



California State Board of Pharmacy

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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 4, 2009

To: Enforcement Committee

Subject: Presentations to the Committee on Board Enforcement Programs

Agenda Items 1, 2, 3

At this meeting, board staff will provide three presentations on major board enforcement programs and operations.

Presentation 1: Overview of the Board's Complaint Investigation Process

Presentation 2: Discussion of the Board's Citation and Fine Program with Focus on Citations and Fines issued for Medication Errors 2008-09

Presentation 3: Presentation on the Board's Pharmacist Recovery Program

A copy of the law establishing the Pharmacist Recovery Program (or PRP) follows this page. Materials for all other segments identified above will be distributed at the meeting.

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 4360-4373

Pharmacists Recovery Program

4360.

The board shall operate a pharmacist' recovery program to rehabilitate pharmacists and intern pharmacists whose competency may be impaired due to abuse of alcohol, drug use, or mental illness. The intent of the pharmacists recovery program is to return these pharmacists and intern pharmacists to the practice of pharmacy in a manner that will not endanger the public health and safety.

4361.

- (a) "Participant" means a pharmacist or intern pharmacist who has entered the pharmacists recovery program.
- (b) "Pharmacists recovery program" means the rehabilitation program created by this article for pharmacists and intern pharmacists.

4362.

- (a) A pharmacist or intern pharmacist may enter the pharmacists recovery program if:
 - (1) The pharmacist or intern pharmacist is referred by the board instead of, or in addition to, other means of disciplinary action.
 - (2) The pharmacist or intern pharmacist voluntarily elects to enter the pharmacists recovery program.
- (b) A pharmacist or intern pharmacist who enters the pharmacists recovery program pursuant to paragraph (2) of subdivision (a) shall not be subject to discipline or other enforcement action by the board solely on his or her entry into the pharmacists recovery program or on information obtained from the pharmacist or intern pharmacist while participating in the program unless the pharmacist or intern pharmacist would pose a threat to the health and safety of the public. However, if the board receives information regarding the conduct of the pharmacist or intern pharmacist, that information may serve as a basis for discipline or other enforcement by the board.

4364.

- (a) The board shall establish criteria for the participation of pharmacists and intern pharmacists in the pharmacists recovery program.
- (b) The board may deny a pharmacist or intern pharmacist who fails to meet the criteria for participation entry into the pharmacists recovery program.

- (c) The establishment of criteria for participation in the pharmacists recovery program shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

4365.

The board shall contract with one or more qualified contractors to administer the pharmacists recovery program.

4366.

The functions of the contractor administering the pharmacists recovery program shall include, but not be limited to, the following:

- (a) To evaluate those pharmacists and intern pharmacists who request participation in the program.
- (b) To develop a treatment contract with each participant in the pharmacists recovery program.
- (c) To monitor the compliance of each participant with their treatment contract.
- (d) To prepare reports as required by the board.
- (e) To inform each participant of the procedures followed in the program.
- (f) To inform each participant of their rights and responsibilities in the program.
- (g) To inform each participant of the possible consequences of noncompliance with the program.

4369.

- (a) Any failure to comply with the treatment contract, determination that the participant is failing to derive benefit from the program, or other requirements of the pharmacists recovery program may result in the termination of the pharmacist's or intern pharmacist's participation in the pharmacists recovery program. The name and license number of a pharmacist or intern pharmacist who is terminated from the pharmacists recovery program and the basis for the termination shall be reported to the board.
- (b) Participation in the pharmacists recovery program shall not be a defense to any disciplinary action that may be taken by the board.
- (c) No provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from the pharmacists recovery program.

4371.

- (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.
- (b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.
- (c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program

according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

4372.

All board records and records of the pharmacists recovery program pertaining to the treatment of a pharmacist or intern pharmacist in the program shall be kept confidential and are not subject to discovery, subpoena, or disclosure pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government **Code**. However, board records and records of the pharmacists recovery program may be disclosed and testimony provided in connection with participation in the pharmacists recovery program, but only to the extent those records or testimony are relevant to the conduct for which the pharmacist or intern pharmacist was terminated from the pharmacists recovery program.

4373.

No member of the board shall be liable for any civil damages because of acts or omissions that may occur while acting in good faith pursuant to this article.



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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 1, 2009

To: Enforcement Committee

Subject: Regulations Required by SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) for Practitioner Recovery Programs

Agenda Item 4

SB 1441 created the Substance Abuse Coordination Committee (SACC) and required that this committee, by January 1, 2010, formulate uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program. This committee is subject to Bagley-Keene Open Meeting Act and is comprised of executive officers and bureau chiefs from specified boards and bureaus.

Given the timeline to develop these standards, the DCA created a workgroup consisting of staff from each of the healing arts boards. (The process is similar to process the board uses to promulgate a regulation.) The workgroup is responsible for developing recommended standards. The recommended standards are then vetted during a Uniform Standards Workshop, a public meeting akin to an informational hearing. The draft standards are then presented during a public meeting to the SACC for consideration and action.

A Uniform Standards Meeting was held on May 5, 2009 to discuss standards 1 - 6.

Future meetings are scheduled for:

- July 15, 2009
- September 22, 2009
- November 10, 2009

An SACC meeting was held on May 18, 2009 to consider uniform standards 1 – 6.

Additional SACC meetings are scheduled for:

- July 27, 2009
- September 30, 2009
- November 16, 2009
- December 15, 2009

There are still many questions surrounding how each board will be required to implement these uniform standards, especially given that each board has separate statutory authority. The DCA legal office will be providing guidance on implementation issues as necessary.

Following this memo is a copy of SB 1441 (Chapter 548, Statutes of 2008) as well as the draft uniform standards 1 – 6.

Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,

approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

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

(b) Several health care licensing boards have "diversion programs" designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board's diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those

vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(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.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomness, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her

diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing
Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic

evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

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

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;

standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,

or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the

diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has

the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) "Board" means the Board of Registered Nursing.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board's diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the

diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.



ISSUE MEMORANDUM	
DATE	May 13, 2009
TO	SB 1441 Substance Abuse Coordination Committee
FROM	SB 1441 Uniform Standards Staff Working Group Presented by: Amy Edelen, Veterinary Medical Board
SUBJECT	SB 1441 Uniform Standard # 1

SB 1441 REQUIREMENT

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

DRAFT UNIFORM STANDARD # 1

If a board has determined that a clinical diagnostic evaluation is necessary in order to evaluate whether practice restrictions or other actions are warranted, the following minimum standards shall apply.

The clinical diagnostic evaluation shall:

- be conducted by a California-licensed practitioner with three (3) years experience in providing evaluations of health professionals with substance abuse disorders;
- be conducted by a practitioner who holds a valid, unrestricted license;
- be an in-person assessment; and,
- be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

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 treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator may not have a financial relationship, personal relationship, or business relationship with the licensee. 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 30 days from the date the evaluator is assigned the matter.



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

SB 1441 REQUIREMENT

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

DRAFT UNIFORM STANDARD #3

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



ISSUE MEMORANDUM	
DATE	May 13, 2009
TO	SB 1441 Substance Abuse Coordination Committee
FROM	SB 1441 Uniform Standards Staff Working Group Presented by: Anne Sodergren, California State Board of Pharmacy
SUBJECT	SB 1441 Uniform Standard # 4

SB 1441 REQUIREMENT

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

DRAFT UNIFORM STANDARD #4

If the board determines that a licensee shall be subject to drug testing, the following minimum standards apply:

1. Licensees shall be tested at least 18 times per year for the first three (3) years of continual abstinence. After the first three (3) years, licensees shall be tested at least 12 times per year.
2. The scheduling of tests shall be done on a random basis, preferably by a computer program.
3. Licensees shall be required to make daily contact to determine if testing is required.
4. Licensees shall be required to test on the date of notification as directed by the board.
5. 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.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. 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.
8. Collection of specimens shall be observed.

(Continued on next page)

DRAFT UNIFORM STANDARD #4 - Continued

9. Prior to vacation or absence, alternative testing location(s) must be approved by the board.
10. Laboratories shall be certified by the National Laboratory Certification Program.
11. 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 business day and will be notified of negative test results within seven (7)business days.



ISSUE MEMORANDUM	
DATE	May 13, 2009
TO	SB 1441 Substance Abuse Coordination Committee
FROM	SB 1441 Uniform Standards Staff Working Group Glenn Mitchell Physician Assistant Committee
SUBJECT	SB 1441 Uniform Standard # 6

SB 1441 REQUIREMENT

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

DRAFT UNIFORM STANDARD #6

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



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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 4, 2009

To: Enforcement Committee

Subject: E-Prescribing Update and Pilot Programs

Agenda Item 5

Background:

Since mid-2008, the board has resumed efforts to aid in the adoption of e-prescribing. A number of patient and health care advocates have strongly pressed the need for increased use of e-prescribing. A principal reason is that statistics indicate that medication errors cost the health care system \$77 billion and cause 7,000 deaths annually. A number of these errors could be prevented by full implementation of e-prescribing. Other savings have been projected from redirected time currently spent by prescribers and pharmacies in verifying and switching prescription orders.

By the mid-1990s, the board had sponsored legislation and promulgated regulations to ensure that e-prescribing was authorized in California law. Since then, various provisions have been added or amended to keep law supportive of allowing electronic prescriptions. A current deterrent is that controlled substances cannot be e-prescribed

On November 20, 2008, the Board of Pharmacy hosted an e-prescribing forum in conjunction with the Department of Consumer Affairs' Professionals Achieving Consumer Trust Summit. Other healing arts boards whose licensees prescribe drugs attended this forum as did our stakeholders and public interest groups. The Dental Board and Medical Board joined us as partners.

Also, the California HealthCare Foundation (CHCF) is strongly advocating adoption of e-prescribing. It also hosted a November 20 forum in San Francisco on e-prescribing.

Since then and among other projects, the CHCF has been working with the executive staff of the Medical Board and the Board of Pharmacy to host a series of statewide events where physicians and pharmacists could earn CE and simultaneously work through issues limiting adoption of e-prescribing.

The board agreed to participate in this effort as did the Medical Board.

This Meeting:

At this meeting the CHCF will provide information about its efforts statewide to secure e-prescribing in California.

There will also be a presentation about a separate e-prescribing pilot being conducted by CalPERS.



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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 4, 2009

To: Enforcement Committee

Subject: AB 718 (Emmerson) E-Prescribing Pilot

Agenda Item 6

This year, Assemblymember Emmerson has introduced Assembly Bill 718, which as currently written, would establish a pilot project in the Inland Empire until January 1, 2013 to demonstrate the value and benefits of e-prescribing. This project would be called the Inland Empire Health Plan E-Prescribing Pilot Program.

The board took no position on this bill during its April Meeting being aware that future amendments were coming. On May 27, the bill was substantially amended to specify the components of the pilot program.

Assemblymember Emmerson's staff will provide information about this proposed pilot project at this meeting.

Following this memorandum are the following documents: a bill analysis, a fact sheet provided by Assemblymember Emmerson and a copy of the bill.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 718

VERSION: As amended: May 27, 2009

AUTHOR: Emmerson

SPONSOR: Reed Elsevier, Inc.

Board Position: None

Committee Recommendation: SUPPORT

SUBJECT: Inland Empire Health Plan e-Prescribing Pilot Program

EXISTING LAW:

1. Allows for the electronic transmission of all prescription drugs at the state level.
2. Established more stringent controls for controlled substances.
3. Does not allow the electronic transmission of controlled substances as identified by the Drug Enforcement Administration (DEA).

THIS BILL WOULD:

Add Section 4071.2 to the Business and Professions Code:

Until January 1, 2013, create the Inland Empire Health Plan E-Prescribing Pilot which must meet all of the following requirements:

- Be administered by an entity that is selected by the Inland Empire Health Plan, is certified by the Certification Commission for Healthcare Information Technology, and has a minimum of five years e-prescribing experience under another state's Medicaid program.
- Requires that the pilot program promote health care quality and the exchange of health information and include the following specific components.
 - Integrated clinical decisions alerts,
 - Current payer formulary information,
 - Appropriate alternatives as specified,
 - Drug compendia approved by the Centers for Medicare and Medicaid Services, and
 - Electronic transmission of prescriptions.

AUTHOR'S INTENT:

According to the sponsor, electronic prescribing would improve safety and efficiency in the practices of medicine and pharmacy, streamline the prescribing process, and enhance communication among health care professionals. Further, the sponsor states that electronically created and transmitted prescriptions can reduce and eliminate errors both at the physician's office at the point of prescribing, and at the pharmacy when a written or oral prescription is entered into the pharmacy's computer system. Further, the sponsor states that e-prescribing can help ensure that patients with multiple physicians are not being over prescribed or taking medications that are contradictory in nature and can ensure that only Medi-Cal approved medications are prescribed as a physician will be immediately notified if the medication is not on the formulary.

FISCAL IMPACT:

The board does not anticipate any major fiscal impact. Any minor impact could be absorbed within existing resources.

COMMENTS:

The board has long supported electronic prescribing. By the mid-1990s, the board had sponsored legislation and promulgated regulations to ensure that e-prescribing was authorized in California law. Since then, various provisions have been added or amended to keep law supportive of allowing electronic prescriptions. A current deterrent is that controlled substances cannot be e-prescribed.

Last year, the federal DEA solicited comments on revised rules to allow the e-prescribing of controlled drugs. These proposed rules appeared to be cumbersome for both prescribers as well as pharmacies. To date the board is we are not aware of any additional actions taken by the federal government.

SUPPORT/OPPOSITION:

Reed Elsevier, Inc.

HISTORY:

- May 27 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on RLS.
- May 21 Referred to Com. on RLS.
- May 11 In Senate. Read first time. To Com. on RLS. For Assignment
- May 11 Read third time, passed, and to Senate. (Ayes 78. Noes 0.)
- Apr. 30 Read second time. To Consent Calendar.
- Apr. 28 Set for hearing in ASM B & P
- Apr. 22 From committee: Do pass, and re-refer to Com. On B & P. Re-referred (Ayes 17. Noes 0) (April 21)
- Apr. 21 From committee chair, with author's amendments: Amend, and re-refer.

- Apr. 14 Re-referred to Com. on HEALTH.
- Apr. 13 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
- Mar. 26 Referred to Coms. on HEALTH and B. & P.
- Feb. 27 From printer. May be heard in committee March 29.
- Feb. 26 Read first time. To print.

AB 718

(Emmerson)

Prescription drugs: electronic transmissions

Sponsor: Reed Elsevier Inc.

This bill would create the Inland Empire Health Plan E-prescribing Pilot Program that would promote health care quality and the exchange of health care information.

An electronic prescribing system in California would add new dimensions of safety and efficiency to the practices of medicine and pharmacy. Electronically created and transmitted prescriptions would streamline the prescribing process and enhance communication among health care professionals while maintain safe and high quality services. Moreover, electronically created and transmitted prescriptions can reduce or eliminate errors both at the physician's office, at the point of prescribing, and at the pharmacy when a written or oral prescription is entered into a pharmacy's computer system.

Besides enhanced efficiency and safety, there are many benefits that electronic prescriptions would provide. For instance, physicians will know which pharmacy a prescription has been sent and track whether the patient has picked it up. This will offer opportunities for physicians and pharmacists to better ensure patient compliance. Furthermore, prescriptions will be completely legible, and physicians will have an electronic record of what has been prescribed making pharmacy prescription records immediately retrievable. Additionally, electronic prescriptions will provide pharmacists with a higher level of confidence in the authenticity of prescriptions. Prescriptions will be received only through trusted partners or agents and will be securely authorized with electronic signatures. Lastly e-prescribing would make improvements in health care quality and efficiency by ensuring that patients with multiple physicians are not being over prescribed or taking medications that are contradictory in nature and by ensuring that only Medi-Cal approved medications are prescribed as a physician will be immediately notified if the medication is not on the formulary.

This legislation will greatly benefit the health care industry, including the Medi-Cal Program. Medi-Cal currently enlists approximately 114,000 providers to care for 6.5 million patients in California. Enacting this program for the Inland Empire Health Plan is expected to generate significant savings.

AMENDED IN SENATE MAY 27, 2009
AMENDED IN ASSEMBLY APRIL 22, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 718

Introduced by Assembly Member Emmerson

February 26, 2009

An act to add and repeal Section 4071.2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 718, as amended, Emmerson. Inland Empire Health Plan E-Prescribing Pilot Program.

The Pharmacy Law regulates, among other matters, the dispensing by prescription of dangerous devices and dangerous drugs, which include controlled substances. Existing law authorizes the electronic transmission of prescriptions under specified circumstances.

This bill would state the intent of the Legislature to enact legislation that would, until January 1, 2013, create the Inland Empire Health Plan E-Prescribing Pilot Program, which and would require the program to promote health care quality and the exchange of health care information; and to include specified components, and be administered by components. The bill would require the Inland Empire Health Plan, a joint powers agency, to select an entity with specified certification and at least 5 years of e-prescribing experience under the Medi-Cal program another state's Medicaid program to administer the program and would require this entity to submit a report to the Legislature, by January 1, 2012, regarding the results of the program and whether the program

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AB 718

— 2 —

should be extended. By imposing a new requirement on a joint powers agency, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. yes. State-mandated local program: no. yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4071.2 is added to the Business and
- 2 Professions Code, to read:
- 3 4071.2. (a) The Inland Empire Health Plan E-Prescribing
- 4 Pilot Program is hereby created. For purposes of this section,
- 5 "program" means the Inland Empire Health Plan E-Prescribing
- 6 Pilot Program.
- 7 (b) The program shall be administered by an entity, selected by
- 8 the Inland Empire Health Plan, with certification from the
- 9 Certification Commission for Healthcare Information Technology
- 10 and a minimum of five years of e-prescribing experience under
- 11 another state's Medicaid program.
- 12 (c) The program shall promote health care quality and the
- 13 exchange of health care information consistent with applicable
- 14 law and shall include all of the following components:
- 15 (1) Integrated clinical decision support alerts for allergies,
- 16 drug-drug interactions, duplications in therapy, and elderly alerts.
- 17 (2) Current payer formulary information.
- 18 (3) Appropriate alternatives, when needed, to support
- 19 cost-effective prescribing at the point of care.
- 20 (4) Drug compendia approved by the Centers for Medicare and
- 21 Medicaid Services.
- 22 (5) Electronic transmission of prescriptions consistent with
- 23 applicable state and federal law.

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1 (d) The entity administering the program shall, on or before
2 January 1, 2012, submit a report to the Legislature on the results
3 of the program and whether the program should be extended.

4 (e) Notwithstanding Section 4321, a violation of this section
5 shall not be a crime.

6 (f) This section shall remain in effect only until January 1, 2013,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2013, deletes or extends that date.

9 SEC. 2. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

14 ~~SECTION 1. It is the intent of the Legislature to enact~~
15 ~~legislation that would create the Inland Empire Health Plan~~
16 ~~E-Prescribing Pilot Program, which would meet all of the following~~
17 ~~requirements:~~

18 ~~(a) Be administered by an entity with certification from the~~
19 ~~Certification Commission for Health Information Technology and~~
20 ~~a minimum of five years of e-prescribing experience under the~~
21 ~~Medi-Cal program.~~

22 ~~(b) Promote health care quality and the exchange of health care~~
23 ~~information.~~

24 ~~(c) Include all of the following components:~~

25 ~~(1) Integrated clinical decision support alerts for allergies,~~
26 ~~drug-drug interactions, duplications in therapy, and elderly alerts.~~

27 ~~(2) Current payer formulary information.~~

28 ~~(3) Appropriate alternatives, when needed, to support~~
29 ~~cost-effective prescribing at the point of care.~~

30 ~~(4) Drug compendia approved by the Center for Medicare and~~
31 ~~Medicaid Services.~~

32 ~~(5) Electronic transmission of prescriptions.~~



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STATE AND CONSUMERS AFFAIRS AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 4, 2009

To: Enforcement Committee

Subject: Demonstration of Technology

Agenda Items 7, 8

Periodically, the board is contacted by vendors hoping to demonstrate new technology to the board to assure that pharmacy law allows the use of such devices, or to seek the board's support for statutory changes that will permit the use of such equipment in the future.

Over the prior few months, a number of such vendors have contacted the board asking for an opportunity to provide a demonstration. At this meeting, the committee will provide these vendors with an opportunity to provide such demonstrations.

However, in very recent days, several vendors who had planned to attend this meeting have indicated that they are unable to make this meeting and have requested a chance to present their technology to the board at a future meeting. At this meeting there will be at least two technology presentations.

However, Asteres (Agenda Item 8) will be unable to attend this meeting at this time.



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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

Date: June 4, 2009

To: Enforcement Committee

Subject: Strategic Plan Update

Agenda Item 9

At the July Board Meeting, the board will update its 2009-10 Strategic Plan. The board truly manages its operations by its strategic plan. All activities undertaken by the board are reported in the plan -- in the component committee reports provided quarterly to the board (in the board packets).

Each fiscal year, the board updates its strategic plan. The current plan was developed in 2006-07 with the assistance of a consultant. Since then, each year the board has reviewed and as necessary revised its strategic plan. These are typically minor adjustments and additions.

The revision is done by each strategic committee by reviewing its portion of the strategic plan, making recommendations and then recommendations to the full board for review and approval at the board meeting.

On the following pages are the Enforcement Committee's strategic goals. In some cases, activities of the Enforcement Committee may be reported under another committee's goals. For example, work on the SB 1441 regulations will be reported under the Legislative and Regulation Committee's strategic goals.

The committee needs to review the plan to ensure its activities are current and reflect projects underway.

GOALS, OUTCOMES, OBJECTIVES, AND MEASURES

ENFORCEMENT COMMITTEE

Goal 1: Exercise oversight on all pharmacy activities.

Outcome: Improve consumer protection.

Objective 1.1	Achieve 100 percent closure or referral on all cases within 6 months by June 30, 2011:
Measure:	Percentage of cases closed or referred within 6 months
Tasks:	<ol style="list-style-type: none"> 1. Mediate all consumer complaints within 90 days. 2. Investigate all other cases within 120 days. 3. Close (e.g. issue citation and fine, refer to the AG's Office) all board investigations and mediations within 180 days.
Objective 1.2	Manage enforcement activities for achievement of performance expectations
Measure:	Percentage compliance with program requirements
Tasks:	<ol style="list-style-type: none"> 1. Administer the Pharmacists Recovery Program. 2. Administer the probation monitoring program. 3. Issue citations and fines within 30 days 4. Issue letters of admonition within 30 days 5. Obtain immediate public protection sanctions for egregious violations. 6. Pursue petitions to revoke probation within 30 days for noncompliance with probationary conditions.
Objective 1.3	Achieve 100 percent closure on all administrative cases within one year by June 30, 2011.
Measure:	Percentage closure of administrative cases within 1 year
Objective 1.4	Inspect 100 percent of all licensed facilities once every 3 years by June 30, 2011.
Measure:	Percentage of licensed facilities inspected once every 3 years
Tasks:	<ol style="list-style-type: none"> 1. Inspect licensed premises to educate licensees proactively about legal requirements and practice standards to prevent serious violations that could harm the public. 2. Inspect sterile compounding pharmacies annually before renewal or before initial licensure. 3. Initiate investigations based upon violations discovered during routine inspections.

Objective 1.5	Initiate policy review of 25 emerging enforcement issues by June 30, 2011
Measure:	The number of issues
Tasks:	<ol style="list-style-type: none"> 1. Monitor the implementation of e-pedigree on all prescription medications sold in California 2. Implement federal restrictions on ephedrine, pseudoephedrine or phenylpropanolamine products 3. Monitor the efforts of the DEA and DHHS to implement electronic prescribing for controlled substances. 4. <u>Evaluate establishment of an ethics course as an enforcement option.</u> 5. <u>Participate in emerging issues of the national level affecting the health of Californians regarding their prescription medicine.</u> 6. Provide information about legal requirements involving e-prescribing to support the Governor's Health Care Initiative and its promotion of e-prescribing. 7. Implement in California the Center for Medicare and Medicaid Service requirements for security prescription forms. 8. Ensure development of appropriate and viable requirements for drug take back programs so consumers can destroy unwanted pharmaceuticals. 9. Liaison with other state and federal agencies to achieve consumer protection.