



ISSUE MEMORANDUM

DATE	August 10, 2009
TO	SB 1441 Substance Abuse Coordination Committee
FROM	SB 1441 Uniform Standards Staff Working Group Richard De Cuir and Kimberly Kirchmeyer
SUBJECT	SB 1441

SB 1441 REQUIREMENT

(10) Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

DRAFT UNIFORM STANDARD #10

The Board shall review each violation of a contract, disciplinary order or probationary order on a case-by-case basis and determine the consequences based upon the following guidelines:

Major Violations may include, but may not be 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. Refusing to obtain biological testing for substance abuse.

Consequences for major violations may include, but may not be limited to:

1. Termination of a contract/agreement
2. Referral for disciplinary action such as:
 - Suspension
 - Revocation
 - Other action as determined by the Board

Minor Violations may include, but may not be limited to:

1. Untimely receipt of required documentation;
2. Missed biological testing for substance abuse;
3. Non-attendance at group meetings;
4. Failure to contact a monitor when required;
5. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations may include, but may not be limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation
5. Issuance of citation and fine or a warning notice;
6. Required reevaluation/testing.

DISCUSSION

Specific Consequences for Minor and Major Violations

In looking at the first segment of this uniform standard, the work group found itself having to engage in extensive discussions surrounding what constitutes a major vs. minor violation. The work group initially separated the violations (major vs. minor) to determine what would

be considered patient harm by the respective boards. The work group agreed this standard does not require **any** delineation on the major or minor violations themselves. However, in trying to write specific consequences, the work group had to identify specific types of violations. There was also considerable discussion surrounding whether to prioritize the violations for each category (major and minor). The work group agreed on several types of violations and prioritized them accordingly. Prioritization of the violations (both major and minor), as well as the consequences as delineated above evolved into two categories.

The first category of consequences resulting from major violations resulted in consequences that were usually the maximum allowed by current law under each board's respective statutes (i.e. termination from board ordered program, license revocation, ISO, PC23, etc.). The second category of consequences resulted from minor violations which might be more technical in nature and only necessitated the respective board to tighten the previously determined board disciplinary or diversion related actions.

Consider use of “Deferred Prosecution”

The initial research completed by the work group considered the potential use of a variation to the criminal use of deferred prosecution authorized under Section 1000 of the Penal Code. Due to the other options available to the boards that in effect accomplish the same goal as deferred prosecution such as closing an investigation while licensees are in the diversion program, the group did not feel it was necessary to add this enforcement tool at this time.

Workgroup Discussion Items

While draft Uniform Standard may appear rather succinct, there was much discussion at the workgroup level on a number of issues including:

- 1) Whether or not the Uniform Standard #10 even required defining a major vs. a minor violation since the standard itself only directed defining consequences;
- 2) How Uniform Standard #10 applied to a licensee in a diversion or rehabilitation program, as well as a board disciplinary action in determining appropriate action;
- 3) The workgroup also thought that some violations might be included in both major and minor violation categories depending on the severity of the violation;

Public Comment

Public comment received included:

- Under the consequences section of Uniform Standard #10, for both major and minor violations, it was recommended that the sentence be added “At least one of the following consequences shall be taken”;
- For major violation #6, the word “Refusing” should be replaced with the word “Failure”
- Under minor violations bullet #2-“Missed biological testing” should be eliminated;

- Under Consequences, a bullet needed to be added which stated "Or other violations as determined by the board."