform Standards developed by the SACC in dealing with substance abusing licensees.

The Board considered the following approaches in how to determine whether a respondent is a substance abusing licensee:

Option 1 – creates a rebuttable presumption that the licensee is a substance-abusing licensee. Once grounds are established that involve drugs or alcohol, the licensee is considered to be a substance abuser unless evidence rebuts that presumption (e.g. sobriety for a certain number of years);

Option 2 – allows for a determination to be made after a clinical diagnostic evaluation that the licensee is a substance-abusing licensee;

Option 3 – requires the Board to prove at a hearing that the licensee is a substance abuser.

The Board chose to implement option #1 to create a rebuttable presumption that the licensee is a substance-abusing licensee which in turn will give notice to the licensee that they have the burden of rebutting that presumption. Option #2 was rejected because it relies on a clinical diagnostic evaluation which may create a lack of clarity. Option #3 was rejected due to the obligation of the Board to prove that a licensee is a substance abuser may be difficult to prove. Any of the three options considered would not impact the content of each standard once it is applied; however, the Board believes option #1 is the most reasonable option in that it puts everyone on notice before a hearing that this is going to be the issue and that way the licensee can choose to present evidence to rebut the presumption. If the presumption is not rebutted, then the

issue becomes only about the consequences once the licensee has been determined to be subject to discipline.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

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

Economic Impact Assessment

This proposed regulatory action will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal only affects individuals that are applying for licensure, licensees of the Board.
- It will not affect the expansion of businesses currently doing business within the State of California because the regulations will only affect licensed individuals and not businesses already operating in the State.
- It will not create new businesses or eliminate existing businesses because the proposal only affects individuals that are applying for licensure, licensees of the Board. None of the provisions will create or eliminate businesses in California.
- The proposed regulatory proposal benefits the health and welfare of California residents because it ensures there are high standards in place to effectively and consistently discipline all healing arts licensees who are found to have substance abuse violations.
- This regulatory proposal does not affect worker safety because it does not affect those areas of law.
- This regulatory proposal does not affect the state's environment because it does not affect those areas of law.

FISCAL IMPACT/BUSINESS IMPACT

Business Impact

The Board has made a determination that the proposed regulatory action may have a minimal, not significant, economic impact on the following types of businesses:

- Businesses owned by licensees of the Board who face disciplinary action due to substance abuse; and
- Businesses that employ licensees of the Board who face disciplinary action due to substance abuse.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, unless that individual is licensed by the Board and subject to disciplinary action.

This proposal would impact private persons who are licensees of the Board, or businesses that are owned by licensees of the Board, who face disciplinary action due to substance abuse violations.

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