

State of California  
Board of Vocational Nursing  
and Psychiatric Technicians

DISCIPLINARY GUIDELINES  
AND  
UNIFORM STANDARDS RELATED  
TO SUBSTANCE ABUSE

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# **INTRODUCTION**

*Business and Professions Code sections 2841.1 and 4501.1 mandate that protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

*To facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known, the Board adopted these Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.*

## **Disciplinary Guidelines**

*The Disciplinary Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.*

*While recognizing the concept that administrative law judges must be free to exercise their discretion, the Board requests that the Disciplinary Guidelines be followed to the extent possible and that any departures be noted and explained in the Proposed Decision.*

*The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect Respondent's conduct had or could have had on the health, safety, and welfare of California consumers.*

## ***Uniform Standards Related to Substance Abuse***

*Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs (Department) Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (rev. 4/20/11). The Board's Uniform Standards not otherwise incorporated into the Standard Conditions are found in Conditions of Probation 25, 26, 27, 28, 29, and 30. The Uniform Standards apply when dealing with substance-abusing licensees.*

*If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee. If the licensee does not rebut that presumption, then Conditions of Probation 25, 26 and 27 shall be imposed unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.*

*Conditions of Probation 28, 29, and 30 shall be considered where the licensee is found to be a substance abuser, and, if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.*

*The Board may impose more restrictive conditions, if necessary, to protect the public.*

# **REGULATORY AUTHORITY**

**California Code of Regulations  
Title 16, Division 25**

**Section 2524 (VN) & Section 2579.10 (PT):**

*Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.*

*In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev.6/20/11), which are hereby incorporated by reference. The Uniform Standards apply to a substance abusing licensee.*

- (a) Subject to subsection (b), deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.*
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply.*
- (c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.*

## ***FACTORS TO BE CONSIDERED***

***In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:***

- *Nature and severity of the act(s), offense(s), or crime(s) under consideration.*
- *Actual or potential harm to the public.*
- *Actual or potential harm to any patient.*
- *Overall disciplinary record.*
- *Overall criminal actions taken by any federal, state or local agency or court.*
- *Prior warnings on record or prior remediation.*
- *Number and/or variety of current violations.*
- *Mitigating or aggravating evidence.*
- *In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.*
- *Time passed since the act(s) or offense(s) occurred.*
- *If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.*
- *Cooperation with the Board and other law enforcement or regulatory agencies.*
- *Other rehabilitation evidence.*

# ***SUMMARY LISTS OF STANDARD AND OPTIONAL CONDITIONS OF PROBATION***

## ***Standard Conditions of Probation (1 – 14):***

*The Standard Conditions of Probation (1-14) are those conditions of probation which will generally appear in all cases involving probation as standard terms and conditions.*

1. *Obey All Laws*
2. *Compliance with Probation Program*
3. *Submit Written Reports*
4. *Notification of Address and Telephone Number Change(s)*
5. *Notification of Residency or Practice Outside of State*
6. *Meetings with Board Representative(s)*
7. *Notification to Employer(s)*
8. *Employment Requirements and Limitations*
9. *Supervision Requirements*
10. *Completion of Educational Course(s)*
11. *Maintenance of Valid License*
12. *Cost Recovery Requirements*
13. *License Surrender*
14. *Violation of Probation*

## ***Optional Conditions of Probation (15 -- 25):***

*The Optional Conditions of Probation (15-25) are those conditions of probation which address specific circumstances of the case.*

- *If relevant to the violation, any of the Optional Conditions may be included in the probation requirements.*
- *If the offense involves substance abuse, including alcohol, Optional Conditions 19-22 are usually required (in addition to the Standard Conditions 1-14 and, if the licensee is found to be a substance-abuser, Uniform Standards Conditions 26-28). Optional Conditions 16-18, 23, and Conditions 29-31 are also recommended, if relevant.*
- *If Respondent's license has been or will have been expired for over four (4) years by the time a decision is rendered, Respondent shall be required to take and pass the licensure examination (Condition 24).*
- *If the case involves mental illness, Conditions 16-18 are recommended.*

15. *Suspension of License*
16. *Examination by a Physician*
17. *Psychiatric/Psychological Evaluation*
18. *Psychotherapy*
19. *Rehabilitation Program*
20. *Addictive Behavior Support Groups*
21. *Abstain from Controlled Substances*
22. *Abstain from Use of Alcohol and Products Containing Alcohol*
23. *Submit Biological Fluid Samples*
24. *Take and Pass Licensure Examination*
25. *Restrictions on Licensed Practice*

# ***SUMMARY LISTS OF UNIFORM STANDARDS – CONDITIONS OF PROBATION***

## ***Required Conditions of Probation (26 -- 28):***

*The following Uniform Standards -- Conditions of Probation shall be imposed as probation conditions in cases where Respondent is placed on probation due to substance abuse.*

- 26. Submit to Drug Testing*
- 27. Positive Drug Test*
- 28. Major and Minor Violations*

## ***Optional Conditions of Probation (29 -- 31):***

*The following Uniform Standards -- Conditions of Probation shall be considered and, if the circumstances of the case warrant, shall be imposed as probation conditions.*

- 29. Clinical Diagnostic Evaluation*
- 30. Group Meetings with Qualified Facilitator*
- 31. Worksite Monitor*

# **DISCIPLINARY GUIDELINES**

## **STANDARD CONDITIONS OF PROBATION [1-14]**

### **1. OBEY ALL LAWS**

Respondent shall obey all federal, state and local laws at all times, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within 5 days of occurrence. This provision applies during any period of suspension or any other period of non-practice, in state or out of state.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the Decision, unless the Board determines that fingerprints were previously submitted by the Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within 30 days of the effective date of the Decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions. Respondent shall submit proof of satisfactory completion of any criminal probation or parole that ends after the effective date of the Board's Decision. Respondent shall submit certified copies of court documents related to the expungement of any conviction(s) if not previously submitted.

### **2. COMPLIANCE WITH PROBATION PROGRAM**

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Upon successful completion of probation, Respondent's license will be fully restored.

### **3. SUBMIT WRITTEN REPORTS**

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports or declarations and verifications of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's Decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

### **4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)**

Respondent shall notify the Board, in writing, within 5 days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

### **5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE**

Respondent shall notify the Board, in writing, within 5 days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. Respondent shall provide written notice to the Board within 5 days of any change of residency or practice.

Respondent shall notify the Board, in writing, within 5 days, upon his/her return to California.

**6. MEETINGS WITH BOARD REPRESENTATIVE(S)**

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

**7. NOTIFICATION TO EMPLOYER(S)**

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his/her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation or Statement of Issues and Disciplinary Decision.

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with his/her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within 5 days of such an event.

Respondent shall notify the Board, in writing, within 5 days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

## **8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS**

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than 6 continuous months and of no less than 20 hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

## **9. SUPERVISION REQUIREMENTS**

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the Board.

## **10. COMPLETION OF EDUCATIONAL COURSE(S)**

Respondent, at his/her own expense, shall enroll and successfully complete coursework substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within 30 days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the coursework, Respondent shall submit "original" completion certificates to the Board within 30 days of course completion.

**11. MAINTENANCE OF VALID LICENSE**

Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within 2 years from the effective date of the Board's Decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

**12. COST RECOVERY REQUIREMENTS**

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$\_\_\_\_\_.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by Respondent shall not relieve Respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

If Respondent has not complied with this condition during the probationary period, and Respondent presents sufficient documentation of his/her good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

### **13. LICENSE SURRENDER**

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary Decision for the surrender:

- 3 years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- 1 year for a license surrendered for a mental or physical illness.

### **14. VIOLATION OF PROBATION**

If Respondent violates the conditions of his/her probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of Respondent's license. If during probation, an Accusation or Petition to Revoke Probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition has been acted upon by the Board.

## **OPTIONAL CONDITIONS OF PROBATION [15-25]**

### **15. SUSPENSION OF LICENSE**

Respondent is suspended from practice as a vocational nurse/psychiatric technician for \_\_\_\_\_ month(s) (period not to exceed one year) beginning on the effective date of this Decision.

During suspension, all probation conditions are in full force and effect except those relating to actual practice. The period of suspension will not apply to the reduction of this probationary period. The probation shall be automatically extended for the same time period as the length of suspension.

### **16. EXAMINATION BY A PHYSICIAN**

Within 60 days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of his/her choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Disciplinary Order prior to the examination. The cost of such examination shall be paid by Respondent.

Respondent shall cause the physician to submit to the Board a written medical report in a format acceptable to the Board. This report shall be submitted within 90 days of the effective date of the Decision. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation.

Respondent shall comply with any order to cease or restrict his/her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance in the manner required by the Board.

## **17. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION**

Within 60 days of the effective date of the Decision, Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. The cost of such evaluation shall be paid by Respondent.

Respondent shall cause the evaluator to submit to the Board a written report concerning Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within 90 days from the effective date of the Decision.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with any order to cease or restrict his/her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. The cost of such therapy shall be paid by Respondent.

## **18. PSYCHOTHERAPY**

Within 60 days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional who has been approved by the Board. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first therapy session. Therapy sessions shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. The cost of such therapy shall be paid by the Respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning Respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted in a format acceptable to the Board within 90 days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning Respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board.

If the therapist finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the therapist's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with any order to cease or restrict his/her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance with this condition in the manner required by the Board.

#### **19. REHABILITATION PROGRAM**

Within 30 days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within 30 days of completion.

Components of the treatment contract shall be relevant to the violation and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol or other identified types of addictive behavior, use of work site monitors, participation in addictive behavior rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by Respondent.

**20. ADDICTIVE BEHAVIOR SUPPORT GROUPS**

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at an addictive behavior support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, Al-Anon, Gamblers Anonymous). Verified documentation of attendance shall be submitted by the Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

**21. ABSTAIN FROM CONTROLLED SUBSTANCES**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

**22. ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL**

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

**23. SUBMIT BIOLOGICAL FLUID SAMPLES**

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

**24. TAKE AND PASS LICENSURE EXAMINATION**

**(Statement of Issues)**

Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

**(Reinstatement of License)**

Prior to resuming practice, Respondent shall take and pass the licensure exam currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

**(Current License)**

Prior to resuming or continuing practice, Respondent shall take and pass the licensure exam currently required of new applicants within 2 years from the effective date of the Board's Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and notice has been mailed to Respondent by the Board.

**25. RESTRICTIONS ON LICENSED PRACTICE**

Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in limited medical procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board.

# ***UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES***

## **UNIFORM STANDARDS – REQUIRED CONDITIONS OF PROBATION [26 -- 28]**

### **26. SUBMIT TO DRUG TESTING**

Respondent shall immediately submit to random, observed and directed drug testing, at Respondent's cost, upon request by the Board or its designee. Respondent shall be subject to the frequency of testing specified in Standard 4 of the Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. Respondent shall make daily contact as directed by the Board to determine if he/she must submit to drug testing. Respondent shall submit his/her specimen on the same day that he/she is notified that a test is required. All alternative collection sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within 1 business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within 7 days of receipt of the specimen. The Board shall be notified of non-negative test results within 1 business day and shall be notified of negative test results within 7 business days.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer and worksite monitor, if any.

## **27. POSITIVE DRUG TEST**

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation and the Board shall impose the consequences set forth in Major and Minor Violations.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject his/her license to further disciplinary action.

## **28. MAJOR AND MINOR VIOLATIONS**

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
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.

If Respondent commits a major violation, the Board shall order Respondent to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused non-attendance at required meetings;
3. Failure to contact a monitor when required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If Respondent commits a minor violation, the Board shall determine what action is appropriate.

## **UNIFORM STANDARDS – OPTIONAL CONDITIONS OF PROBATION [29 -- 31]**

### **29. CLINICAL DIAGNOSTIC EVALUATION**

Within 30 days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the licensee with the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the licensee has a substance abuse problem, is a threat to himself/herself or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. 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.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing at a minimum of 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board.

Respondent shall not return to practice until the Board determines that he/she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what, if any work limitations will be placed on a license, the Board will consider the factors set forth in SACC Standard No. 6. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a license is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in SACC Standard No. 11.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

### **30. GROUP MEETINGS WITH QUALIFIED FACILITATOR**

Upon recommendation of the clinical evaluator and/or determination by the Board, Respondent shall participate in group support meetings led by a facilitator who meets the following qualifications and requirements:

The meeting facilitator must have a minimum of 3 years experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the State or other nationally certified organization(s).

The meeting facilitator must not have a financial, personal, or business relationship with Respondent in the last 5 years.

The meeting facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the dates and location of the meetings, Respondent's attendance, and Respondent's level of participation and progress.

The meeting facilitator shall report within 24 hours any unexcused absence to the Board.

### **31. WORKSITE MONITOR**

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

**(Revised 6/20/11; Effective 12/29/12)**

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

<b>Disciplinary Violations</b>	<b>VN Program B&amp;P Code</b>	<b>PT Program B&amp;P Code</b>	<b>Maximum Discipline</b>	<b>Intermediate Discipline</b>	<b>Minimum Discipline</b>
<b>1. Unprofessional Conduct</b>	2878(a)	4521(a)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>2. Incompetence and/or Gross Negligence</b>	2878(a)(1)	4521(a)(1)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>3. Conviction of Practicing Medicine</b>	2878(a)(2)	4521(a)(2)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24
<b>4. False or Misleading Advertising</b>	2878(a)(3)	4521(a)(3)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>5. Excessive Force, Mistreatment or Abuse of Any Patient</b>	2878(a)(4)	4521(i)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 * Restricted Practice 24 *Other Conditions
<b>6. Failure to Maintain Confidentiality of Patient Medical Information</b>	2878(a)(5)	4521(k)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>7. Failure to Report Commission of Act Prohibited by Section</b>	2878(a)(6)	4521(l)	Revocation	Revoc. Stayed: 3 Years Standard Conditions 1-14	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

<b>Disciplinary Violations</b>	<b>VN Program B&amp;P Code</b>	<b>PT Program B&amp;P Code</b>	<b>Maximum Discipline</b>	<b>Intermediate Discipline</b>	<b>Minimum Discipline</b>
<b>8. Procuring a License by Fraud or Misrepresentation</b>	2878(b)	4521(b)	---	---	Revocation
<b>9. Assisting With Criminal Abortion</b>	2878(c)	4521(c)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14
<b>10. Violating Terms of Licensing Chapter</b>	2878(d)	4521(d)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
<b>11. Making False Statement on Application for Initial License</b>	2878(e)	4521(e)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
<b>12. CONVICTION Substantially Related to Functions of License (Non-Drug Related)</b>	2878(f)	4521(f)	Revocation or Denial of License	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions
<b>13. Impersonating or Acting as Proxy for Applicant on Exams</b>	2878(g)	4521(g)	---	---	Revocation or Denial of License
<b>14. Impersonating a Licensee or Permitting Others to Use License</b>	2878(h)	4521(h)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

<b>Disciplinary Violations</b>	<b>VN Program B&amp;P Code</b>	<b>PT Program B&amp;P Code</b>	<b>Maximum Discipline</b>	<b>Intermediate Discipline</b>	<b>Minimum Discipline</b>
<b>15. Assisting Physician to Violate Medical Practice Act</b>	2878(i)	4521(j)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>16. Commission of Any Act Involving Dishonesty</b>	2878(j)	4521(n)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>17. Sexual Misconduct Related to Practice</b>	2878(k)	4521(m)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>18. Sexual Misconduct Related to Practice</b>	2878(k)	4521(m)	---	---	Revocation (Required by 16 C.C.R. §2524(c) [VN] and 16 C.C.R. §2579.10(c) [PT])
<b>19. Knowing Failure to Follow Infection Control Guidelines</b>	2878(l)	4521(o)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 24	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>20. Failure to Report Known Violations</b>	2878.1	4521.2	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>21. Illegal Possession, Prescribing, Self-Administration of Controlled Substances or Dangerous Drugs</b>	2878.5(a)	4521(a)(4)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<b>22. Illegal Use of Drugs/Alcohol Posing Danger to Public &amp; Impairs Ability to Practice</b>	2878.5(b)	4521(a)(5)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician 16 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Restricted Practice 24 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions
<b>23. CONVICTION of Drug or Alcohol Related Crimes</b>	2878.5(c)	4521(a)(6)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Restricted Practice 24 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

<b>Disciplinary Violations</b>	<b>VN Program B&amp;P Code</b>	<b>PT Program B&amp;P Code</b>	<b>Maximum Discipline</b>	<b>Intermediate Discipline</b>	<b>Minimum Discipline</b>
<b>24. Confinement or Committal for Addiction</b>	2878.5(d)	4521(a)(7)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician 16 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Psychiatric/Psychological Evaluation 17 *Psychotherapy 18 *Rehab Program 19 *Restricted Practice 24 *Diagnostic Evaluation 28 *Qualified Group Meetings 29 *Worksite Monitor 30 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Testing 25 Positive Drug Tests 26 Major/Minor Violations 27 *Other Conditions
<b>25. Falsify, Make Incorrect, Inconsistent or Unintelligible Entries Pertaining to Drugs</b>	2878.5(e)	4521(a)(8)	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Drug Testing 25 *Positive Drug Tests 26 *Major/Minor Violations 27 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

**VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 20, 2011; Effective December 29, 2012)**

<b>Disciplinary Violations</b>	<b>VN Program B&amp;P Code</b>	<b>PT Program B&amp;P Code</b>	<b>Maximum Discipline</b>	<b>Intermediate Discipline</b>	<b>Minimum Discipline</b>
<b>26. Disciplinary Action by Another State, Agency or Licensing Board</b>	2878.8	4521.6(a)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<b>27. Failure to Report Child, Elder or Dependent Adult Abuse (Unprofessional Conduct)</b>	2878(a) CCR 16 2520.1 2520.2 2520.3	4521(a) CCR 16 2577.2 2577.3 2577.4	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

**Important Notes:**

- Conditions of Probation 1 through 14 are standard conditions of probation. The Board requests these standard conditions of probation be imposed on all disciplinary cases resulting in probation.
- Conditions of Probation 15 through 24 are optional conditions of probation, which address specific circumstances of a case.
- Conditions of Probation 25 through 27 must be imposed as conditions of probation for all substance-abusing licensees.
- Conditions of Probation 28 through 30 must be considered for all substance-abusing licensees and, if the circumstances of the case warrant, shall be imposed as probation conditions.

If individual circumstances exist which justify omissions or deviations from these guidelines, the Board requests that this information be duly noted in the Proposed Decision issued by the Administrative Law Judge hearing the case. This will help the Board to better evaluate the Proposed Decision and to make an official Decision which accurately reflects the facts of each specific disciplinary matter.

\* Other Conditions of Probation may be added based upon the underlying cause of discipline.

**(Revised 6/20/11; Effective 12/29/12)**