



ISSUE MEMORANDUM

| | |
|----------------|---|
| DATE | May 13, 2009 |
| TO | SB 1441 Substance Abuse Coordination Committee |
| FROM | SB 1441 Uniform Standards Staff Working Group Presented by: Carol Stanford, Board of Registered Nursing |
| SUBJECT | SB 1441 Uniform Standard # 2 |

SB 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

DRAFT UNIFORM STANDARD # 2

The board shall determine on a case-by-case basis whether a licensee shall be temporarily removed from practice by utilizing the enforcement provisions for temporary removal that are contained in statute. If a board determines it is necessary, a licensee who has been ordered removed from practice may be required to undergo a clinical diagnostic evaluation. Any treatment recommended by the evaluator and approved by the board shall be determined on a case-by-case basis using the following criteria:

- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance use;
- scope, and pattern of use;
- treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse; and,
- threat to himself/herself or the public.

These same criteria shall be used by the board to determine whether to permit a licensee to return to practice on a part- or full-time basis.

DISCUSSION

The boards have statutory authority over licensees and a mandate to protect the public; however, their ability to remove licensees immediately from the work place is limited. There are requirements of due process, which requires 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 boards to legitimately, prevent someone from practicing in the livelihood for which they are licensed. In some cases an Interim Suspension Order (ISO), Temporary Suspension Order (TSO), or PC23 is required. The ISO and TSO have 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 PC23 is as 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. The ability of any licensing agency to have the financial means to issue hundreds of orders based on complaints alone without legitimate, legally authorized investigations is unrealistic, and would be met with opposition from every area of the professional landscape: licensees, associations, attorneys, public advocates, etc.

Those boards that have Diversion Programs or alternate programs do have the ability to require immediate cessation of practice without the need of the above orders or due process. Under most cases, it is feasible to suspend the practice of the licensee while they undergo evaluation in order to protect the public, determine the rehabilitative needs of the licensee, and begin the monitoring process. The value added to the program is the ability to quickly intervene when a licensee is presented as having a substance abuse issue whether or not there is sufficient evidence to warrant an ISO, or TSO.

PROS

- 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 indentified 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.

Each program, Enforcement, Probation, Diversion, must handle there licensees differently and on a case-by-case basis as the board deems necessary. However, without the above or similar orders, only those with Diversion Programs or alternate programs have the flexibility to immediately remove someone from practice as a means for the licensee to be allowed to enter or continue in the program. The Enforcement and Probation program must incorporate due process into any decision regarding the removal of a licensee from practice.

CONS

- For some professions, removal from practice can jeopardize the public.
- These standards put too much faith in expert opinion and not enough in evidence. Temporary removal should be first response with immediate continuous drug testing.

PUBLIC COMMENT

- There are concerns regarding the ignoring of due process on behalf of the licensee.
- The laws limit what boards can do regarding the removal of licensees from practice.
- The laws governing some boards only allow licensees to be removed from practice if there is immediate imminent danger to the public.
- This standard can be difficult to meet.