



ISSUE MEMORANDUM

DATE	May 13, 2009
TO	SB 1441 Substance Abuse Coordination Committee
FROM	SB 1441 Uniform Standards Staff Working Group Presented by: Kristine Brothers, Acupuncture Board
SUBJECT	SB 1441 Uniform Standard # 3

SB 1441 REQUIREMENT

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

DRAFT UNIFORM STANDARD #3

The licensee shall provide the name, physical address, and telephone number of his/her employer and shall give specific, written consent that the licensee authorizes the board to communicate with the licensee's employer relevant to the licensee's work status and substance abuse history, treatment, and monitoring.

DISCUSSION

The following are issues that were discussed when formulating uniform standard #3.

- The ability to communicate about a licensee's status or condition is a condition that boards already require of their participants and respondents, whether it be through a diversion program, i.e., work site monitor or a probation order, i.e., probation monitor.
- In diversion programs, a work site monitor is required as a means to stay informed of the licensee's status or condition; however, the monitor is typically not the licensee's employer. In bringing this up, the subject of the licensee's confidentiality arose since the employer would now be required to be informed of the licensee's status and condition.
- There are statutes in place for some boards with diversion programs that address the confidentiality of records pertaining to the licensee's treatment so the uniform standard conflicts. Because of this conflict, there will need to be statute changes to allow for this uniform standard.

- As part of a diversion program, the licensee must report his/her condition and status to an employer without having gone through due process to determine if there is in fact a problem of practicing safely. This concern was addressed by requiring the licensee to give specific, written consent for this communication to take place. In addition, uniform standard #1 would require the licensee to be evaluated to determine whether or not the licensee has a substance abuse problem, thus requiring him or her to comply with this standard through a diversion program.
- It was thought that the uniform standard should be more specific in what the licensee is exactly consenting to and what information is released. To address this need, the standard specifies that the board may communicate with the licensee's employer in regard to his/her work status, substance abuse history, treatment, and monitoring.
- There is a need for an additional requirement that ensures a licensee be monitored by means of a work site monitor or probation condition if the licensee is self-employed.
- Uniform standard #3 does not allow communication in relation to any disciplinary action taken against his/her license. However, most boards' disciplinary guidelines require that a licensee provide his/her employer with a copy of the decision's probation order.
- Another concern was brought up in relation to the Americans with Disabilities Act (ADA), in that some licensees who might be considered substance abuse licensees by its board are recognized under ADA as having a medical condition. These licensees may not presently be substance abusers, but due to past substance abuse, their ability to practice safely is affected; therefore, they may be subject to comply with this standard through a diversion program or probation order.
- The issue of some licensees being self-employed, without an employer to communicate with, was also brought up. In this instance, uniform standard #3 would not apply.
- Some boards currently do not have authority to collect employer information, especially boards that predominately have licensees that are self-employed. These boards do not have a means to know if the licensee has an employer or is self-employed.

PROS

- Although confidentiality was a discussion point, having communication with a licensee's employer who regularly works with and observes the licensee provides a good tool in monitoring the licensee's condition. This communication is another tool for boards to stay informed, so they may take swift action if public safety becomes an issue.
- Implementing a uniform standard that allows boards to obtain employer information greatly benefits boards that currently do not have this authority.

CONS

- Licensees voluntarily participating in a diversion program may feel it is a breach of confidentiality

- Due to statutory conflict, some boards will need to make statute changes to coincide with uniform standard #3.

PUBLIC COMMENT

There were not many public comments on uniform standard #3. The only issue that was raised was the fact that self-employed licensees are not addressed in the standard. It was explained that the standard specifically requires communication with licensees' employers. If a licensee does not have an employer, then the standard does not apply.

The other written comments received only showed support of the standard and felt that the licensee's employer should be encouraged to become a partner for communication in the monitoring phase of the licensee's recovery.