



**Title 16, Dental Board of California
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No Hearing Has Been Scheduled

Subject Matter of the Proposed Regulations: Uniform Standards for Substance-Abusing Licensees

Sections Affected: Sections 1018.01 and 1018.02 of Article 1 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations.

Specific Purpose of Each Adoption:

1. Background:

The Dental Board of California (Board) is responsible for licensing and regulating dental professionals in California pursuant to the provisions of the Dental Practice Act (“Act” – Business and Professions Code (BPC) sections 1600 and following) The Board licenses an estimated 89,000 dental professionals, including approximately 43,500 licensed dentists; 44,500 registered dental assistants (RDAs); and 1,700 registered dental assistants in extended functions (RDAEFs). The Board is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental assistants. Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions as specified in BPC section 1601.2.

BPC section 1614 authorizes the Board, in accordance with the Administrative Procedure Act (APA) (Government Code section 11400 et seq.), to adopt, amend, or repeal rules and regulations concerning the administration and enforcement of the Act. Government Code section 11425.50, subdivision (e), provides that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation in accordance with the APA.

On September 28, 2008, Senate Bill 1441 (Chapter 548, Statutes of 2008) was signed by Governor Arnold Schwarzenegger and established the Substance Abuse Coordination Committee (SACC) comprised of the executive officers of the Department of Consumer Affairs’ (Department) healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The SACC

was charged with the task of developing uniform standards in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a healing arts board has a formal diversion program. In April 2010, the SACC developed a document named “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” which contained the sixteen uniform standards as required by SB 1441 (“SACC’s Uniform Standards”). In April 2011, the SACC made revisions to the April 2010 version and finalized the document.

In accordance with advice provided by the Attorney General’s Office (see Underlying Data), the Board adopted a document incorporated by reference entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” (“Uniform Standards document”) at Section 1018.01 to “use” the SACC’s standards as required by BPC section 315. The Uniform Standards document was first incorporated by reference in California Code of Regulations Section 1018.01 on April 1, 2014. The edition of the Uniform Standards document incorporated by reference that includes the SACC’s 2010 Uniform Standards is dated February 28, 2013. However, as described further below, the SACC has since reconvened and modified its testing standards.

The Board’s Uniform Standards document is used to provide direction to the Board in determining the terms and conditions of discipline for licensees found to have committed actions warranting administrative discipline. Title 16, California Code of Regulations (CCR) section 1018.01 requires the Board, in reaching a decision on a disciplinary action under the Administrative Procedure Act (APA), to consider the Uniform Standards for licensees that have been determined to be substance-abusing through a notice and hearing procedure consistent with the APA.

Finally, BPC sections 315.2 and 315.4 authorizes healing arts boards, such as this Board, to issue a “cease practice” order for specified violations of a probation or diversion program. However, those laws do not specify the process for issuing or contesting such orders and the effect cessation of practice would have on a probationer’s probationary period. This proposal would address all of the aforementioned issues by adopting a new Board regulation related to cease practice orders in CCR section 1018.02 as noted below.

2. Problem Being Addressed:

Senate Bill 796 (Hill, Chapter 600, Statutes of 2017) required the Department to reconvene the SACC, review the existing criteria for Uniform Standard #4 and determine whether the existing criteria should be updated to reflect recent developments in testing research and technology. The SACC revised the Uniform Standards and modified Uniform Standard #4 in March 2019 (see Underlying Data). Changes to CCR section 1018.01 are therefore being made to ensure that the Board is compliant with the changes that were

promulgated in the Uniform Standards conditions most recently adopted by the SACC as required by BPC section 315. In addition, some standards were inadvertently not included in the Board's original proposal and are being added to make the Uniform Standards implementation consistent with the requirements of BPC section 315. The Board's Uniform Standards have not been modified since they were adopted in 2014, and this rulemaking would update the Uniform Standards to better protect California consumers and ensure consistency in the Board's enforcement actions and the law enacted by BPC section 315.

If the Uniform Standards document is amended, the corresponding regulation, CCR section 1018.01, must also be amended to incorporate by reference the revised Uniform Standards document as approved and revised by the Board on November 9, 2023.

The Board is proposing additional changes to CCR section 1018.01 to add clarity with respect to specified terms relevant to substance-abusing licensees. The proposed changes add definitions for "major violation," "minor violation," "prohibited substance," and "biological testing." The proposed changes also describe what actions the Board may take if a substance-abusing licensee is found to have committed a major or minor violation of probation in accordance with the SACC's Uniform Standards.

The Board is also proposing a new CCR section 1018.02 – Cease Practice – Probation. This new section describes the criteria for when the Board may issue a cease practice order, requirements for providing notice to the probationer subject to the order, and the process for appeal. The new proposed section also sets criteria for when a probationer subject to such an order can resume practice. Finally, it notes that the time when a probationer is subject to a cease practice order does not count toward the reduction of the probationary period.

The specific changes to the Uniform Standards and the reasons therefor are provided in detail below.

3. Anticipated Benefits of the Regulations

The proposed amendments make the Uniform Standards consistent with current law and the current probationary environment, clarify the terms related to substance-abusing licensees and probation violations to reduce the likelihood of misinterpretation and strengthen consumer protection. The Board anticipates that the updated Uniform Standards will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board's disciplinary requirements for licensees that are determined to be substance abusers as specified.

The updated Uniform Standards will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board to ensure compliance with the law as mandated by BPC section 315. The regulatory proposal will benefit the public by improving the consistency of penalties for violations of the Act and its regulations, therefore resulting in a more fully rehabilitated licensee who can safely practice.

Specific Purpose of, and Factual Basis/Rationale for each amendment, adoption or repeal:

The Board proposes to:

- **Amend Section 1018.01, Uniform Standards for Substance-Abusing Licensees.**

Amendments to Subsection (a)

(1) Purpose: This proposal would strike a reference to “(commencing with sections 11500 et seq.) and add a reference to the “Administrative Procedure Act” next to the citation of said act in the Government Code. This would add the official name of the APA and the corresponding Government Code section 11500 cited in this section of regulations next to each other.

Rationale: Adding the official name provides clarity to readers that may be more familiar with the Act by its name rather than its Code sections and removes overly complicated “et seq.” language most licensees may not be familiar with.

(2) Purpose: Change the version date from February 28, 2013 to November 9, 2023 and create a new short-form reference “Uniform Standards document”. (Changes to the document itself are discussed in the section entitled “Amend the Uniform Standards document incorporated by reference in Section 1018.01” below.)

Rationale: This change is necessary to accurately reflect the date the Dental Board of California approved the proposed changes to the Uniform Standards as revised. As discussed above, this is required for the Board to fully implement the most current standards established by the SACC in March 2019 as required by BPC section 315. The proposed amendments to the revision dates for the Uniform Standards are necessary to inform licensees and other stakeholders of the date when the Board’s policy in this area was last revised. Creating a short form reference will improve readability and comprehension by providing information about the referenced document in a more concise manner.

Adopt new subsection (c)

Purpose: Add new subsection (c) listing what actions committed by a substance-abusing licensee would constitute a major violation of probation. All language in this subsection largely follows the language in SACC's Uniform Standards #9 (positive drug test is evidence of use of prohibited substance and major violation) and #10 (major and minor violations section) for major violations. Exceptions include an additional ground for determining a major violation at (c)(9), minor modifications to the grammar for easier comprehension, and to specify the meaning of the terms used in these SACC Uniform Standards in regulation (e.g., "as provided in the Board's probationary order," "as defined in this section;" or use of the term "prohibited substance" (as proposed to be defined in subsection (g) of this proposal).

Since the SACC's Uniform Standards #10 indicate that "Major Violations include, but are not limited to," the list enumerated in the SACC's Uniform Standards document, the Board proposes to add another basis for imposing a maximum penalty for a major violation in Subsection (c) of paragraph (9) to specify the Board's policy in this area in furtherance of public protection. This subsection adds to that language in Standard #10 that the Board will consider it a major violation if a licensee fails to comply with any term or condition of probation which presents an immediate threat to the violator or to the public. The Board is placing these subsections in regulation to establish the major violation(s) of probation and establish the actions the Board may take against a licensee for major violations of probation by substance-abusing licensees.

Rationale: Listing the actions that constitute a major violation provides clarity to licensees about the possible consequences of those violations and to Board staff about the behavior to monitor for possible violations. In adopting the major violations in Standard #10 of the SACC's Uniform Standards, the Board implements the law as mandated by BPC section 315. The Board also believes licensees and the public benefit from having a list of major violations of probation by substance-abusing licensees and the consequences the Board may impose for such violations in regulation as further specified below.

The Board decided, in the interests of public safety, to add subsection (c), paragraph (9), to SACC Standard #10's list of major violations and the consequences. Subsection (c) paragraph (9) of this section establishes that if a substance-abusing licensee fails to comply with any term or condition of probation which presents an immediate threat to the violator or to the public, that will be considered a major violation (this is the converse of how the SACC's Uniform Standard #10 defines a "minor" violation as discussed below).

Subsection (c) paragraph (9) was added to effectuate the Board's commitment to public safety. As a result, substance-abusing licensees are on notice that they must keep their own and the public's safety paramount when complying with conditions of probation or risk losing their licenses.

Adopt new subsection (d)

Purpose: Specify what enforcement actions the Board can impose on a substance-abusing licensee on probation with the Board who commits a major violation of probation consistent with the requirements in the SACC's Uniform Standards #10 and the APA's requirements for providing notice and hearing opportunities if further enforcement action were to be taken. These would include:

- (1) Issuing an immediate cease-practice order in accordance with Section 1018.02 and ordering the licensee to undergo a clinical diagnostic evaluation meeting the requirements set forth in the Uniform Standards document at the expense of the licensee. Any order issued by the Board pursuant to this subsection shall state that the licensee must test negative for at least a month of continuous biological testing before being allowed to resume practice.
- (2) Increasing the frequency of biological testing.
- (3) Referring the licensee for further disciplinary action, such as suspension, revocation, or other action as determined by the Board in accordance with the procedures outlined in the APA.

Rationale: Listing the potential enforcement actions the Board may impose for a major violation of probation provides clarity to licensees and Board staff about what may happen in the event of a major violation of probation. In adopting the list of consequences in Standard #10 of the SACC's Uniform Standards, the Board implements the law as mandated by BPC section 315.

The Board also believes licensees and the public benefit from having a list of possible consequences the Board may impose for such violations in regulation (see below) since such notice may provide a deterrent effect and result in a more fully informed and rehabilitated licensee. To avoid confusion about how the Board would implement a cease practice order, the Board adds a cross-reference to CCR section 1018.02.

The Board adds "in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code" to implement and give notice to probationers regarding

how the Board would respond procedurally to a licensee who commits a major violation (i.e., any administrative action to enforce this violation would be noticed in an Accusation or other charging document and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing).

Adopt a new subsection (e)

Purpose: Specify what actions would constitute a minor violation of probation. Add new subsection (e) listing what actions committed by a substance-abusing licensee would constitute a minor violation of probation.

All language in this subsection largely follows the language in SACC’s Uniform Standards #10 (major and minor violations section) for minor violations with technical changes to the syntax, grammar and word choice (e.g., “unexcused absence” for “non-attendance”) of the SACC Uniform Standards #10 language for easier comprehension by the regulated community and the Board staff who administer the Board’s regulations and standards. The SACC Uniform Standards #10 list would therefore be changed slightly from this:

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.

To this:

(e) A substance-abusing licensee who does any of the following shall be deemed to have committed a minor violation of probation:

- (1) Fails to submit required documentation to the Board in a timely manner;
- (2) Has an unexcused absence at a required meeting;

(3) Fails to contact a worksite monitor as required by the Board’s probationary order; or

(4) Fails to comply with any term or condition of probation which does not present an immediate threat to the violator or to the public.

Rationale: Listing the actions that constitute a minor violation provides clarity and notice to licensees about the possible consequences of those violations and to Board staff about the behavior to monitor for possible violations. In adopting the minor violations in Standard #10 of the SACC’s Uniform Standards, the Board implements the law as mandated by BPC section 315. The Board also believes licensees and the public benefit from having a list of minor violations of probation by substance-abusing licensees and the consequences the Board may impose for such violations in regulation as further specified below. In the Board’s experience, greater notice increases compliance with minimum standards for the protection of the public.

Add new subsection (f)

Purpose: Specify what enforcement actions the Board can impose on a substance-abusing licensee who commits a minor violation of probation.

In addition, to avoid licensee confusion, the Board would make changes to the SACC Uniform Standards #10 text proposed to be adopted in this subsection to further specify that:

- (A) cease practice orders are issued “in accordance with Section 1018.02” (proposed to be adopted with this proposal at CCR section 1018.02),
- (B) that citations are issued by the Board in accordance with the Board’s regulations at Article 7 of this Division,
- (C) that clinical diagnostic evaluations requirements are contained in the Uniform Standards document (the short form reference discussed in this document previously), and,
- (D) that any further enforcement actions taken for a minor violation are done in accordance with the procedures outlined by the APA.

Rationale: Listing the potential enforcement actions the Board may impose for a minor violation of probation provides clarity to licensees and Board staff about what may happen in the event of a minor violation of probation. In adopting the list of consequences in Standard #10 of the SACC’s Uniform Standards, the Board

implements the law as mandated by BPC section 315. The Board also believes licensees and the public benefit from having a list of possible consequences the Board may impose for such violations in regulation as such notice may provide a deterrent effect and result in a more fully informed and rehabilitated licensee. To avoid confusion about how the Board would implement a cease practice order, the Board adds a cross-reference to CCR section 1018.02.

The Board adds “in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code” to implement and give notice to probationers regarding how the Board would respond procedurally to a licensee who commits a minor violation of probation (i.e., any administrative action to enforce this violation would be noticed in an Accusation or other charging document and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing).

Add new subsection (g).

Purpose: Specify what categories of substances constitute a prohibited substance for the purposes of this Article. This term is used in the SACC Uniform Standards, which the Board seeks to implement in this rulemaking.

Rationale: The definition provides clarity for licensees and Board staff about what substances would be covered by the proposed regulatory language that defines the use, consumption, ingestion, or self-administration of as a major violation of probation. : The definition of “prohibited substance” provides an expanded definition of items that are for the most part illegal in nature. However, the flexibility of the terminology permits the Board to include new illegal substances, which may not currently exist, but will pose a risk to the public’s health, safety, or welfare in the future.

The definition also allows for substances that have been legal for long periods of time, such as alcohol, but may not have health benefits when consumed in large quantities or in high toxic content (e.g., high proof alcohol). Defining this term also informs licensees that the individual is not to consume items unless prescribed by the appropriately licensed health care practitioner authorized to issue a prescription (consistent with the Pharmacy Law for prescribing at BPC section 4040) and approved by the Board on a case-by-case basis, or alcohol or any other substance the licensee has been instructed by the Board not to use, consume or ingest. It is the Board’s desire to implement the SACC’s Uniform Standards that require licensees eliminate the consumption of prohibited substances to safely provide much needed services to the public.

Add new subsection (h)

Purpose: Define what “biological tests” mean for the purpose of determining what tests would qualify as biological testing under provisions of the SACC’s Uniform Standards that require it.

Rationale: This term is used in the SACC Uniform Standards #4 (other drug standards section, last paragraph) and SACC Uniform Standards #10 (major violations section—item 6) as an appropriate type of testing method, which the Board seeks to implement in this rulemaking. The definition provides clarity for licensees and Board staff about what biological samples would be acceptable when biological testing is required for substance-abusing licensees according to the Board’s Uniform Standards document.

This definition is necessary to define the approved types of testing, which can determine the existence of various substances (including banned or prohibited substances according to SACC’s Uniform Standards noted above) within the body. Inclusion of the definition for the term “biological fluid testing” in regulation helps to clarify and give notice of the types of testing the Board may deem to be required. Without defining this term, the Board could inadvertently use language that is not acceptable by the courts, or terminology that requires further clarification as the Board believes it is not commonly understood by the average person who would be subjected to this regulation.

Add new subsection (i)

Purpose: Add language stipulating that nothing in section 1018.01 would limit the Board’s ability to revoke the probation of a substance-abusing licensee who has violated a term or condition of that probation. Subsection (i) would be added consistent with the language in SACC Uniform Standard #10 that the Board’s authority to revoke the probation of a licensee who has violated a term or condition of that probation is not limited by that section of the Uniform Standards.

Rationale: This language reinforces that the listed actions in proposed subsections (c) and (e) described as consequences for major and minor violations of probations (respectively) are not limitations on the Board’s discretion to proceed to outright revocation for a probation violation, if warranted. The Board believes that licensees and the public benefit from the Board clearly stating in this regulation that it retains its authority to revoke the probation of a substance-abusing licensee who violates a term or condition of probation. This reinforces the Board’s authority to protect the public in the event a licensee fails to adhere to the terms and/or conditions of their probation. It is the intent of the Board that licensees with substance abuse issues address those issues and practice unimpaired, for the protection of the public. If such a licensee is unable to

comply, the Board will therefore need to use its authority to protect the public through outright revocation, fulfilling its statutory mandate.

- **Adopt new Section 1018.02 titled Cease Practice - Probation**

Purpose: Adopt new section 1018.02 and title establishing what actions would prompt the Board to issue a Cease Practice order, the notice and appeal provisions for such an order, and the conditions under which a cease practice order may end.

Rationale: Establishing the criteria for the issuance of a cease practice order provides clarity and prior notice to licensees and Board staff about the process and appeal rights available to affected probationers. This proposal is consistent with similar regulations issued by another board in this Department (see 16 CCR § 1399.375).

Adopt new subsection (a):

Purpose: Establishes that the Board shall issue a notice to cease practice of any profession or performance of any duties that are authorized under a board license or permit to any licensee placed on probation that commits a major or minor violation of probation (as identified in CCR section 1018.01), as directed by the Board. The purpose is to specify the type of notice that would be provided to any of the Board's licensees or permit holders (including dentists and dental auxiliaries regulated by the Board) to implement the Board's cease practice authority under BPC sections 315.2 or 315.4.

Rationale: Existing law at BPC sections 315.2 and 315.4 authorize the Board to issue a cease practice order for any probationer who tests positive for a prohibited substance (a major violation) or commits any other major violation pursuant to the SACC's Uniform Standards. However, those laws do not specify how or when the Board would issue such an order, and what "cease practice" means relative to such orders.

This proposal is therefore necessary to specify the Board's process for issuing such orders through a "notice" process in a manner specified in proposed subsection (b) to ensure adequate notice to affected licensees and staff, and immediately implement compliance "as directed" by the Board. The "as directed" language is necessary to immediately implement SACC Uniform Standard Nos. 8 (when a licensee tests positive for a banned substance) and 10 (whenever a major violation is committed by the licensee) as intended for the protection of the public. In addition, to avoid confusion from probationers about what "cease practice" covers, the Board adds requirements for ceasing "the practice of any profession or performance of any duties that are authorized by any license or permit issued by the Board in accordance with the Act..."

Adopt new subsection (b)

Purpose: Establishes that the Board must attempt to contact a probationer by electronic or telephonic means to inform them of the issuance of the cease practice order as well as deliver notice by certified and regular mail at the licensee's last known address. The Board must also revise its licensing database to reflect the status of the license (i.e., cease practice order issued).

Rationale: This proposal establishes the way the Board shall provide notice to affected probationers, which the Board believes, in its experience, provides the greatest opportunity for notice of the issuance of such an order and to ensure compliance. The proposal would specify the requirement for attempted by electronic "and/or" telephonic means first to give the most immediate notice possible and uses the terms "and/or" since the Board may not have current emails or telephonic information for communication for all probationers. To ensure legal written notice has been provided and considered served, the Board would send the written notice by mail certified and regular mail (see e.g., Evidence Code section 641 (the "mailbox rule"): "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail."). Without such documented delivery options, the Board has no assurances that the probationer has received notice of the Board's cease practice order. Providing such specificity will ensure the most effective enforcement of the Board's cease practice orders, and further provide administrative guidance for the Board's staff responsible for noticing and serving the Board's cease practice orders.

Adopt new subsection (c)

Purpose: Describe the process by which a probationer may informally appeal the decision to issue the cease practice order. This proposal details the process for appealing the cease practice order, including the timeframe for the appeal (10 days of the date of the notice), the official making the decision on the appeal (Executive Officer) and how the probationer will be notified of the outcome of the appeal decision (by certified mail).

Rationale: Existing law does not provide an opportunity for probationers to administratively challenge a cease practice order. The proposal would provide notice and an opportunity for licensees to administratively challenge a cease practice order and inform Board staff and its Executive Officer about how the appeal of a cease practice order must be conducted.

Subdivision (c) of BPC sections 315.2 and 315.4 specify that cease practice orders “shall not constitute disciplinary action.” Nevertheless, to allow a licensee reasonable opportunity to address alleged errors or omissions in the cease practice order process described in this proposal, the Board is proposing the creation of an internal administrative remedy to address cease practice appeals short of other legal remedies, including litigation. The proposal would do all of the following, which in the Board’s experience gives probationers and the Board sufficient time to file, address and respond to an informal appeal:

- (1) Authorize the probationer to file a written appeal within 10 days of the date of the notice to cease practice, and to provide additional evidence disputing the finding of the violation(s) that was cause for the notice to cease practice.
- (2) Authorize the Executive Officer to review the appeal and make a determination in the matter within 10 days from the date the written appeal and all supporting evidence or documentation is received.
- (3) Require the Board to notify the probationer of the outcome by certified mail.

Specifying the Executive Officer as the official responsible for reviewing such orders will enable the Board’s top supervisor to verify that staff work has been done in accordance with the Board’s requirements and that no grounds for reversal of the order exist. Serving notice of the outcome by certified mail enables the Board to document that a final determination was made and served timely and in accordance with this proposal.

Adopt new subsection (d)

Purpose: Establish what must take place for a probationer subject to a cease practice order to resume practice, including not resuming practice “until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved.”

Rationale: This proposal would implement what is considered standard protocol for the Board to terminate jurisdiction over a compliance issue: dissolution of the enforcement order once compliance is obtained (as determined by the particular enforcement proceeding involving an Accusation and/or Petition to Revoke Probation or other enforcement case). However, existing law does not specify when a licensee would be certain that such a restriction would be lifted. Setting these conditions under which a probationer may resume practice provides notice to licensees and Board staff about the requirements for ending a cease practice order and provides certainty regarding when practice may resume. This ensures accurate and fair notice to the regulated community regarding their responsibilities for compliance with a cease practice order.

Adopt new subsection (e)

Purpose: To clarify that the duration of a cease practice order will not be applied to the reduction in the substance-abusing licensee’s probationary period.

Rationale: The issuance of a cease practice order is not intended to confer a benefit on the probationer subject to the order. Applying the time period when the probationer was under a cease practice order to the probationary period would effectively reward the probationer’s actions that resulted in the issuance of the cease practice order. Additionally stipulating this requirement will not reduce the probationary period provides clarity and prior notice to licensees and Board staff that the cease practice order would effectively toll the probationer’s probationary period and that the time when they ceased practice would not be considered “time served” in reducing their probationary period.

- **Amend the Uniform Standards document that is incorporated by reference in Section 1018.01**

General Changes throughout the Uniform Standards Document (“general changes”):

Aside from non-substantive changes (for easier comprehension and consistency including the use of gender neutral terms (removal of references to his/her and replacing them with “respondent” and other gender neutral references), and correction of grammar, syntax and legal citations formats, the proposed amendments to the Uniform Standards are as follows:

- **Amend Title Page of the Uniform Standards Related to Substance Abusing Licensees Document to Add a New Revision Date**

Purpose: Aside from general changes noted above, the purpose is to amend the title to strike “New February 28, 2013” and add the revision date of “November 9, 2023” to be consistent with the date the Board most recently revised its policy in this area and with the revision date in the proposed text.

Rationale: The proposal is necessary to provide notice and transparent identification to affected users of when the Board made its policy changes related to its Uniform Standards for substance-abusing licensees.

- **Add references to the Substance Abuse Coordination Committee (SACC) document titled “Uniform Standards Regarding Substance Abusing Healing Arts Licensees” (March 2019) (“SACC’s Uniform Standards”)**

The March 2019 Uniform Standards document published by the SACC is required to be used by the Board in accordance with BPC section 315. As a result, the Board's update to the Uniform Standards includes updated cross-references to the SACC's March 2019 revision date throughout the Board's Uniform Standards document.

Purpose: To cite the authority used for some of the changes in the Board's Uniform Standards update. Aside from the general changes noted above, this proposal would add a sentence that explains how the SACC's Uniform Standards were revised (see discussion above in "Statement of the Problem") and provide a new publication date ("March 2019") and shortform reference ("Uniform Standards") in the Board's Uniform Standards document.

Rationale: As discussed above, this is required for the Board to fully implement the most current standards established by the SACC in March 2019 as required by BPC section 315. The proposed amendments to add this sentence about the revised SACC document and the new publication dates for the SACC's Uniform Standards are necessary to inform licensees and other stakeholders of the rationale behind why the Board's policy in this area was last revised.

- **In Standard (1) Notification to Employer - add "and this decision"**

Purpose: To strike "Decision and" and replace it with "and this Decision" so it would read, in part: "Prior to engaging in the practice of dentistry, the Respondent shall provide a true copy of the Accusation and this decision to Respondent's employer...."

Rationale: This revision clears up possible ambiguities about which Decision should be provided to the employer according to the requirements of this section. This change would help ensure that probationers are fully informed about their obligations under this condition, and therefore help increase compliance with this condition in the Board's orders.

- **In Standards (4) and (5) related to drug testing and group support meetings, add "this" in front of "decision"**

Purpose: To add "this" in front of "decision" so the Board identifies which decision must be provided as required in Uniform Standards Nos. (4) (ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS) and (5) (FACILITATED GROUP SUPPORT MEETINGS).

Rationale: This revision clears up possible ambiguities about which Decision should be provided according to the requirements of these sections. This change would help ensure that probationers are fully informed about their obligations under this condition, and therefore help increase compliance with this condition in the Board’s orders.

- **In Standard (3) Drug and Alcohol Testing - Add additional circumstance under which the Board or its designee may require less frequent testing in accordance with revised SACC Uniform Standard #4**

Purpose: To allow for a reduction in testing frequency to a minimum of 24 times a year if the practicing licensee Respondent is receiving a minimum of 50 percent supervision per day from a supervisor licensed by the Board. This proposed change would implement the SACC’s Uniform Standards, the language in this regulation is taken directly from SACC’s Uniform Standard #4 (within the “EXCEPTIONS TO TESTING FREQUENCY SCHEDULE” section) with modifications to clarify that the condition applies to “practicing licensees” to clear up any ambiguity about whether those inactive or tolling licensees would be able to benefit from this reduction option.

Rationale: The above-noted changes are necessary to update the standards consistent with the revised SACC Uniform Standards document (see underlying data) and associated revisions to Uniform Standard #4 made by the SACC in March 2019, which include (SACC revisions adding text are in red and underline for comparison):

VI. LICENSED SUPERVISION DURING PRACTICE

“A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the board.”

Further, under the circumstance described, the licensed supervisor that supervises the practicing licensee Respondent would be able to monitor the Respondent’s activities during that supervision. If the Board or its designee considered such supervision sufficient to mitigate the potential of the Respondent to abuse substances during the supervision, then it would be reasonable for the Board or its designee to reduce the testing requirement to a minimum of 24 times a year, or twice monthly.

- **In Standard (3) Drug and Alcohol Testing – revise the language around Respondent’s alternate drug testing plans due to vacation or absence to be for any vacation or absence rather than just refer to alternate testing sites for vacation or travel outside of California.**

Purpose: Change the requirement to having Respondent obtain Board approval for alternatives to Respondent’s drug testing plans (including frequency) to address any vacation or absence, not just vacation or travel outside of California. Change would also require Board approval for alternatives in frequency as well as location of testing. This proposal would make changes to conform the Board’s Uniform Standards text to the SACC’s Uniform Standards #4 requirements, including:

- (1) adding the phrase “prior to vacation or absence”,
- (2) deleting “all” and replacing it with “any” alternative,
- (3) deleting “site due to vacation or travel outside of California” and replacing it with “requirements (including frequency).”

Rationale: Existing text in this section is derived from Uniform Standards #4 of the SACC’s document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” revised April 2011. The above-noted changes are necessary to update the standards consistent with the revised SACC Uniform Standards document and associated revisions to Uniform Standard #4 made by the SACC in March 2019, which include (SACC revisions adding text are in red and underline for comparison):

““Prior to vacation or absence, any alternative to the licensee’s drug testing location(s) requirements (including frequency) must be approved by the board.”

These conforming changes to this Uniform Standards condition will allow the Board to continue to monitor the probationer fairly and accurately in order to ascertain if they are substance and/or chemical free and in compliance with the minimum standards required to be used by the Board in accordance with BPC section 315.

In addition, the existing standards do not adequately address a Respondent’s drug testing plan for circumstances when Respondent is on vacation or absence. The current language is limited to vacation or travel outside of California and only to drug testing sites.

There are likely to be circumstances where a Respondent may be on vacation or absent from their normal employment and not leave the State of California. Given the size of the state, it is also likely that such travel could impact the ability of Respondent to comply with previously established drug testing plans. They may be unable to visit their usual testing location(s) and the nature of the absence may make it difficult to maintain the expected testing frequency, even with the use of alternate sites.

While the final authority in approving alternate drug testing plans remains with the Board, the proposed changes would encompass more circumstances where alternative

plans may be sought and would provide better guidance to the Board for cases when this occurs.

- **Add Standard (8) Request by a Substance-Abusing Licensee to Return to Practice**

Adopt subsection (a)

Purpose: To implement the SACC's Uniform Standards, the language in subsection (a) and paragraphs (1), (2), and (3) is taken directly from Standard #11 (items 1, 2, and 3) of the SACC's Uniform Standards with minor additional language added by the Board to clarify the process of requesting a return to practice. Subsection (a) of Standard (8) describes the criteria the Respondent must meet to the satisfaction of the Board prior to requesting a return to full time practice following the issuance of a cease practice order or the imposition of practice restrictions. Specifically:

- Demonstrated sustained compliance with the Respondent's treatment and/or recovery program
- Demonstrated ability to practice safely based on monitor reports, evaluations by licensed healthcare practitioners and any other information related to Respondent's recovery
- Negative biological tests or biological tests indicating no use, consumption, ingestion or self-administration of prohibited substances for at least six months, 2 positive monitor reports (if applicable) and complete compliance with other terms and conditions of probation.

Rationale: Each of the proposed paragraphs in subsection (a) are a part of the criteria licensees must meet for a return to full practice under SACC Uniform Standard #11. Providing these prerequisites for Respondents seeking return to full-time practice provides guidance to those Respondents and to the Board about what behavior could reasonably be inferred to demonstrate that a Respondent has progressed enough in their recovery that they can be trusted with a return to full-time practice.

The Board adopts these criteria because it is important to distinguish between behavior that would demonstrate a readiness for full-time practice and behavior that would demonstrate a readiness for an unrestricted license and adoption of these criteria in (a) and (b) help to make that distinction. Paragraph (a)(1) requires compliance of the licensee with the program, allowing the Board to view a consistent pattern of compliance as a justification for allowing a licensee to return to full time practice. Paragraph (a)(2) requires work site reports, evaluations, and other information to demonstrate that the licensee is not a threat to the public as they are able to provide

dental or dental auxiliary services with safety to the public. Paragraph (a)(3) requires the licensees to show they would practice unimpaired by showing proof of having negative biological fluid tests within a six-month period, two positive worksite monitor reports; and complete compliance with other terms and conditions of the program.

Adopt subsection (b)

Purpose: To implement the SACC's Uniform Standards in accordance with BPC section 315, the language in subsection (b) and paragraphs (1) through (5) is taken directly from Standard #12 (items 1 through 5) of the SACC's Uniform Standards with minor grammatical changes to clarify the process of requesting a full and unrestricted license to practice. Subsection (b) of Standard (8) describes the criteria the Respondent must demonstrate before they can request a full an unrestricted license. Specifically:

- Sustained compliance with the terms of the cease practice order or practice restrictions (as applicable)
- Successful completion of a treatment or recover program, if required
- Consistent and sustained participation in activities to promote and support Respondent's recovery
- Ability to practice dentistry, oral and maxillofacial surgery, or elective facial cosmetic surgery, or provide dental supportive services as a licensed dental auxiliary, depending on the Respondent's license and/or permit
- Continuous sobriety for three to five years.

Rationale: The Board anticipates that licensees will benefit from receiving notice of established standards to get rehabilitated individuals back to a full and unrestricted license as soon as possible after proving they have been successful in completing the Board-ordered treatment or recovery program. This is necessary to ensure that the Board allows only individuals who have successfully completed the program to safely go back to unrestricted practice.

Incorporating the language from SACC Uniform Standard #12 is expected to have the following benefits for each paragraph under subsection (b):

- Paragraph (1) establishes a history of compliance with the terms of the disciplinary order.
- Paragraph (2) establishes that the licensee can recover from addiction and is not likely a threat to the public.

- Paragraph (3) establishes a pattern of compliance by the licensee with the activities that promote the licensee’s recovery from addiction or substance abuse.
- Paragraph (4) establishes that the licensee can safely return to practice. This item incorporates the overall goal of the program, which is to return highly skilled individuals back to safe practice to provide services to the community.
- Paragraph (5) requires the licensee demonstrate the licensee has a long-term commitment to recovery and mitigates the probability of relapse and subsequent risk to the public.

Providing these prerequisites for Respondents seeking a full and unrestricted license provides guidance to those Respondents and to the Board about the expected behavior to demonstrate that a substance-abusing licensee can be entrusted to fulfill the obligations of their license without restriction or monitoring. Compared to the removal of a cease practice order or other practice restrictions, a full and unrestricted license means the end of the corrective action deemed necessary by the Board. As a result, the standard of demonstrated rehabilitative behavior is much higher than for other forms of return to practice petitions.

Underlying Data

1. “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees”, Department of Consumer Affairs, Substance Abuse Coordination Committee, dated March 2019
2. California State Board of Pharmacy AG Opinion No. 13-202 dated April 8, 2015
3. Agenda, Relevant Meeting Materials, and Minutes from the Board’s November 8-9, 2023 Board meeting

Business Impact

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts.

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters involving substance-abusing licensees. The proposed regulatory action only adversely affects dental and dental auxiliary licensees and applicants who, through their own conduct, subject themselves to disciplinary action for violations of the laws and regulations within

the Board’s jurisdiction and are deemed substance-abusing by the Board after notice and a hearing.

Any “adverse economic impact” would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board’s jurisdiction and the determination that the individual affected is a substance-abusing licensee. Any potential “adverse economic impact” may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.

Economic Impact Assessment:

This Board has determined that this regulatory proposal will have the following effects:

The Board began implementing the Uniform Standards in 2014. The proposed regulatory changes are intended to better align the Board’s regulations with current law and existing practice. As a result, the regulations are not anticipated to increase costs to the state.

The Board notes, the updated Uniform Standards provide for reduced biological testing frequency for qualifying probationers, as specified, which would result in reduced costs to these individuals of approximately \$1,780 in year-one and \$760 per year for the remaining five-year probation period as follows:

Dental Board of California Biological Testing - Economic Impact (Individuals)						
Biological Testing*	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Standard Frequency**	\$3,302	\$2,286	\$2,286	\$2,286	\$2,286	\$12,446
Reduced Frequency***	\$1,524	\$1,524	\$1,524	\$1,524	\$1,524	\$7,620
Difference:	\$1,778	\$762	\$762	\$762	\$762	\$4,826

*Assumes 5-year probation period

** Standard Frequency - \$3,302 (Yr-1: 52 tests) & \$2,286 (Yrs 2-5: 36 tests)

***Reduced Frequency - \$1,524 (Yrs 1-5: 24 tests)

The Board averages six probationers per year. If all six probationers qualified for reduced biological testing, costs would be reduced up to approximately \$6,600 per year

and up to \$66,000 over a 10-year period as follows:

Dental Board of California Biological Testing - Economic Impact (Total Costs)												
Biological Testing	Costs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Standard Frequency (6)*	Various	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$15,748	\$157,480
Reduced Frequency (6)*	\$1,524	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$9,144	\$91,440
	Difference:	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$6,604	\$66,040

*Assumes 6 probationers per year with 2 entering/exiting program per year

These regulations would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses currently doing business in the State of California because the proposed regulations set out standards for enforcement cases involving substance-abusing licensees. Individuals in compliance with the Dental Practice Act and associated regulations, including the requirement to practice unimpaired, will not be affected by the proposed regulations.

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will enhance the Board's ability to take appropriate action against substance-abusing dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations and are determined through notice and hearing to be substance-abusing licensees. Additionally, this proposal will benefit Deputy Attorneys General, Administrative Law Judges, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary actions.

This regulatory proposal does not affect worker safety because the proposal does not address worker safety.

This regulatory proposal does not affect the state's environment because the proposed regulations are not focused on the state's environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.