

**UNIFORM STANDARDS RELATED TO
SUBSTANCE-ABUSING LICENSEES WITH
STANDARD LANGUAGE FOR PROBATIONARY ORDERS**

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Issued By:

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STANDARD LANGUAGE TO BE INCLUDED IN EVERY PROBATIONARY ORDER FOR SUBSTANCE-ABUSING LICENSEES

Pursuant to Business and Professions Code section 315, the Dental Board of California is directed to use the standards developed by the Substance Abuse Coordination Committee (SACC) for substance abusing licensees. On April 11, 2011, the SACC developed standards to be used by all healing arts boards. Those standards were updated by the SACC in a document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (March 2019) ("Uniform Standards"). Administrative Law Judges, parties, and staff are therefore required to use the language below, which is developed in accordance with those SACC standards.

To that end, the following probationary terms and conditions shall be used in every case where it has been determined that the individual is a substance-abusing licensee as provided in California Code of Regulations, title 16, section 1018.01. For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Dental Board of California or its designee. These conditions shall be used in lieu of any similar standard or optional term or condition proposed in the Board's Disciplinary Guidelines, incorporated by reference at California Code of Regulations, title 16, section 1018. However, the Board's Disciplinary Guidelines should still be used in formulating the penalty and in considering additional terms or conditions of probation appropriate for greater public protection (e.g., other standard or optional terms of probation).

ADDITIONAL PROBATIONARY TERMS AND CONDITIONS

(1) NOTIFICATION TO EMPLOYER: Prior to engaging in the practice of dentistry, Respondent shall provide a true copy of the Accusation and this decision to Respondent's employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of dentistry before accepting or continuing employment. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in place of employment.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person engages in the practice of dentistry.

Respondent shall give specific, written consent to the Board and its contractor to allow the Board or its designee to communicate with Respondent's employer and supervisor, or contractor regarding Respondent's work status, performance, and monitoring.

Source: (Uniform Standard #3 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated March 2019.)

(2) SUPERVISED PRACTICE: Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision. Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding Respondent and the supervisor's requirements and reporting responsibilities.

The plan of supervision shall be *(direct and require the physical presence of the supervising dentist in the dental office during the time dental procedures are performed.) (general and not require the physical presence of the supervising dentist during the time dental procedures are performed but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice)*. Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed dentist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has

been approved by the Board. All costs of the supervision shall be paid by Respondent.

The supervisor shall sign an affirmation that the supervisor has reviewed the terms and conditions of Respondent's disciplinary order and agrees to supervise Respondent as set forth by the Board.

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

The supervisor shall orally report any suspected substance abuse to the Board and the Respondent'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. The supervisor shall submit a written report to the Board within 48 hours of occurrence.

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

Source: (Uniform Standard #7 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated March 2019.)

NOTE: Orthodontic Assistants require, at a minimum, direct supervision to perform licensed functions (Business and Professions Code section 1750.3). Dental Sedation Assistants require, at a minimum, direct supervision to perform licensed functions (Business and Professions Code section 1750.5). Registered Dental Assistants in Extended Functions require, at a minimum, direct supervision to perform certain licensed functions (Business and Professions Code section 1753.5).

(3) DRUG AND ALCOHOL TESTING: Respondent shall 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. Though the frequency of testing will be determined by

the Board or its designee, and shall be designed so as to prevent Respondent from anticipating testing dates (either randomized testing or unpredictable dates), the frequency of testing shall be at least the following: at least fifty-two (52) test dates during the first year of probation; at least thirty-six (36) test dates during the second, third, fourth, and fifth years of probation; and at least one (1) test per month in each year of probation after the fifth so long as there have been no positive test results during the previous five (5) years. The Board or its designee may require less frequent testing if any of the following applies:

- Where Respondent has previously participated in a treatment or monitoring program requiring testing, the Board or its designee may consider that prior testing record in applying the three-tier testing frequency schedule described above;
- Where the basis for probation or discipline is a single incident or conviction involving alcohol or drugs, or two incidents or convictions involving alcohol or drugs that were at least seven (7) years apart, that did not occur at work or on the way to or from work, the Board or its designee may skip the first-year testing frequency requirement(s);
- Where Respondent is not employed in any health care field, frequency of testing may be reduced to a minimum of twelve (12) tests per year. If Respondent wishes to thereafter return to employment in a health care field, Respondent shall be required to test at least once a week for a period of sixty (60) days before commencing such employment, and shall thereafter be required to test at least once a week for a full year, before Respondent may be reduced to a testing frequency of at least thirty-six (36) tests per year, and so forth;
- Respondent's testing requirement may be suspended during any period of tolling of the period of probation;
- Where Respondent has a demonstrated period of sobriety and/or non-use, the Board or its designee may reduce the testing frequency to no less than twenty-four (24) tests per year.
- Where Respondent is a practicing licensee, if Respondent receives a minimum of 50% supervision per day by a supervisor licensed by the Board, the Board or its designee may reduce testing frequency to a minimum of 24 times per year.

Any detection through testing of alcohol, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, may cause the Board or its designee to increase the frequency of testing, in addition to any other action including but not limited to further disciplinary action.

Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that Respondent is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an “out of range result” is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by Respondent. An “out of range result” is one in which, based on scientific principles, indicates Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the Board. If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. Prior to vacation or absence, any alternative to Respondent’s drug testing requirements (including frequency) must be approved by the Board.

Source: (Uniform Standards #4, #8-10 of “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” revised dated March 2019 and Business and Professions Code section 315.2.)

(4) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND

DANGEROUS DRUGS: Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified, Respondent shall provide a copy of the accusation and this decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent 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, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

Source: (Uniform Standards #4, #8 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated March 2019, and Business and Professions Code section 315.2.)

(5) FACILITATED GROUP SUPPORT MEETINGS: Within fifteen (15) days from the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall 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 shall give consideration to the following:

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

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required. All costs associated with facilitated group support meetings shall be paid by Respondent.

The group facilitator shall meet the following qualifications and requirements:

1. 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.
2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with Respondent in the last five (5) years.
3. The group facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Source: (Uniform Standard #5 of “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” revised dated March 2019)

(6) CLINICAL DIAGNOSTIC EVALUATION: Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. The Board or its designee shall select or approve evaluator(s) holding a valid, unrestricted license to practice, with a scope of practice that includes the conduct of clinical diagnostic evaluations and at least three (3) years’ experience conducting such evaluations of health professionals with alcohol or substance abuse problems. The evaluator(s) shall not have a financial relationship, personal relationship, or business relationship with Respondent within the last five (5) years. The evaluator(s) shall provide an objective/unbiased, and independent evaluation of Respondent. Respondent shall provide the evaluator with a copy of this decision prior to the clinical diagnostic evaluation being performed.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of thirty (30) days pending the results of a clinical diagnostic evaluation and review by the Board. During such time, Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by Respondent. The evaluation(s) shall be conducted in accordance with acceptable professional standards for alcohol or substance abuse clinical diagnostic evaluations. The written report(s) shall set forth, at least, the opinions of the evaluator as to: whether Respondent has an alcohol or substance abuse problem; whether Respondent is a threat to themselves or others; and recommendations for alcohol or substance abuse treatment, practice restrictions, or other steps related to Respondent’s rehabilitation and safe practice. If the evaluator determines during the evaluation process that Respondent is a threat to him/herself or others, the evaluator shall notify the Board within twenty-four (24) hours.

Respondent shall cease practice until the Board determines that Respondent is able to safely practice either full-time or part-time and has had at least thirty (30) days of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Source: (Uniform Standards #1, #2 of “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” revised dated March 2019, and Business and Professions Code section 315.4.)

(7) DRUG OR ALCOHOL ABUSE TREATMENT PROGRAM: Upon order of the Board, Respondent shall successfully complete an inpatient, outpatient or any other type of recovery and relapse prevention treatment program as directed by the Board. When determining if Respondent should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, Respondent's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether Respondent is a threat to himself or herself or others. All costs associated with completion of a drug or alcohol abuse treatment program shall be paid by Respondent.

Source: (Uniform Standard #6 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated March 2019.)

(8) Request by a Substance-Abusing Licensee to Return to Practice.

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

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

(b) Before Respondent may request a full and unrestricted license, Respondent shall demonstrate:

- (1) Sustained compliance with the terms of this decision, if applicable;
- (2) Successful completion of a treatment or recovery program, if required;

- (3) Consistent and sustained participation in activities that promote and support Respondent's recovery, including, but not limited to, ongoing support meetings, therapy, counseling, a relapse prevention plan, and community activities;
- (4) Ability to practice dentistry, oral and maxillofacial surgery or elective facial cosmetic surgery, or provide dental supportive services as a licensed dental auxiliary, safely; and,
- (5) Continuous sobriety for three (3) to five (5) years.

Source: (Uniform Standards #11, #12 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated March 2019.)