



DRAFT

**DEPARTMENT OF CONSUMER AFFAIRS
SUBSTANCE ABUSE COORDINATION COMMITTEE
MINUTES**

Date: Tuesday, April 6, 2010

Location: First Floor Hearing Room, S-102
1625 North Market Boulevard
Sacramento, CA 95834

**Committee Members
Present:**

Brian Stiger, Director of DCA, Committee Chair
Elinore F. McCance-Katz, M.D., Ph. D., CA Department of
Alcohol & Drug Programs
Janelle Wedge, Acupuncture Board
Kim Madsen, Board of Behavioral Sciences
Lori Hubble, Dental Hygiene Committee
Richard De Cuir, Dental Board of California
Linda Whitney, Medical Board of California
Heather Martin, Board of Occupational Therapy
Steve Hartzell, Physical Therapy Board
Elberta Portman, Physician Assistant Committee
Jim Rathlesberger, Board of Podiatric Medicine
Robert Kahane, Board of Psychology
Louise Bailey, Board of Registered Nursing
Stephanie Nunez, Respiratory Care Board
Annemarie Del Mugnaio, Speech-Language Pathology &
Audiology Board
Susan Geranen, Veterinary Medical Board
Virginia Herold, Board of Pharmacy

**Committee Members
Not Present:**

Teresa Bello-Jones, Board of Vocational Nursing & Psychiatric
Technicians
Donald Krpan, D.O., Osteopathic Medical Board/Naturopathic
Medicine
Mona Maggio, Optometry Board
Robert Puleo, Board of Chiropractic Examiners

DCA Staff Present:

LaVonne Powell, Legal Counsel
Susan Lancara, Legislative and Policy Review
Katherine Demos, Legislative and Policy Review
Erica Eisenlauer, Legislative and Policy Review

Please note that attendees were not required to sign-in and some names may be misspelled. Various DCA staff was also present.

Call to Order

Chair Brian Stiger called the meeting to order at 10:43 a.m.

1. Welcome

Chair Stiger welcomed and thanked everyone for attending the Substance Abuse Coordination Committee Meeting.

2. Committee Member Introductions

Each committee member introduced themselves to those in attendance.

3. Approval of November 16, 2009 Meeting Minutes

MOTION: Approve the minutes of the November 16, 2009 Substance Abuse Coordination Committee Meeting.

M/S: Not recorded

Support: 17 Oppose: 0 Abstain: 0

4. Purpose of Meeting

Chair Stiger provided that the committee will be discussing and can take action on Uniform Standards #1, #2, #8, and #10, and any non-substantive edits to the standards. He stated that the committee will also review proposed language that was developed by staff to address concerns regarding the definition of "inactive status."

No public comment was provided.

5. **Discussion and Action on Amended Uniform Standard #1 Regarding Clinical Diagnostic Evaluation**

LaVonne Powell stated that many comments have been received regarding Uniform Standard #1. She reviewed the following SB 1441 requirement specific to this standard.

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

Ms. Powell reviewed the proposed language changes for the standard. She discussed that the language was revised to more appropriately address the requirement as to when the board could order a clinical diagnostic evaluation.

Louise Bailey requested clarification regarding who will pay for the diagnostic evaluation.

Ms. Powell discussed that the language has been modified to clearly specify that the evaluation shall be paid for by the licensee.

Ms. Bailey provided that initial diagnostic evaluations are paid for by the board for participants in the Board of Registered Nursing's program.

Jim Rathlesberger offered a proposal to approve the proposed language changes for Uniform Standard #1.

Steve Hartzell discussed that not all boards currently pay for the evaluation. He indicated that participants in the Physical Therapy Board's program pay all costs.

Mr. Hartzell discussed the requirement in the proposed language that the licensed practitioner hold a valid license to conduct clinical diagnostic evaluations. He stated that he is unaware of any board that issues a license specific to the evaluations. Mr. Hartzell suggested that the language be amended to specify that the practitioner hold a license which includes a scope of practice to conduct the evaluation.

Susan Geranen provided that participants in the Veterinary Medical Board's program pay a fee which includes the cost of the evaluation.

Discussion continued on the variance from board to board regarding responsibility for payment of the evaluations.

Ms. Powell discussed that the Committee can either establish a policy decision regarding payment of the evaluations or choose to strike the language regarding the payment allowing each board to continue or establish its policy on payment of

the evaluation. She recommended that each board specify who will pay for the evaluation within their disciplinary guidelines.

Chair Stiger reviewed the suggested changes to the proposed language to strike the language regarding the payment of the evaluation and to specify that clinical diagnostic evaluations shall be included in the scope of the license held by the licensed practitioner conducting the evaluation.

Public Comment

Yvonne Shall, representing California Medical Association, expressed concern that the changes to the proposed language are open ended and have been changed to not include reasonable suspicion as a requirement to undergo a clinical diagnostic evaluation.

Ms. Powell clarified that this standard has been modified to address the SB 1441 requirement and only applies to a licensee who is in a board diversion program or whose license is on probation. She advised that the boards currently have the authority to order clinical diagnostic evaluations.

There was no additional public comment.

MOTION: Approve the following proposed language for Uniform Standard #1:

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license which includes a scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other

recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

M/S: Rathlesberger/Hartzell

Support: 17 Oppose: 0 Abstain: 0

6. Discussion and Action on Amended Uniform Standard #2 Regarding Replacing the Phrase "Placed on Inactive Status" with "Automatically Suspended"

Ms. Powell discussed that public concern has been raised regarding the use of "automatic suspension" as it could impact an individual's ability to continue in a program and is considered discipline for purposes of reporting to the National Practitioner Databank. She stated that a cease practice order is being recommended to address this concern. Ms. Powell suggested a statutory change to specify that a cease practice order will not constitute discipline.

Mr. Hartzell discussed that participants in the Physical Therapy Board's diversion program sign a contract that will allow for "stop practice." As such, he questioned whether statutory authority is needed.

Ms. Powell provided that the "stop practice" is not a real order from the board and is not enforceable.

Chair Stiger discussed that the intent of this standard is to remove an individual from practice as quickly as possible.

Mr. Hartzell provided that use of "automatic suspension" eliminates the need for statutory change and improves implementation of the standard.

Ms. Powell provided that the department's CAS system will be updated to include a code for a cease practice order.

Ms. Bailey provided that the Board of Registered Nursing (BRN) requires its participants to cease practice when beginning the program. She indicated that this provision will work for the BRN.

Elinore McCance-Katz sought clarification regarding the difference between cease practice and "inactive status."

Ms. Powell provided that "inactive status" is requested by a licensee when they are not practicing and do not want to have to comply with continuing education (CE) requirements. She indicated that the committee has received comments discouraging the use of "inactive status" in this instance so that this license status is not also used for licensees with a substance abuse problem. Ms. Powell discussed that cease practice will be an actual order from the board; but, will not be used as discipline.

Heather Martin offered a proposal to include a cease practice order in Uniform Standard #2.

Richard De Cuir discussed that the majority of Dental Board licensees are sole practitioners. He asked whether a cease practice order would immediately shut down a sole practitioner's dental office.

Ms. Powell provided that the practitioner would be removed from practice; but, the office is permitted to remain open. She clarified that suspension would require that the office shut down.

Public Comment

Yvonne Shall, representing California Medical Association expressed concern regarding due process and the use of cease practice as a new term. She suggested that this term be clearly defined.

A representative from the United Nurses Association of California also expressed due process concerns and said that the phrase "cease practice" would become the new code word for an addicted licensee. He suggested that the language clarify whether a cease practice order is mandatory or discretionary.

The committee discussed possible changes to the language to require a mandatory cease practice order. Stephanie Nunez expressed concern regarding the elimination of discretion in this area and how this may impact the discretion of an administrative law judge (ALJ).

Ms. Powell discussed that the disciplinary guidelines can be used to articulate to an ALJ that probationary conditions are to be used to ensure a licensee is safe to practice and are not used to help a licensee get to the point where they are safe to practice.

Ms. Martin amended her proposal to require that the board issue a cease practice order.

A member of the public echoed the concern that use of a "cease practice order" status will identify a licensee as an individual with a substance abuse problem.

Ms. Powell clarified that a statutory change is needed to make a cease practice order public information.

Dr. McCance-Katz expressed concern that an employer may not be aware that an employee has been ordered to cease practice.

The committee discussed probationary terms and releases that help to facilitate information regarding probation terms and restrictions to an individual's employer.

There was no additional public comment.

MOTION: Approve the following proposed language for Uniform Standard #2:

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least one (1) month of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;

- the scope and pattern of use;
- the treatment history;
- the licensee’s medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

M/S: Martin/Hartzell

Support: 15 Oppose: 2 Abstain: 0

7. Discussion and Action on Amended Uniform Standard #8 Regarding Replacing the Term “Inactive Status” with “Automatically Suspended”

Chair Stiger suggested that the language in the proposal for Uniform Standard #8 be modified to be consistent with the changes just passed for Uniform Standard #2.

Ms. Powell reviewed the proposed language for Uniform Standard #8 and the recommendation to modify the proposal to require a cease practice order instead of an automatic suspension or an inactive license when a licensee tests positive for a banned substance.

Ms. Nunez offered a proposal to approve the proposed language and recommended changes for Uniform Standard #8.

Ms. Geranen provided comment on false positive drug test results. She asked how this result will be addressed.

Dr. McCance-Katz discussed that false positive results can be retested to rule out a positive. She explained that it is possible; yet, unlikely that an individual is taking medication that can cause a false positive. Dr. McCance-Katz stated that individuals can be educated to avoid certain substances that may cause such a result.

Public Comment

A representative from the California Medical Association suggested that a timeframe be established for when a cease practice is ordered and when it is lifted if a false positive is confirmed.

Ms. Powell suggested that the board immediately lift the cease practice order once the determination is made that the positive drug test is not evidence of use.

Pat Whalen, representing NUNAC, also encouraged the establishment of a timeframe regarding cease practice orders. He provided support for amending

the language to specify that the board will immediately lift a cease practice order upon confirmation of a false positive.

Dr. McCance-Katz discussed turnaround times for drug testing results and the role of a Medical Review Officer (MRO) to review and interpret these results.

Debra, a BRN diversion program participant, provided comment on false positives. She discussed that she is aware of a lab in Sacramento that practices protocol prone to contamination of the sample.

Dr. McCance-Katz advised that this protocol violates the drug collection procedure. She encouraged Debra to contact the diversion program vendor regarding this lab.

Mr. De Cuir confirmed that the cease practice order will apply to a sole practitioner and will not shut down the operation of their office.

MOTION: Approve the following proposed language for Uniform Standard #8:

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee;
and,
3. Communicate with any treatment provider, including group facilitator/s.

M/S: Nunez/Hartzell

Support: 17 Oppose: 0 Abstain: 0

8. Discussion and Action on Amended Uniform Standard #10 Regarding Replacing the Word “Inactivation” with “Automatic Suspension”

Chair Stiger reviewed the proposed language for Uniform Standard #10. He recommended that “cease practice order” replace “inactivation” of a license and “automatic suspension” as a consequence for a major violation.

Mr. Rathlesberger offered a proposal to approve the proposed language and recommended changes for Uniform Standard #10.

Ms. Nunez sought clarification regarding subsections (a) and (b) listed under the first consequence for a major violation in Uniform Standard #10.

Ms. Powell provided that because only the first item of the Standard has been agendaized, the subsections will need to be added to a future meeting agenda for discussion.

Public Comment

A member of the public discussed that subsection (b) may conflict with Uniform Standard #8 regarding the immediate lift of a cease practice order upon confirmation of a false positive.

Ms. Nunez provided that a major consequence from Uniform Standard #10 will only be imposed if in fact there is a positive.

Virginia Herold discussed that the language regarding consequences for a major violation is unclear and should be clarified regarding whether all consequences are to be imposed. She expressed concern that when all consequences listed in the section are imposed, a clinical diagnostic evaluation is being required in addition to the termination of the licensee from the program. Ms. Herold recommended that this section be reconsidered and revised appropriately.

Chair Stiger agreed to add an agenda item to address this language at a future meeting of the committee.

There was no additional public comment.

MOTION: Approve the following proposed language for Uniform Standard #10:

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;

4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
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.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of a citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

M/S: Rathlesberger/De Cuir

Support: 14 Oppose: 1 Abstain: 2

9. Discussion and Action on Non-Substantive Edits of All Standards

Chair Stiger requested that the committee discuss any non-substantive changes to the Standards.

Linda Whitney reviewed Uniform Standard #9. She requested that a comma be added before the word “and” in the third line of the Standard.

Mr. Rathlesberger requested that the language in Uniform Standard #2 specify “30 days” instead of “one (1) month.”

Public Comment

No public comment was provided.

MOTION: Approve the following non-substantive changes to the Uniform Standards:

#2 Uniform Standard

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days ~~one (1) month~~ of negative drug tests.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10, and the board shall impose the consequences set forth in Uniform Standard #10.

M/S: Whitney/Rathlesberger

Support: 17 Oppose: 0 Abstain: 0

10. Public Comment

Ms. Nunez requested that a discussion regarding the number of drug tests be added as an agenda item for the next meeting.

Chair Stiger provided that this item will be added to the next meeting’s agenda.

Ms. Nunez offered to work with other executive officers on this issue.

Mr. De Cuir offered to assist Ms. Nunez.

Other committee members also offered assistance.

Mr. Hartzell requested that alternatives to blood tests such as electronic monitoring devices also be considered during this discussion.

Chair Stiger discussed the appointment of a subcommittee to address Uniform Standard #4 and the number of drug tests. He appointed the following subcommittee to review the Standard and to make a recommendation back to the committee:

Stephanie Nunez, Respiratory Care Board (Chair)
Richard De Cuir, Dental Board
Steve Hartzell, Physical Therapy Board
Louise Bailey, Board of Registered Nursing
Virginia Herold, Board of Pharmacy
Kim Madsen, Board of Behavioral Sciences
Dr. McCance-Katz, Department of Alcohol and Drug Programs

Ms. Powell provided that the meetings of this subcommittee will need to be noticed.

Susan Lancara volunteered to do the staff work for this subcommittee.

A representative of the California Medical Association asked whether the committee is still accepting comments.

Chair Stiger provided that the committee is still accepting comments.

Deborah, a participant in the Board of Registered Nursing's Diversion Program, reviewed the time, work, and paperwork required for participation in a diversion program. She presented 2 ½ years worth of paperwork to the committee. Deborah stated that the work required is worthwhile. She commended the diversion program and contracted program vendor, Maximus.

There was no additional public comment.

11. Adjournment

Chair Stiger thanked everyone thanked the committee and attendees for participating in the meeting. The meeting was adjourned at 12:20 p.m.