

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS**

HEARING DATE: July 8, 2014

SUBJECT MATTER OF PROPOSED REGULATIONS: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

SECTIONS AFFECTED: Section 1888 of Division 18 of Title 16 of the California Code of Regulations, and the Board of Behavioral Sciences Disciplinary Guidelines, Revised December 2012, which are incorporated by reference.

BACKGROUND AND IDENTIFICATION OF THE PROBLEM

Senate Bill 1441 (Ridley-Thomas) was signed into law in September 2008. This bill was prompted by a concern at the Legislature that there is a lack of a consistent policy across healing arts boards under the Department of Consumer Affairs (DCA), for dealing with licensees or registrants who abuse drugs and alcohol.

SB 1441 required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of DCA's healing arts boards, was tasked with formulating, by January 1, 2010, uniform and specific standards that each board would be required to use in dealing with substance abusing licensees.

The result of this committee process was the creation of 16 uniform standards which healing arts boards would adopt through regulation. The anticipated benefit from the Uniform Standards is increased public protection by allowing consumers specific and more consistent protection from substance abusing licensees.

This is consistent with the anticipated benefit of SB 1441, which states the following:

Section 1, "(a) Substance abuse is an increasing problem in the health care professions, where impairment of a health care practitioner for even one moment can mean irreparable harm to a patient." and

Section 1, "(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees."

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

Based on the standards created by the SACC, the Board is proposing amendments which incorporate the Uniform Standards into its existing Disciplinary Guidelines, which are incorporated by reference in Section 1888 of Division 18 of Title 16 of the California Code of Regulations (CCR). The resulting document would be titled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" and will consist of four sections:

1. **Uniform Standards Related to Substance Abuse:** This is a new section and would apply to licensees or registrants who test positive for a controlled substance, or whose license or registration is on probation due to a substance abuse problem.
2. **Penalty Guidelines:** This section was already part of the Disciplinary Guidelines; it lists types of violations and the range of penalties that may be imposed.
3. **Disciplinary Orders:** This section was already part of the Disciplinary Guidelines. It contains language for proposed optional and standard terms and conditions of probation. It has been modified, where appropriate, to include the new Uniform Standards related to substance abuse.
4. **Board Policies and Guidelines:** Already part of the Disciplinary Guidelines, this section explains the policies and guidelines for various enforcement actions.

The proposed amendments incorporate the SACC's Uniform Standards 1-12. Uniform Standards 13, 14, and 15 were not incorporated because they only apply to Boards with diversion programs, which this board does not have. Uniform Standard 16 was also not incorporated, because it involves boards' internal reporting criteria, which is not pertinent to the Disciplinary Guidelines.

1. Amendments to CCR Section 1888

Proposed Change: Several amendments are proposed to Section 1888. They are as follows:

- Renames the Board of Behavioral Sciences "Disciplinary Guidelines", which are incorporated by reference into the regulations in this section, to the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines", in order to account for the incorporation of the SACC-proposed uniform standards into this document.
- Changes the revision date of the document (the revision date will be specified by OAL based on which quarter it determines this proposal becomes effective).
- Changes the title of Section 1888 to be consistent with the above changes
- Adds language stating that the Disciplinary Guidelines apply to all disciplinary matters, while the Uniform Standards apply to cases of substance abuse.
- Adds subsection (a), stating a violation involving drugs and/or alcohol is a substance abuse violation, and that the Uniform Standards shall apply except in certain specified instances.
- Adds subsection (b), which allows deviation from the Uniform Standards at the discretion of the Board only if certain mitigating or aggravating factors are present; also states that the Board is not prohibited from imposing additional terms that would provide greater public protection.
- Amends Authority and Reference citations as needed to comply with current law.

Purpose and Factual Basis/Rationale: The purpose of these proposed amendments is to increase public protection by ensuring healing arts boards have a uniform standard of discipline for substance abusing licensees. Outlining these uniform standards within the Disciplinary Guidelines will ensure that the public, as well as licensees, are clear as to what standards will apply.

2. Amendments to Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (incorporated by reference in Section 1888)

- a. **Cover Page:** Renaming of the document to reflect the inclusion of the Uniform Standards. The revise date was also updated. A sentence was added at the bottom of the page to make users of the document aware that the document is available online.

Purpose and Factual Basis/Rationale: The purpose of this change is to ensure clarity of the document for both the public and Board licensees/registrants.

- b. **Introduction (Page 1):** The introduction was updated to reflect the fact that the Uniform Standards are now incorporated into the document. The document was subdivided into four parts for ease of use and to make it clear that the Uniform Standards are only applicable in cases of substance abuse, and not in all disciplinary cases.

Purpose and Factual Basis/Rationale: The purpose of this change is to ensure clarity of the document. The document was divided into four distinct parts for ease of use by the reader.

- c. **Table of Contents:** Updates the Table of Contents to reflect the addition of the Uniform Standards, to reflect the document being divided into four parts, and to re-number pages as needed.

Purpose and Factual Basis/Rationale: This change was needed so the document remains consistent and clear to the reader.

- d. **Addition of Section I: Uniform Standards Related to Substance Abuse:** In order to comply with SB 1441, the Board proposes this section describing standards that shall apply in all cases where a licensee or registrant is placed on probation due, in part, to a substance abuse violation, as follows:

- o **Clinical Diagnostic Evaluation:** This subsection requires a substance abusing licensee to undergo a clinical diagnostic evaluation. Requires the evaluator to:
 - Be a licensed practitioner with a valid, unrestricted license to conduct these evaluations;
 - Have 3 years' experience in evaluating health care professionals with substance use disorders; and
 - Be approved by the Board.

While a licensee/registrant is undergoing a clinical diagnostic evaluation, requires the Board to suspend the license or registration during this time pending a Board review of the results. The licensee/registrant must also be randomly drug tested at least two times per week during this time.

Purpose and Factual Basis/Rationale: The purpose of adding this subsection is to increase consumer protection by requiring that each licensee or registrant with a substance abuse violation is evaluated by a professional with specific expertise in substance abuse. This evaluator will then provide the Board with a report containing his or her professional opinion about the specific substance abuse issues of the individual, allowing the Board to determine if that individual is a threat to him/herself or others, and to then move forward determine the disciplinary action needed for that individual in order to protect the public from harm.

Requiring a licensee/registrant to refrain from practice pending a review of the clinical diagnostic evaluation protects the public by providing the Board with an additional tool to restrict a potentially unfit practitioner from practicing. Currently, the Board's ability to remove a licensee/registrant from the workplace is limited. There are requirements of due process, which require clear and convincing evidence in some cases, the preponderance of evidence, or proof of immediate, imminent danger to the public or others. In some cases, an Interim Suspension Order (ISO), Temporary Suspension Order (TSO) or Penal Code 23 (PC 23) is required. The ISO and TSO have a tendency to be expensive, labor intensive, and require time to process. This proposed clause will allow the Board to quickly intervene in the case of a substance abuse violation, while it determines the best course of disciplinary action.

- **Clinical Diagnostic Evaluation Report:** This subsection specifies that the clinical diagnostic evaluation report must contain specified information, including the following:
 - Whether the licensee/registrant is a threat to himself/herself or others;
 - Recommendations for the person's treatment, practice, restrictions, or other recommendations for rehabilitation and safe practice; and
 - This report must be provided to the Board in a report within 30 calendar days;

The proposed language also specifies that if the evaluator believes this person is a threat to him/herself or others, the evaluator must notify the Board within 24 hours.

The evaluator is prohibited from having a financial, personal, business, or professional relationship with the licensee or registrant.

This section also specifies that the licensee or registrant may not return to practice until there are at least 30 calendar days of negative drug tests.

Purpose and Factual Basis/Rationale: The purpose and benefit of this language is to increase public protection by specifying that the clinical diagnostic evaluation contain certain expert findings to the Board and requiring that it be done in a specified timeframe. Public protection is also increased by ensuring that the evaluator is impartial, and does not have a personal or professional relationship with the licensee/registrant. This ensures that the evaluator is objective. Finally, this section ensures that if there is a threat to the licensee/registrant or others, the Board is notified quickly so that it may take immediate action.

Because of the complexity of addictive disease, professional substance abuse evaluations are important to assist the Board in making informed decisions regarding a licensee's ability to practice safely. Many individuals who have substance abuse issues also have other medical problems/diagnoses. The evaluator can present recommendations for a therapeutic treatment plan, which may be incorporated into a Board order as elements for monitoring.

- **Supervisor Requirements:** This subsection requires that, if the Board mandates a substance abusing licensee/registrant to obtain a supervisor, that the supervisor meets certain requirements:
 - Does not have a financial, personal, business, or professional relationship with the licensee or registrant;
 - Meets specified licensing and practice requirements;
 - Have face-to-face contact with their supervisee at least once per week;
 - Reports any suspected substance abuse to the Board within a specified time; and
 - Completes monthly written reports to the Board containing specified details.

Purpose and Factual Basis/Rationale: These specific supervision requirements will benefit the public because they ensure that the supervisor is qualified and impartial, and they mandate that the supervisor must meet with and observe the licensee/registrant face-to-face and report his or her findings. This ongoing contact is important because it allows the supervisor to directly monitor and record the licensee/respondent's progress (or lack thereof) and report any suspected violations to the Board quickly so it may take immediate action if needed.

- **Chemical Dependency Support or Recovery Group Meetings:** This subsection requires that the Board must take certain information into consideration when determining the required frequency of group support recovery meetings. This includes the following:
 - Consideration of the recommendation of the clinical diagnostic evaluator;

- Consideration of the history of the licensee/registrant's case; and
- Consideration of the length of sobriety.

The proposed language also requires that the facilitator of the group support recovery meeting have certain qualifications, including three years' experience and a license in providing recovery services.

Purpose and Factual Basis/Rationale: These requirements will enhance public protection because it is essential to their recovery that licensees/registrants are receiving a level of group support that is sufficient for their particular needs, These requirements will also help ensure that this treatment is effective by making sure the group leader has certain qualifications and experience, and is therefore equipped to assist the licensee/registrant in his or her recovery.

- **Major and Minor Violations:** This subsection defines both major and minor violations, and also defines the consequences if a substance abusing licensee or registrant commits a major or minor violation, as required by SB 1441. It also states if a major violation is committed, the Board shall automatically suspend the license or registration.

Purpose and Factual Basis/Rationale: By specifically defining major and minor violations and their consequences, the Board is ensuring public protection by requiring consistent discipline for specified types of violations. The public benefits through increased protection, and licensees also benefit because types of violations and their required consequences are uniform and specifically outlined so that they know in advance that certain actions will bring certain discipline.

- **Positive Test for Alcohol and/or a Controlled Substance:** This subsection outlines the actions that the Board must take if a licensee/registrant tests positive for alcohol and/or a controlled substance. This includes the following:
 - Automatic suspension of the license/registration;
 - Immediately contacting the licensee/registrant to inform them of the suspension; and
 - Immediately notifying the employer of the suspension.

This subsection also requires the Board to take certain steps to ensure a positive test indicates prohibited substance use.

Purpose and Factual Basis/Rationale: The Board is mandated with the task of public protection. This language will protect the public by allowing the Board to immediately suspend a licensee/registrant if he or she tests positive for alcohol or a controlled substance. The language also allows the Board to immediately notify the employer so that there is no confusion about whether or not the licensee/registrant may practice during this time. Testing positive for a banned substance is a violation of probation and in the past, licensees have sometimes continued to work until the Board

could pursue disciplinary action based on the probation violation.

This section also includes some safeguards to benefit and protect licensees/registrants, by requiring the Board to take certain steps to ensure that a positive test indicates prohibited use.

- **Drug Testing Standards:** This subsection specifies a set of standards that will apply to each licensee/registrant subject to drug testing. It outlines the following requirements:
 - Randomness of tests;
 - Required daily contact to determine if a test is required;
 - Requirements for specimen collectors and testing locations.;
 - Requirements that a laboratory must process results within 7 days; and
 - Requirements that a laboratory must notify the Board of a positive result within 1 day.

Purpose and Factual Basis/Rationale: The purpose of this section is to specify that drug testing must be random. Randomness is very important in drug testing because the person being tested should not be able to predict when they might be tested, because this could allow them to strategically refrain from the prohibited behavior at certain times. The timeframes on laboratory processing imposed by this section are important because it is important for public protection purposes for the Board to know the results of a test in a timely manner, so it can take action if needed.

- **Drug Testing Frequency and Exemptions:** These subsections specify how often a substance-abusing licensee or registrant must drug test. The language also gives the Board discretion to increase the number of tests at its discretion if it believes this is necessary for public protection. It also allows the Board to make exceptions to the drug testing frequency schedule in certain circumstances, such as when a licensee has already been participating in a treatment program requiring testing or if the licensee is not currently practicing.

Purpose and Factual Basis/Rationale: This section is being proposed so that there is a prescribed schedule of frequency of drug testing, which will ensure that licensees are treated equally in terms of how often they must drug test. However, allowing the Board some discretion regarding testing also allows the Board to evaluate each licensee's situation on a case-by-case basis, if appropriate. For example, if a licensee can demonstrate that he or she has already been successfully participating in a treatment program that is requiring drug testing, the Board may adjust the testing schedule to account for this. This sort of exception still maintains public protection, while allowing the Board to account for individual situations in a manner that is manageable and realistic.

- **Criteria to Petition to Return to Practice:** This subsection sets specific

criteria that a licensee or registrant must meet before he or she may petition the Board to return to full time practice. This includes the following:

- Sustained compliance with the recovery program;
- Ability to practice safely as evidenced by work site reports and evaluations; and
- Six months of negative drug tests.

Purpose and Factual Basis/Rationale: The purpose of this section is to set forth a specific set of standards the licensee or registrant must demonstrate he or she meets before he or she may ask the Board to consider allowing him or her to practice again. It protects the public because the licensee/registrant must demonstrate compliance with each standard in order to return. It also ensures that all licensees/registrants will be evaluated according to the same criteria.

- **Criteria to Petition for Reinstatement to Unrestricted License or Registration:** This subsection sets specific criteria that a licensee or registrant must meet before he or she may petition to return to unrestricted practice. This includes the following:

- Sustained compliance with the terms of the disciplinary order;
- Demonstration of consistent and sustained participation in activities that support recovery, including ongoing support meetings and therapy; and
- Continuous sobriety of at least 3 to 5 years.

Purpose and Factual Basis/Rationale: The purpose of this section is to set forth a specific set of standards the licensee or registrant must demonstrate he or she meets before he or she may ask the Board to consider allowing an unrestricted license or registration. It protects the public because the licensee/registrant must demonstrate compliance with each standard in order to return. It also ensures that all licensees/registrants will be evaluated according to the same criteria.

- e. **Amendments to Section II: Penalty Guidelines:** This section serves as a guideline to the public, licensees and registrants, and Board staff and members, regarding potential minimum and maximum penalties for various violations of the Board's licensing law. It needs to be amended due to the addition of the Uniform Standards to the Disciplinary Guidelines.

On the section's introduction page, a disclaimer is needed for clarity purposes. The document currently states that penalties shown are merely guidelines. However, an amendment was added to state that this does not apply to substance abusing licensees where the Uniform Standards would apply, because the Uniform Standards are not guidelines and must be followed.

Changes were made as needed to the actual penalty grid (pages 14-23) to incorporate the requirements of the Uniform Standards as necessary. For

example, the Uniform Standards require all substance abusing licensees to undergo a clinical diagnostic exam, so this has been added as a minimum penalty to the applicable violations. For the violation “Use of Drugs With Client While Performing Services,” the Uniform Standards would require random drug testing as a disciplinary term, so this has been added. Other amendments were made as needed to make terms consistent with terms used in the Uniform Standards.

Purpose and Factual Basis/Rationale: The purpose of these amendments is to make the penalty guidelines grid consistent with the terms and penalties used in the Uniform Standards. The amendments also make it clear to all readers, including licensees and the public, that while the disciplinary penalties are just guidelines, the Uniform Standards must be followed in cases of substance abuse.

- f. **Amendments to Section III: Model Disciplinary Orders: Optional Terms and Conditions of Probation:** This section outlines “Optional Terms and Conditions of Probation” that may be used in disciplinary cases. Several amendments are needed to these conditions to ensure that they are consistent with the new Uniform Standards for substance abusing licensees. The terms have also been renumbered as needed for clarity purposes.

- **Condition 1: Actual Suspension:** This condition is being amended to include the term “clinical diagnostic examination” as it is a new term that may apply to the need for extending a suspension. Language has also been added which requires the respondent to be responsible for informing the employer of the Board’s decision and the reasons for the length of suspension. The respondent is required to submit documentation to the Board that he or she complied with this requirement. Language has also been added to state that prior to the lifting of the suspension, the Board must receive documents confirming that the respondent is safe to practice.

Purpose and Factual Basis/Rationale: This amendment ensures consistency and completeness in that the new “clinical diagnostic examination” is incorporated into the terms and conditions of probation where needed. It also ensures public protection by requiring a respondent to prove, via documentation, that he or she has let his or her employee know of a suspension. It also ensures public protection by requiring the Board to have documentation of safe practice before lifting any suspension.

- **Condition 4: Clinical Diagnostic Evaluation:** This condition is being added because per the Uniform Standards, it is now required of all substance abusing licensees. The condition requires the evaluation to be completed within 20 days of the effective date of the Board’s decision, and it requires an automatic suspension of at least one month and drug testing two times per week.

The condition also requires the evaluator to submit the evaluation within

10-30 days.

Purpose and Factual Basis/Rationale: The purpose of adding this condition is because the Uniform Standards require that each substance abusing licensee/registrant undergoes a clinical diagnostic evaluation. Setting specific timelines in which it must be completed and submitted, and requiring license suspension and drug testing twice a week protects the public by ensuring that the evaluation is done in a timely manner, and it ensures that a potentially unfit practitioner is not practicing pending the results of this test and while the Board is determining the best course of disciplinary and corrective action.

- **Condition 5: Supervised Practice:** This condition is being amended to include a requirement that the respondent sign an agreement with the supervisor and the Board regarding the respondent and supervisor's requirements and reporting responsibilities.

Purpose and Factual Basis/Rationale: This condition is added because the Uniform Standards require the supervisor to abide by certain reporting requirements (such as reporting any suspected substance abuse, and submitting monthly reports). By requiring an agreement be signed, public protection is enhanced because this helps ensure both the supervisor and the respondent each are aware of and understand their responsibilities.

- **Condition 8: Rehabilitation Program:** This condition is being amended to replace the term "biological fluid testing" with the term "drug and alcohol testing" in order to be more consistent with the terminology used in the Uniform Standards.

Purpose and Factual Basis/Rationale: This change is being made so that the language used throughout the document is consistent.

- **Conditions 9 and 10: Abstain from Controlled Substances/Use of Alcohol, Submit to Drug and Alcohol Testing:** These conditions are being amended to be consistent with the drug testing requirements prescribed by the Uniform Standards. Amendments being made will require a minimum number of tests per year, as prescribed by the Uniform Standards. Language has been added requiring a license/registration to be automatically suspended for a positive test, and outlines the daily contact required of the licensee/registrant to determine if random testing is required that day.

Purpose and Factual Basis/Rationale: These requirements make current Board drug testing requirements consistent with the requirements set forth in the Uniform Standards. Requiring a specific number of random tests and daily check-ins will ensure public protection by making the respondent submit to rigorous test requirements that they cannot predict to ensure that they do not use alcohol or controlled substances, and ensures that if they do test positive, the Board has the authority to

suspend the license/registration automatically. It also ensures all substance abusing licensees are held to the same strict disciplinary standard.

- g. **Amendments to Section III: Model Disciplinary Orders: Standard Terms and Conditions of Probation:** This section outlines “Standard Terms and Conditions of Probation” that must be used in disciplinary cases. Amendments are needed to these of these conditions to ensure that they are consistent with the new Uniform Standards for substance abusing licensees. The terms have also been renumbered as needed, and a technical change has been made to an incorrect reference to the law.

- **Condition 21: Failure to Practice:** This condition is being amended to replace an incorrect reference to the Business and Professions Code. The reference to Section “4908.02” is incorrect. The correct reference is Section “4980.02.”

Purpose and Factual Basis/Rationale: This change is being made so that the language used in this document correctly references the Board’s licensing law.

- **Condition 25: Notification to Employer:** This condition is being amended to require a respondent to provide the Board the names, addresses, and telephone numbers of all employers, supervisors, and contractors. The amended language also requires the respondent to sign an agreement with the employer to allow the Board to communicate with the employer regarding his or her work status and monitoring.

Purpose and Factual Basis/Rationale: The purpose of this amendment is to make sure the Board is able to contact the licensee/registrant’s employer to make sure that the licensee/registrant is complying with his or her probation. Having open channels of communication, in the case of a substance abusing licensee on probation, will give the Board the ability to quickly intervene if needed to protect the public, if it finds that the licensee has resumed using alcohol or controlled substances.

- h. **Section IV: Board Policies and Guidelines:** No amendments were made to this section; however it was re-numbered as Section IV. This section explains the Board’s policies and guidelines for various enforcement actions.

Purpose and Factual Basis/Rationale: This language was separated into its own section to increase the clarity and flow of the document.

UNDERLYING DATA

1. Senate Bill 1441 (Ridley-Thomas) (Chapter 548, Statutes of 2008)
2. The Department of Consumer Affairs Substance Abuse Coordination Committee’s “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” April 2011

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that the proposed regulatory action may have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be affected cannot be predicted. The Board only has the authority to take administrative action against a licensee and not a business. Therefore, the costs incurred by a business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees, because it ensures there are high standards in place to effectively and consistently discipline all healing arts licensees who are found to have substance abuse violations.

Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the 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." The Uniform Standards provide the Board with an effective tool to discipline substance-abusing licensees, and the public will benefit from this increased protection.

The proposal will have no effect on worker safety or the State's environment because it does not affect those areas of law.

Reporting Requirements: This proposed regulation does not impose any reporting requirements upon a licensee who is in compliance with the law. Licensees who are subject to disciplinary action due to substance abuse violations will face requirements to report to the Board and/or employer various information regarding their disciplinary action, clinical diagnostic evaluation, current employment, compliance with supervision requirements, and submittal of other required documentation.

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the 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." The public will benefit from the increased clarity and protections this proposal provides, as

described above.

FISCAL IMPACT/BUSINESS IMPACT

Business Impact

The Board has made an initial determination that the proposed regulatory action may have an effect on the following types of businesses:

- Businesses owned by licensees of the Board who face disciplinary action due to substance abuse; and
- Businesses that employ licensees of the Board who face disciplinary action due to substance abuse.

The following reporting, recordkeeping, or other compliance requirements are projected

A licensee that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data regarding the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative and disciplinary action against a licensee, not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law, as well as licensees employed by these businesses who are in compliance with the law, will not incur any fiscal impact.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, unless that individual is licensed by the Board and subject to disciplinary action.

This proposal would impact private persons who are licensees of the Board, or businesses that are owned by licensees of the Board, who face disciplinary action due to substance abuse violations.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be affected cannot be predicted. The Board only has the authority to take administrative action against a licensee and not a business. Therefore, the costs incurred by a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Under the proposed Uniform Standards, a licensee with a substance abuse violation may be subject to several disciplinary actions. Some are mandatory, and some may be required based on the circumstances of the case. Potential disciplinary actions, and their estimated costs, are as follows:

Potential Costs for a Licensee/Registrant Subject to the Uniform Standards due to Substance Abuse	
Disciplinary Action [1]	Estimated Unit Cost [4]
Clinical Diagnostic Evaluation	\$1,000 - \$3,000 per evaluation
Suspension of License/Registration [2]	individual's salary
Inpatient Substance Abuse Treatment	\$10,000 - \$35,000 depending on treatment program
Supervised Practice	approx. \$200 - \$400 per month
Chemical Dependency Support/Recovery Group Meetings	\$0 - \$100 per month depending on program
Drug/Alcohol Testing (52-104 tests in Year 1) [3]	approx. \$70 per test
[1] Represents possible disciplinary actions based on the Uniform Standards. Frequency or necessity of each individual action may vary based on the circumstances of the case.	
[2] Suspension of license/registration is required at a minimum for the duration of the clinical diagnostic evaluation. The suspension would continue if licensee is not found safe to return to practice	
[3] Required frequency of drug testing is 52-104 times in year 1, 36-104 times in years 2-5, and if no positive tests, once per month after year 5.	
[4] In addition to these costs, the licensee/registrant may incur other minor costs related to the reporting requirements of the Uniform Standards. These include costs of notifying the employer of the Board's decision, and submission to the Board of required documents such as the clinical diagnostic evaluation.	

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered:

1. Not adopt the regulations. This alternative was rejected because this regulatory proposal will provide the Board with additional tools to discipline and monitor substance abusing licensees, and to ensure that it is done in a consistent manner that protects the

public.

2. Adopt the regulations. The Board has determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.