

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

HEARING DATE: May 10, 2011

SUBJECT MATTER OF PROPOSED REGULATIONS: Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines

SECTION(S) AFFECTED: California Code of Regulations, Title 16, Division 10, Sections 1018 and 1020.5

INTRODUCTION:

On September 28, 2008, Senate Bill 1441 (Chapter 548, Statutes of 2008) was enacted and required the Department of Consumer Affairs (Department) to establish a Substance Abuse Coordination Committee (SACC) comprised of the Executive Officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The SACC was charged with the task of developing 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. In April 2010, the SACC developed a document named *Uniform Standards Regarding Substance-Abusing Healing Arts Licensees*, which contained the sixteen uniform standards as required by SB 1441. The Dental Board of California (Board) is proposing to implement those uniform standards in its Disciplinary Guidelines through the regulatory process.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board currently regulates a total of 72,866 licensees; consisting of 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating of the Dental Practice Act (DPA); monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Business and Professions Code Section 1614 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Dental Practice Act.

The Board proposes to amend Sections 1018 and 1020.5 of Division 10 of Title 16 of the California Code of Regulations. The main purpose for amending the regulation is to update the *Dental Board of California Disciplinary Guidelines with Model Language, Revised 08/30/2010*, that is incorporated by reference in Section 1018, to use the uniform standards developed by the SACC and to specify that it is the Diversion Evaluation Committee's duty and responsibility to consider the uniform standards contained within the incorporated document in creating treatment rehabilitation plans for licensees entering the impaired licentiates program. The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. The proposed changes are necessary to aid the Board in the discipline of substance abusing licensees to provide better public protection.

The Board is proposing the following changes:

Amend Article 4.5 and Section 1018 of Division 10 of Title 16 of the California Code of Regulations (Uniform Standards Related to Substance Abuse and Disciplinary Guidelines)

The title of Article 4.5 and the title of Section 1018 would be changed from "Disciplinary Guidelines" to "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines". The title of the incorporated document would be changed from "Dental Board of California Disciplinary Guidelines with Model Language" to "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language". The incorporated document's revision date would be changed from August 30, 2010 to February 25, 2011.

Amend Section 1020.5 of Division 10 of Title 16 of the California Code of Regulations (Diversion Evaluation Committee Duties and Responsibilities)

This proposal would amend Section 1020.5 to specify that the diversion evaluation committee's duties and responsibilities include the consideration of the uniform standards contained within the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language", revised February 25, 2011, when creating treatment rehabilitation plans for licensees entering the impaired licentiates program.

Amend the *Dental Board of California Disciplinary Guidelines with Model Language, Revised 08/30/2010*, that is incorporated by reference in Section 1018 of Division 10 of Title 16 of the California Code of Regulations to *Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language*, revised February 25, 2011

The document incorporated by reference would be amended to the uniform standards developed by the SACC and contained within the document entitled “*Uniform Standards Regarding Substance Abusing Healing Arts Licensees*”, dated April 2010. Those proposed changes include:

TITLE PAGE:

The Board proposes to add “Uniform Standards Related to Substance Abuse and” to the Guidelines title page to reflect the addition of the uniform standards to the Guidelines to read “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language”.

The Board proposes to update the revision date on the title page from August 30, 2010 to February 25, 2011.

The Board proposes to add the Department of Consumer Affairs logo to the title page.

INTRODUCTION:

The Board proposes to specify that the Board has adopted the recommended guidelines for disciplinary orders and conditions of probation for violations of the Dental Practice Act, as well the uniform standards to be applied to substance abusing licensees.

LEGAL AUTHORITY:

The Board proposes to add “Legal Authority” to the incorporated document to specify that the legal authority for the “Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language” revised February 25, 2011, is contained in Section 1018 of Title 16 of the California Code of Regulations.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE:

The Board is adding the following uniform standards that should be used in all cases in which a license is placed on probation due to a substance abuse problem. Whether individual conditions are ordered however, is within the discretion of the Board.

1. Clinical Diagnostic Evaluations:

In consideration of the uniform standards of the SACC, the Board proposes to require that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation

must be conducted by 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 evaluations would be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

This standard would increase consumer protection by:

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

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

2. Clinical Diagnostic Evaluation Report:

In consideration of the uniform standards of the SACC, the Board proposes to require what the Clinical Diagnostic Evaluation Report (Report) would contain, including but not limited to, the evaluator's opinion, whether the licensee has a substance abuse problem and recommendations for substance abuse treatment. The Board also proposes to require that (1) the evaluator not have a financial, personal or business relationship with the licensee in the last five years; (2) if the evaluator determines during the process that a licensee is a threat to himself or herself or others, the evaluator is to notify the Board with 24 hours of such a determination; and (3) the final written Report is to 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, not to exceed 30 days.

In addition, the Board proposes to require a review of 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 licensee based on the specified criteria that includes, but is not limited to, license type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, and medical history.

The Board further proposes to require that the Board take into consideration certain factors when determining if the licensee should be required to participate in inpatient, outpatient or other type of treatment. These factors, include, but are not limited to, the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration, and severity of substance abuse and whether the licensee is a threat to himself or herself of others.

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee. 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/diagnoses. The evaluator can present recommendations for a therapeutic plan. Any disciplinary action should be based on the behavior and the resulting harm or risk of harm. Treatment recommendations may be incorporated into a contract or Board order as elements for monitoring or criteria toward re-entry requirements.

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

The Board has current statutory authority over licensees and a mandate to protect the public; however, the Board's ability to remove licensees immediately from the work place is limited. There are requirements of due process, which require clear and convincing evidence in some cases, the preponderance of evidence, or proof of immediate, imminent danger to the public in others. These requirements are necessary in order for the Board to legitimately, prevent someone from practicing in the livelihood for which they are licensed. In some cases an Interim Suspension Order (ISO or Penal Code 23 (PC 23) is required. The ISO has a tendency to be expensive, labor intensive, and require time to process. These are part of a disciplinary process and are usually temporary until an accusation is filed and a decision rendered. The PC 23 is the result of criminal action taking place and allows for suspension of the license based on criminal filings. In each case, the cause for the suspension must be proven or found, and there must be sufficient evidence to warrant the action. However, after a notice and hearing and a probationary order is issued, the Board lacks the current authority to

remove a substance abusing licensee immediately upon a finding of a substance abuse problem.

This new proposal is necessary to permit the Board to quickly intervene when a licensee is presented as having a substance abuse issue without resorting to an ISO of PC 23 orders.

3. Facilitated Group Support Meetings:

In consideration of the uniform standards of the SACC, the Board proposes that if the Board requires a licensee to participate in facilitated group support meetings, the facilitated group support meetings must meet specified requirements to be considered for approval by the Board. When the Board determines the licensee's attendance frequency at a facilitated group support meeting, the Board is required to consider the licensee's history, the documented length of sobriety that has elapsed since substance abuse, the recommendation of the clinical evaluator, the scope and pattern of substance use, the licensee's treatment history, and the nature, duration, and severity of substance abuse.

In addition, the group meeting facilitator is required to meet specified qualifications and requirements. The meeting facilitator is required to have a minimum of three years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations. The meeting facilitator is required to not have had a financial, personal, or business relationship with the licensee in the last five years. The meeting facilitator is required to provide the Board with 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 meeting facilitator is required to report any unexcused absence within twenty-four hours.

By specifying the requirements for facilitated group support meetings for the treatment of substance abuse, the standard ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

4. Supervised Practice (Work Site Monitor Requirements):

In consideration of the uniform standards of the SACC, the Board proposes that if the Board determines that supervised practice is necessary for a particular licensee, the supervisor must meet specified requirements to be considered for approval by the Board. These requirements include, but are not limited to, (1) no current or former financial, personal or familial relationship with the licensee or other relationships that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board; (2) have an active unrestricted license with

no disciplinary action within the last five (5) years; (3) adhere to specified methods of supervising the licensee.

In addition, the Board proposes to require reporting requirements of the supervisor as follows:

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

As directed in SB 1441 in consideration of the uniform standards of the SACC, the Board is proposing to establish worksite monitoring requirements and standards, including, but not limited to, (1) required qualifications of monitors, (2) required methods of monitoring by monitors, and (3) required reporting by monitors. The Board currently utilizes a probationary condition for supervised practice in cases involving incompetence, negligence, and sexual misconduct. The Board is proposing to amend the probationary condition of supervised practice to include cases relating to substance abuse and if a licensee is placed on probation due to substance or alcohol abuse then the supervisor is required to meet the same worksite monitoring requirements as directed by the SACC's uniform standards.

The supervisor's role is to supervise a licensee who is chemically impaired and to ensure that the licensee is not abusing drugs and/or alcohol. The supervisor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse. The supervisor should not have any financial or personal relationship with the licensee. This will ensure that the supervisor is providing impartial evaluations. Frequent face-to-face contact with the licensee is important in order to assess the licensee's appearance, eye contact, and behavior. The supervisor needs to interview the staff in the office on the licensee's behavior and review the attendance records in order to adequately report to the Board the licensee's overall performance. The reporting

criteria would identify a timeline for reporting to the Board of possible substance abuse by the licensee, what information must be included in the supervisor report, and the timeline the report is to be submitted to the Board. Also, included in the standard is language to require the licensee and supervisor to sign and submit the required consent forms and affirmations in order for the Board to communicate with the supervisor.

Implementing this standard would provide (1) ongoing documentation of the licensee's behavior and help ensure the public's safety and (2) immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol.

5. Major and Minor Violations:

In consideration of the uniform standards of the SACC, the Board proposes to include the following definitions for major and minor violations:

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board is required to (1) order the licensee to cease practice, (2) inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board, (3) require the licensee to undergo a new clinical diagnostic evaluation, (4) terminate the contract/agreement, (5) refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board would be required to determine what action is appropriate.

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. The Board protects the public through the Dental Practice Act, regulations and related statutes. Getting standards for major violations would enable the Board to notify licensees of the consequences that would be the maximum allowed by current law under the Board's Practice Act and regulations. Minor violations could result in consequences determined appropriate by the Board, i.e., increased biological testing, increased meeting attendance.

6. Drug Testing Standards:

In consideration of the uniform standards of the SACC, the Board proposes that if a licensee tests positive for a banned substance, the Board is required to order that the licensee cease any practice, and contact the licensee to inform him or her that the licensee has been ordered to cease practice and the licensee may not practice until the Board determines that he or she is able to safely practice. The proposed amendments require the Board to notify the licensee's employer that the licensee has been ordered to cease practice, and that the licensee may not practice until the Board determines that the licensee is able to safely practice. The Board is required to determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, the licensee shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation.

In addition, the following drug testing standards would be required to apply to each licensee subject to drug testing:

- Licensees shall be randomly alcohol or drug tested at least 104 times per year for the first year and at any time as directed by the Board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 50 times per year, and at any time as directed by the Board.
- Alcohol or drug testing may be required on any day, including weekends and holidays.
- Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.
- Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.
- Licensees shall be alcohol or drug tested on the date of notification as directed by the Board.

- Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
- Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
- Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
- Collection of specimens shall be observed.
- Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the board.
- Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

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

Many of the standards specific to testing collection and specimen handling are consistent with or based upon the guidelines established by the U.S. Department of Transportation. Requiring the certification of laboratories through the National Laboratories Certification Program ensures consistent handling and processing of test results. The minimum number of tests provided will help to identify relapse and allow for licensees to be randomly tested. Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to “flush” their system overnight. Further, the established certification of the laboratory will include creatine and pH levels, which can be a sign of a licensee “flushing” their system. Further, the standard is broad enough to allow the Board to determine on a case-by-case basis if a licensee should be required to submit a specimen more quickly, e.g., before 10:00 a.m. or within six (6) hours of notice.

DISCIPLINARY GUIDELINES

Factors to Be Considered:

The Board proposes making technical grammatical and punctuation corrections under the “Factors to be Considered”.

Other Situations in Which Revocation is the Recommended Penalty:

The Board proposes making technical grammatical and punctuation corrections under the “Other Situations in Which Revocation is the Recommended Penalty”.

Probation Terms and Conditions:

The Board proposes making technical additions to specify that standard conditions are to be included in all probationary orders and that additional conditions are applicable to the nature of the violation(s).

List of Standard Probationary Terms and Conditions:

The Board proposes technical, non-substantive amendments to change the title to “List of Probationary Terms and Conditions” to include both standard and additional probation conditions.

The Board proposes technical, non-substantive amendments to add a header for the “Standard Probation Conditions” and specify that introductory language and standard probation conditions 1 through 14 are required for all probation decisions.

List of Additional Probationary Terms and Conditions:

The Board proposes technical, non-substantive amendments to delete the title “List of Additional Probationary Terms and Conditions” so that the additional conditions are included under the new title “List of Probationary Terms and Conditions”.

The Board proposes technical, non-substantive amendments to add a header for the “Additional Probation Conditions” and add (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions.

STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS

(14) Notification:

The Board proposes amendments to standard probation condition (14) Notification in consideration of the SACC’s uniform standards, and to specify that licensees on probation are required to provide a copy of the Decision or Accusation to their employer, supervisor, contractor, or prospective employer or contractor and at any other facility where the licensee engages in the practice of dentistry 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, or contractors. 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 dentistry.

Additionally, the licensee would be required to complete consent forms and sign an agreement with their employer and supervisor, or contractor, and the Board to authorize the Board to communicate with the employer and supervisor, or contractor regarding the licensee's work status, performance, and monitoring.

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

ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE

The Board proposes adding introductory language under the heading of "Additional Conditions of Probation Model Language" to specify that the additional probationary conditions may be imposed depending on the nature of the violation(s) and that some of the additional probationary conditions should be applied to substance abusing licensees in consideration of the SACC's uniform standards.

(18) Supervised Practice:

The Board proposes amendments to additional probation condition (18) Supervised Practice to require the licensee to complete required consent forms and sign an agreement with the supervisor and the Board regarding the licensee's and the supervisors requirements and reporting responsibilities.

Additionally, the proposed amendments require the supervisor to sign an affirmation that he or she has reviewed the terms and conditions of the licensee's probationary order and agrees to supervise the licensee as set forth by the Board.

The proposed amendments specify that the supervisor is required to have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, but at least once per week. The supervisor is required to interview other staff in the office regarding the licensee's behavior, if applicable. The supervisor is required to review the licensee's work attendance and behavior.

The supervisor would be required to orally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. The supervisor would be required to submit a written report to the Board within 48 hours of occurrence.

The supervisor would be required to complete and submit a written report monthly or as directed by the board. The report would be required to include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

This condition would allow the Board to monitor the competency of Respondent by use of a fellow practitioner. It should be used in those cases involving incompetence, negligence-sexual misconduct, and substance abuse. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during the time dental procedures are performed. General supervision does not require the physical presence of the supervising dentist. The type of required supervision depends on the severity of the violation(s), and the nature, duration, and severity of substance abuse.

(26) Diversion Program:

The Board proposes amendments to additional probation condition (26) Diversion Program to in consideration of the SACC's uniform standards. If a licensee is not accepted into the Diversion Program for any reason, then the clinical diagnostic evaluation requirements would apply.

Upon order of the Board, a licensee would be required to undergo a clinical diagnostic evaluation and provide the evaluator with a copy of the Board's Decision prior to the evaluation being performed. Any time the licensee is ordered to undergo a clinical diagnostic evaluation, the licensee would be required to cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the licensee would be required to submit to random drug testing at least 2 times per week.

The licensee would be required to cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The licensee would be responsible for the cost of the clinical diagnostic evaluation.

The licensee would be required to cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. The licensee would be required to comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

Where it has been determined that in order to protect the public, a licensee or applicant should be evaluated to determine if he or she should participate in the Board's Diversion Program due to drug or alcohol impairment, this condition of probation should be imposed.

(27) Biological Testing:

The Board proposes amendments to additional probation condition (27) Biological Testing in consideration of the SACC's uniform standards. The proposed amendments specify that the licensee is required to submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. The proposed amendments specify that the licensee is required to be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and a minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. The Board-approved laboratory is required to be certified and accredited by the U.S. Department of Health and Human Services. The licensee would be required to have the biological test performed on the same day that he or she is notified that a test is required. to ensure that the test results are sent immediately to the Board. If a licensee tests positive for a banned substance, the licensee would be required to be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. The proposed amendments specify that all alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

This probation condition will allow the Board to monitor the licensee in order to ascertain if he/she is substance and/or chemical free. It is to be required when the Respondent has violated any alcohol and/or substance abuse prohibitions. This condition is required to be used in conjunction with additional probationary condition (28) Abstain from Use of Alcohol, Controlled Substance and Dangerous Drugs.

(28) Abstain From Use of Alcohol, Controlled Substances and Dangerous Drugs:

The Board proposes amendments to additional probation condition (28) Abstain from Use of Alcohol, Controlled Substances and Dangerous Drugs to specify that if a licensee has a positive drug screen for any substance not legally authorized, the licensee shall be ordered by the Board to cease any practice and may not practice unless and until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, the licensee shall be automatically suspended from practice pending the final decision on the petition to revoke probation

or accusation. This period of suspension would not apply to the reduction of this probationary period.

This condition would be required when Respondent has violated any alcohol and/or substance abuse prohibitions. The provisions of Section 315.2 of the Business and Professions Code require the Board to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure protection of the public. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(35) Facilitated Group Support Meetings:

The Board proposes the addition of additional probation condition (35) Facilitated Group Support Meeting to comply with the SB 1441 uniform standards. Within fifteen (15) days from the effective date of the decision, a licensee would be required to submit to the Board or its designee for prior approval the name of one or more meeting facilitators. The licensee is required to participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator.

When determining the type and frequency of required facilitated group support meeting attendance, the Board would be required to give consideration to: (1) the licensee's history, (2) the documented length of sobriety/time that has elapsed since substance abuse, (3) the recommendation of the clinical evaluator, (4) the scope and pattern of use, (5) the licensee's treatment history, and (5) the nature, duration, and severity of substance abuse.

The licensee would be required to submit verified documentation of attendance with each quarterly report. The licensee would be required to continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

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 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

- The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) 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 twenty-four (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.

(36) Clinical Diagnostic Evaluation

The Board proposes the addition of additional probation condition (36) Clinical Diagnostic Evaluation in consideration of the SACC's uniform standards. Upon order of the Board, a licensee is required to undergo a clinical diagnostic evaluation and provide the evaluator with a copy of the Board's Decision prior to the evaluation being performed. Any time the licensee is ordered to undergo a clinical diagnostic evaluation, the licensee would be required to cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the licensee is required to submit to random drug testing at least 2 times per week.

The licensee would be required to cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The licensee would be responsible for the cost of the clinical diagnostic evaluation.

The licensee would be required to cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. The licensee would be required to comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

This condition would be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

This condition gives the Board the ability to order a Respondent, at any time during the probation period, to undergo an evaluation to determine if he or she is currently safe to practice with safety to the public.

RECOMMENDED PENALTIES

Section 1680(m) B&P - Violation of any Law Regulating the Dispensing or Administration of Dangerous Drugs or Controlled Substances

The Board proposes the addition of (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions as the recommended penalty for the violation of any law regulating the dispensing or administration of dangerous drugs or controlled substances in consideration of the SACC's uniform standards.

Section 1681(a) B&P - Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances

The Board proposes the addition of (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions as the recommended penalty for violations of substance abuse, possession or control, alcohol abuse, or conviction related to controlled substances in consideration of the SACC's uniform standards.

Section 1681 (b) B&P - Use of drugs/alcohol causing danger to patient

The Board proposes the addition of (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions as the recommended penalty for violations of use of drugs or alcohol causing danger to a patient in consideration of the SACC's uniform standards.

Section 1681 (c) B&P - Conviction of violating state drug statutes

The Board proposes the addition of (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions as the recommended penalty for violations of a conviction of violating state drug statutes in consideration of the SACC's uniform standards.

Factual Basis/Rationale:

Existing law, California Business and Professions Code Section 315, established the SACC within the Department and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Existing law, California Business and Professions Code Section 315.2, specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, California Business and Professions Code Section 315.4, authorizes healing arts boards within the department to order a licensee on probation or in a diversion program to cease practice for major violations and when the when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Business and Professions Code Section 1614, authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Dental Practice Act.

Existing law, California Government Code Section 11400.20, authorizes an agency to adopt regulations to govern an adjudicative proceeding.

Existing law, California Government Code Section 11425.50(e), specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation.

The California Code of Regulations section 1018 incorporates by reference the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

The Board regulates the practice of dentistry and the protection of the public is the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. The Board conducts its own inspections and investigations of licensees and applicants and determines when and how a licensee should be disciplined to protect the public.

The Disciplinary Guidelines are necessary to assist the board, deputy attorney generals and administrative law judges to identify and impose appropriate disciplinary action against a licensee or applicant who violates the laws governing the practice of dentistry.

The "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language" is referenced in these amendments. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. It is available on the board's website and from the board upon request.

UNDERLYING DATA:

1. Senate Bill 1441 (Chapter 548, Statutes of 2008), authored by Senator Ridley-Thomas
2. The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2010"
3. February 25, 2011 Dental Board Meeting Minutes
4. "Dental Board of California Disciplinary Guidelines with Model Language", revised 8/30/2010, with updates to February 25, 2011

BUSINESS IMPACT:

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

The following types of businesses would be affected:

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

The Board currently regulates a total of 72,866 licensees, including 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions.

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

Probationers are responsible for paying the costs of the diversion program, clinical diagnostic evaluations, biological testing, and facilitated group support meetings. The average salary of a practicing dentist in California is approximately \$150,000 per year and the average salary of a practicing registered dental assistant in California is

approximately \$35,000 per year. The average current rate of a urine analysis is \$45 per test, plus the average collection fee of \$25, for a total average cost of \$70 per urine test. A probationer ordered to comply with the Biological Testing condition would incur an expense of approximately \$7,300 for the first year (104 times for the first year) and approximately \$3,500 per year for the duration of the probationary term (minimum of 50 times per year for the subsequent probationary years). The average cost of the first year of biological testing is approximately one-fifth of a registered dental assistant's average salary.

If the 104-time per year testing requirement 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 Board anticipates up to 18 new probationers established each year, will be subject to the new testing requirements. The Board anticipates that at least half of the probationers will not be able to afford the cost of the testing frequency and will result in the Board's pursuit of revocation of the probationer's license. The Board estimates it will incur an estimated annual cost of \$45,000 for the prosecution and hearing costs associated with the revocation of nine probationers.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

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

1. Do not seek a regulatory change.

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