



ISSUE MEMORANDUM	
DATE	May 13, 2009
TO	<b>SB 1441 Substance Abuse Coordination Committee</b>
FROM	<b>SB 1441 Uniform Standards Staff Working Group</b> Presented by: Amy Edelen, Veterinary Medical Board
SUBJECT	<b>SB 1441 Uniform Standard # 1</b>

### **SB 1441 REQUIREMENT**

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

### **DRAFT UNIFORM STANDARD # 1**

If a board has determined that a clinical diagnostic evaluation is necessary in order to evaluate whether practice restrictions or other actions are warranted, the following minimum standards shall apply.

The clinical diagnostic evaluation shall:

- be conducted by a California-licensed practitioner with three (3) years experience in providing evaluations of health professionals with substance abuse disorders;
- be conducted by a practitioner who holds a valid, unrestricted license;
- be an in-person assessment; and,
- be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

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 treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator may not have a financial relationship, personal relationship, or business relationship with the licensee. 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 30 days from the date the evaluator is assigned the matter.

## **DISCUSSION**

### **Approach to Uniform Standard #1**

There was extensive discussion regarding whether a clinical diagnostic evaluation should be required for all substance abusing licensees. The uniform standards will apply to licensees subject to disciplinary actions as well as diversion program participants. There are some cases in which – whether or not boards pursue Interim Suspension Orders and licensing restrictions via criminal proceedings pursuant to Penal Code 23 – clinical diagnostic evaluations are unnecessary. A clinical diagnostic evaluation would not be necessary in a situation where there demonstrable immediate threat to public safety and/or where violations are so egregious (e.g., crimes in addition to substance abuse, harm/death of a patient) that the board would not allow the licensee to practice under any circumstances; thus, the board would seek revocation instead of permitting rehabilitation/treatment.

Staff also discussed whether the standard should apply to licensees “found to be” or “suspected” of misusing and/or abusing alcohol. After consulting with Legal Counsel, staff recommends setting minimum standards for clinical diagnostic evaluations, instead of requiring when such evaluations occur. Following are positions that were considered:

- The term “suspected,” could require licensees to get evaluated right away and could provide a basis for license suspension. “Suspected” is too vague and could be interpreted that an Accusation has to be filed before a licensee can be required to undergo clinical evaluation. Some boards were uncomfortable with use of the term “suspected.”
- The term “found,” is a general, concrete, broad term that could be left to interpretation by boards, however it has legal implication that due process has been followed.
- Staff initially agreed that it would be better to use the terminology “where there is evidence or reasonable belief that a licensee is misusing or abusing drugs and/or alcohol and/or a licensee requests participation in a diversion program,” instead of “found” or “suspected.”
- After consulting with Legal Counsel and considering due process, staff settled on leaving it up to the board to determine if a clinical diagnostic evaluation is necessary in order to evaluate whether practice restrictions or other actions are warranted.

### **Defining Clinical Diagnostic Evaluation**

“Diagnostic” has a very specific medical definition. Staff checked with Legal Counsel to ensure that using the term “diagnostic” in Uniform Standard #1 would not require a specific tool to be used for evaluation. Currently, three (3) satisfactory tools are used for diagnosis. Use of different tools is determined upon on the type of substance the licensee is abusing. Some tools are more expensive. Currently, some assessments are made by telephone.

### Experience/Credentials Required for Evaluators

Staff initially specified licenses and specialties of practitioners qualified to conduct clinical diagnostic evaluations. Some practitioners who are allowed to conduct clinical evaluations under their practice acts were not in that list. Excluding them from Uniform Standard #1 could be a cause of concern to them and be seen as limiting their scope of practice. Staff considered including a requirement that continuing education specific to substance abuse be required but decided against it because it is a detail that should be addressed in regulation by each board.

### PROS

As drafted, this standard increases 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 boards are notified quickly if the licensee is a threat to himself/herself or the public while allowing for due process, as well as pursuit of Interim Suspension Orders and licensing restrictions via criminal proceedings pursuant to Penal Code 23.
- 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.

### CONS

- Requiring in-person assessments may create difficulties in remote locations and increase cost.
- Not specifying a tool to be used for clinical diagnostic evaluation will result in case-by-case variations, however, it may be appropriate depending on the type of substance abuse and if mental health is an issue.

**PUBLIC COMMENT**

Public comments received included:

- Suggestions that it be clear that the evaluator make a “recommendation,” not a “determination.” The standard was revised accordingly.
- A recommendation that there be a timeframe on the personal/financial/business relationship between the licensee and evaluator. This was not incorporated into the standard.
- Suggestions that more research and definition may be necessary on the “acceptable professional standards.” Staff drafted the standard to allow for acceptable professional standards to be applicable to the specific tool used for assessment, of which, three (3) tools are currently used and have been found to be satisfactory.
- Suggestions that there be more than one category of professional who is trained and qualified to make multidisciplinary evaluations and that, in some cases, a team of professionals may be warranted. It was staff’s intent in drafting the standard to provide minimum standards for a clinical diagnostic evaluation without precluding additional assessments. The standard was clarified accordingly.
- Suggestions that the evaluator have experience in providing evaluations of a health professional with substance abuse disorders. The standard was revised accordingly.
- Suggestion that the evaluator preferably be a physician with expertise in addiction medicine or addiction psychiatry. This was not incorporated into the standard. Other practitioners, including neuropsychologists, marriage and family therapists, psychiatric/mental health nurses, and clinical social workers are qualified under their practice acts to conduct clinical diagnostic evaluations.
- Suggestion that the evaluator be required to examine specified collateral data. The standard was not revised as tools used for clinical diagnostic evaluation and applicable best practices already prescribe data to be examined.
- Suggestion that “substance abuse” be used instead of “chemical dependency.” The standard was revised accordingly.