

PHYSICIAN ASSISTANT BOARD

ADDENDUM TO THE FINAL STATEMENT OF REASONS

Hearing Date: 9 February 2015

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section Affected: Title 16, California Code of Regulations Section 1399.523

Updated Information

The following information is provided as an addendum to the Final Statement of Reasons:

1399.523 Disciplinary Guidelines language

Section 1399.523(a) was updated to delete "committee" and replace with "Board."

Section 1399.523(a) was updated to reflect the 4th Edition 2015 version of the Board's Manual of Disciplinary Guidelines and Model Disciplinary Orders.

Section 1399.523(b) entire section was underlined to reflect language added.

These changes do not affect the purpose or the scope of the proposed regulatory change

Manual of Disciplinary Guidelines and Model Disciplinary Orders

Cover Page: This change was made to more accurately reflect the currently approved edition of the Board's Manual of Disciplinary Guidelines and Model Disciplinary Orders.

Page 1: Introduction. The word, "Model" was inadvertently omitted from the manual. "Model" was added to current version.

Page 1: The word, "four" was underlined. "Four" was not underlined in previous editions.

Page 1: The following paragraphs were inadvertently omitted from the manual. Additionally, "Committee" was deleted and replaced with "Board." The following paragraphs were added:

The Physician Assistant Board (PAB) recognizes that the penalties and conditions of probation contained in this booklet are merely guidelines. Selecting conditions of discipline appropriate to individual cases may necessitate variations from these guidelines, for taking into account particular mitigating or aggravating circumstances.

However, absent significant extenuating circumstances, the penalty and probation provisions of these guidelines should be followed by those individuals representing the Board in disciplinary actions.

Whenever a Proposed Decision or stipulation varies from the conditions contained in the following guidelines, the Board encourages both the deputy attorney general who negotiated the stipulation and the administrative law judge who heard the case to explain any deviations or omissions from the guidelines. The Board will then be better informed and understand the circumstances and reasons for any changes or deviations from these disciplinary guidelines.

Page 3: The year "2013" was deleted and replaced with "2015." This change will reflect the current date of the manual.

Page 6: Deleted "Drug and Alcohol Recovery Monitoring Program" section because it was removed during the 15-day comment period. This change reflects the language for the "Order of Adoption."

Page 6 and 7: Disciplinary Guidelines Index. Underlying stricken out page numbers and Causes for Discipline were changed to reflect the guidelines filed with Secretary of State's Office in May 2008. Added underlines to new "Causes for Discipline."

Page 8 to 17: Causes for Discipline and License Restriction section. Underlying stricken out numbers (in parentheses) representing Model Disciplinary Orders were changed to reflect the guidelines filed with the Secretary of State's Office in May 2008.

Page 8: Section 725 Excessive Treatments. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 9: Sections 726, 729, and 3527(a) Sexual Misconduct. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 9: Section 820 Mental or Physical Illness. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Item 4: Added underline to the word "drugs."

The Model Disciplinary Orders were renumbered to correct duplicate number 5.

Page 10: Sections 2054 and 2278 Holding Oneself out as a Physician or Use of Title "Doctor" and/or "M.D." This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 10: Section 2234 (b) Gross Negligence, 2334(c) Repeated Negligent Acts, and 2234(d) Incompetence This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 10: Sections 2234(e) and 3527(a) Dishonesty. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 11: Sections 2237 and 3527(a) Conviction Related to Drugs and 2238 and 3527(a) Violation of Drug Statutes. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008. In item 9 the word, "monitoring" was underlined.

Page 12: Sections 2239 and 3527(a) Drug or Alcohol Abuse and Section 2280 Intoxication While Treating Patients. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

In item 8 the word, "monitoring" was underlined.

Page 13: Sections 2241 and 3527(a) Furnishing Drugs or Transmitting Drug Orders to Addict. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 13: Sections 2242 and 3527(a) Administering or Furnishing Drugs or Transmitting Drug Orders, Without Prior Good Faith Examination. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 14: Sections 2252 and 3527(a) Illegal Cancer Treatment This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 14: Sections 2261 and 3527(a) Making or Signing False Documents and Section 2262 Alteration of Medical Records. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 15: Sections 2266 Failure to Maintain Adequate Records and Section 3327(a) Failure to Maintain Required Patient Records. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 15: Sections 3502.1 Drug Order Authority and 3527(a) Administering, Furnishing, or Transmitting Drug Orders Not Prescribed by Supervising Physician. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 16: Section 3527(a) Practicing Medicine Without Delegated Authority from a

Supervising Physician; Exceeding Delegated Scope of Practice: Practicing Without Adequate Supervision. This section was updated to add omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Section 3527(a) Failure to Follow Guidelines for Prevention of Blood Borne Pathogens. This section was updated to delete the (c) reference found in the guidelines filed with the Secretary of State's Office in May 2008.

Page 18 and 19: Index of Model Disciplinary Orders. Page numbers were changed to reflect the guidelines filed with Secretary of State's Office in May 2008.

On item 3, added the word, "initial" which was omitted from previous editions. Items 6 and 7 added omitted language from the guidelines filed with the Secretary of State's Office in May 2008.

Page 20: Item 3. "Initial Probationary Licenses" was underlined. The phrase "where the license is issued, immediately *revoked*, and the revocation stayed" was never originally underlined in the 45 day version, therefore it is being deleted. The change does not substantially change the rights and responsibilities of those individuals who must comply with the regulation.

Page 21: Item 7. Existing language was moved to "Option 1 Restriction" in item 6. Item 6. "Option 1" and "Option 2" were underlined. The phrase, "Partial Restriction of" was deleted.

Page 28: Item 21. "from the effective date of the decision and order" was added to clarify when the 30 days begins. The change does not substantially change the rights and responsibilities of those individuals who must comply with the regulation because it is the same phrase used throughout the guidelines.

Page 30 and 31: Item 25. Biological Fluid Testing – deleted "but not to exceed one-hundred and four (104)" because it was removed during the 15-day comment period.

Bullet 2 was amended to add the language "of a minimum of fifty-two (52) random tests per year and participate in the second year of testing frequency requirement of a minimum of thirty-six (36) random tests per year."

Business and Professions Code section 315 establishes the Substance Abuse Coordination Committee. The Committee is responsible for formulating the Uniform Standards. The change in Bullet 2 does not substantially change the rights and responsibilities of those individuals who must comply with the regulation because it reflects Uniform Standard #4.

The phrase, "A positive result is one which, based on scientific principles, indicates respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome" as the sentence is somewhat confusing. It was deleted for clarity.

Page 31: Item 26. Facilitated Group Support Meetings – qualification 2 was revised from five (5) years to one (1) year to comply with the Uniform Standard #5.

Page 34: Item 35 Non-Practice While on Probation was update. The word, “be” was added to make the sentence grammatically correct.

Page 35: The phrase “fails to practice as a physician assistant” was underlined. The added phrase was not originally underlined in the 45 day text, however, it was discussed in the Addendum to the Initial Statement of Reasons which was made available for comment during the 15-day notice period.

Item 37 Condition Fulfillment was update to capitalize the words, “Accusation” and “Decision.”

Page 36: Removed the 2014 reference and update the revision date to February 9, 2015.

Public Comments Received at Hearing on 9 February 2015:

Kevin Schunke, Regulation Manager, Medical Board of California commented that their implementation of SB 1441 guidelines and updates to their Disciplinary Guidelines regulatory package was rejected by Office of Administrative Law. He noted that their package was to be resubmitted to Office of Administrative Law.

Mr. Schunke’s comments were reflective of the Medical Board of California’s regulatory package and did not address concerns or comments regarding the Board’s proposal.

These changes do not affect the purpose or the scope of the proposed regulatory change.

PHYSICIAN ASSISTANT BOARD
FINAL STATEMENT OF REASONS

Hearing Date: 9 February 2015

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section Affected: Title 16, California Code of Regulations Section 1399.523

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

On 27 April 2015, the Physician Assistant Board (Board) issued a 15-day Notice of Availability of Modified Text and Documents Added to the Rulemaking file. The modified text includes proposed additional amendments to the "Manual of Disciplinary Guidelines and Model Disciplinary Orders" (Guidelines) that would further enhance the document as well as a change to the revision date to the Guidelines. In addition, the Board provided notice of the addition of the following documents to the rulemaking file: (1) Addendum to the Initial Statement of Reasons (ISR); and, (2) Draft Meeting Minutes from the February 9, 2015 Physician Assistant Board Meeting. The Addendum to the ISR describes the updated factual basis and rationale for each proposed additional change to the Guidelines set forth in the modified text of the Guidelines document.

The modified text, modified guidelines and additional documents were made available to the public and were posted on the Board's website.

The public comment period began on 27 April 2015 and ended on 13 May 2015. There were no public comments received by the Board regarding the proposed amendments or the documents added to the rulemaking file.

A summary of the additional proposed changes to the Guidelines is included in the Addendum to the Initial Statement of Reasons that is a part of this rulemaking file.

These changes do not affect the purpose or the scope of the proposed regulatory change.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Physician Assistant Board has determined that the proposed regulations would not affect small businesses. The proposed regulation will only affect individual licensees. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business at which a licensee works who is the subject of disciplinary action cannot be projected. Businesses employing licensees who are in compliance with the law will not incur any fiscal impact.

The anticipated benefits of this regulatory proposal are:

The Board has determined that this proposed regulatory change updating the Board's Guidelines will benefit California consumers by enhancing the Board's ability discipline physician assistants who violate the Physician Assistant Practice Act or other laws and regulations regarding the practice of medicine by a physician assistant.

In addition, incorporating the Uniform Standards provides maximum protection to California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse. These benefits are a direct result of the Board's statutorily mandated priority set forth in Business and Professions Code section 3504.1. The protection of the public is the highest priority for the Board in exercising licensing, regulatory, and disciplinary functions.

The proposed adoption of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, updated Guidelines will provide clarity for licensees to understand what specifically could apply to them in the disciplinary matters.

Administrative Law Judges and Attorney Generals will also benefit from the updated Guidelines when drafting decisions, which will help ensure consistency in interpretation and application of penalties in disciplinary matters.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.

Finding of Necessity

This regulatory proposal does not require the licensee to submit a report.

Incorporation by Reference

The Board's disciplinary guidelines entitled, "Physician Assistant Board Manual of Model Disciplinary Guidelines and Model Disciplinary Orders" 4th Edition 2015 (guidelines) and the Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance Abusing Healing Arts Licensees" (April 2011) (uniform standards) are incorporated into the California Code of Regulations (CCR).

The incorporation by reference method was used because it would be impractical and cumbersome to publish the guidelines and uniform standards in the CCR. The guidelines and uniform standards are intended to assist administrative law judges, attorneys, licensees, and others involved in the disciplinary process. The guidelines were developed to establish consistency and impose the most appropriate penalty in administrative disciplinary actions for similar offenses on a statewide basis. The uniform standards are specific standards in sixteen specified areas for healing arts boards, including the Board, to use in dealing with substance-abusing licensees. Both publications are extensive and have been printed booklet-style and available on-line. If the guidelines and uniform standards were incorporated into the CCR, it would increase the size of Division 13.8 and may cause confusion to the user. The guidelines and uniform standards were made available to the public and were posted on the board's website.