

CALIFORNIA ACUPUNCTURE BOARD

UNIFORM
STANDARDS RELATED TO
SUBSTANCE-ABUSING
LICENSEES

SEPTEMBER 2016

THE BOARD'S UNIFORM STANDARDS RELATED TO SUBSTANCE-ABUSING LICENSEES

Pursuant to Business and Professions Code §315, the following standards are adopted by the Board and shall be adhered to for all cases where the evidence establishes that an individual is a substance-abusing licensee.

1. Clinical Diagnostic Evaluations:

If ~~a~~ the Board orders a licensee ~~who is either in a diversion program or~~ whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

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.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

2. Removal from Practice Pending Clinical Diagnostic Evaluation

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, ~~and the criteria below,~~ a probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice based on the following criteria:

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

However, no licensee shall return to practice until he or she has at least 30 days of negative drug tests.

3. Board Communication with Probationer's Employer:

If the licensee ~~who is either in the Board diversion program or~~ whose license is on probation has an employer, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

4. Drug Testing Standards:

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation ~~or in a diversion program~~ due to substance use:

TESTING FREQUENCY SCHEDULE

~~A~~The Board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation ~~or diversion~~.

Nothing precludes ~~a~~the Board from increasing the number of random tests for any reason. ~~Any~~If the Board ~~who~~ finds or has suspicion that a licensee has committed a violation of ~~a~~the Board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

- I. PREVIOUS TESTING/SOBRIETY
In cases where ~~a~~the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

- II. VIOLATION(S) OUTSIDE OF EMPLOYMENT
An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs

were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

~~A~~ The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the ~~licensee's~~ Board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

~~A~~ The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

~~The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back to back testing as well as, numerous different intervals of testing. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.~~

Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the Board.

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, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

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 one (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 seven (7) days of receipt of the specimen. The ~~appropriate~~ Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

~~A~~ The Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit ~~a~~ the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

~~For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:~~

Historical Data - Two Years Prior to Implementation of Standard

~~Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.~~

Post Implementation Data - Three Years

~~Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.~~

Data Collection

~~The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:~~

~~Probationer/Diversion Participant Unique Identifier~~

~~License Type~~

~~Probation/Diversion Effective Date~~

~~General Range of Testing Frequency by//for Each Probationer/Diversion Participant~~

~~Dates Testing Requested~~

~~Dates Tested~~

~~Identify the Entity that Performed Each Test~~

~~Dates Tested Positive~~

~~Dates Contractor (if applicable) was informed of Positive Test~~

~~Dates Board was informed of Positive Test~~

~~Dates of Questionable Tests (e.g. dilute, high levels)~~

~~Date Contractor Notified Board of Questionable Test~~

~~Identify Substances Detected or Questionably Detected~~

~~Dates Failed to Appear~~

~~Date Contractor Notified Board of Failed to Appear~~

~~Dates Failed to Call In for Testing~~

~~Date Contractor Notified Board of Failed to Call In for Testing~~

~~Dates Failed to Pay for Testing~~

~~Date(s) Removed/Suspended from Practice (identify which)~~

~~Final Outcome and Effective Date (if applicable)~~

5. Participation in Group Support Meetings

If ~~a~~ the Board requires a licensee to participate in group support meetings, the following shall apply:

- I. When determining the frequency of required group meeting attendance, the Board shall give consideration to the following:
 - the licensee's history;
 - the documented length of sobriety/time that has elapsed since substance use;
 - the recommendation of the clinical evaluator;
 - the scope and pattern of use;
 - the licensee's treatment history; and,
 - the nature, duration, and severity of substance abuse.

- II. Group Meeting Facilitator Qualifications and Requirements:
 1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
 2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
 3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
 4. The facilitator shall report to the Board any unexcused absence of the Board licensee required to participate within 24 hours.

6. Determining What Treatment is Necessary

In determining whether inpatient, outpatient, or other type of treatment is necessary, the Board shall consider the following criteria:

- Recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;

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

7. Work Site Monitor Requirements:

~~A~~ The Board may require the use of worksite monitors. If ~~a~~ the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the Board:

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work

environment on a frequent basis as determined by the board, at least once per week.

- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

8. Procedure for Positive Testing

~~When~~ If a licensee tests positive for a banned substance:

1. The Board shall order the licensee to cease practice;
2. The Board shall contact the licensee and instruct the licensee to leave work; and

3. The Board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the Board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the Board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the Board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

9. Procedures for a Confirmed Ingested Banned Substance

When ~~a~~ the Board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the Board shall impose the consequences set forth in Uniform Standard #10.

10. Major and Minor Violations & Consequences

Major Violations include, but are not limited to:

1. Failure to complete ~~a~~ the Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
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.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

11. Petition for Return to Practice

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program;
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse; and
3. Negative drug screening reports for at least six (6) months, two (2) Positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

12. Petition for Reinstatement

“Petition for Reinstatement” as used in this standard is an informal request as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable;
2. Demonstrated successful completion of recovery program, if required;
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated that he or she is able to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.