

DEPARTMENT OF CONSUMER AFFAIRS  
**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS**  
**DIVISION 13.3 AND 13.4**  
**SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**  
**AND HEARING AID DISPENSERS BOARD**

INITIAL STATEMENT OF REASONS

**Hearing Date**

No public hearing has been scheduled for this proposed regulatory action.

**Subject Matter of Proposed Regulations**

Uniform Standards

**Sections Affected**

Sections 1399.102, 1399.131, and 1399.131.1 of Division 13.3 and sections 1399.155 and 1399.155.1 of Division 13.4, Title 16 of the California Code of Regulations (CCR).

**Background and Statement of the Problem**

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a state agency vested with the authority to regulate the practices of speech-language pathology, audiology, and hearing aid dispensing under Business and Professions Code (BPC) Section 2530.1. The Board's mandate and its mission is to protect the public while exercising its licensing, regulatory, and disciplinary functions (BPC Section 2531.02). The Board regulates approximately 35,000 licenses for speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispenser licenses. To protect the public, the Board is authorized to discipline licensees who may endanger the health, welfare, and safety of the public (BPC Section 2533).

Existing law, under BPC Sections 2531.06 and 2531.95, authorizes the Board to adopt or repeal regulations to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend and add regulations regarding DCA's Uniform Standards guidelines for the discipline of substance-abusing licensees.

Existing law, under BPC Section 315, established the Substance Abuse Coordination Committee (Committee) within the Department of Consumer Affairs (DCA) and required

the Committee to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program. This proposed regulation will add CCR sections 1399.131.1 and 1399.151.1 to incorporate the DCA's Uniform Standards by reference into regulations. This must be done in two separate divisions of title 16 of the CCR a result of the merger of the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau in 2010.

Existing law, under BPC Section 315.2, specifies that a healing arts board within DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision from the DCA's Uniform Standards being incorporated by reference into regulations by this rulemaking.

Existing law, under BPC Section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards amended and authorized under BPC Section 315. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision in the DCA's Uniform Standards which is being incorporated by reference into regulations by this rulemaking.

Existing law, under Government Code Section 11400.20 authorizes an agency to amend regulations to govern an adjudicative proceeding. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing law, under Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, and order standard of general application or other rule unless it has been adopted as a regulation. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing regulations, under CCR sections 1399.131 and 1399.151, specify that the Board shall consider the disciplinary guidelines in reaching a decision on a disciplinary action under the Administrative Procedures Act. This proposed regulation will amend these sections and add sections 1399.131.1 and 1399.155.1 to require the Board to use the DCA's Uniform Standards when reaching a decision on disciplinary actions for

substance-abusing licensees.

There is no existing federal regulation or statute comparable to this proposed regulation.

This proposed regulation will enhance the Board's mission to protect the public by adopting consistent standards to apply when dealing with substance-abusing licensees. 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. To address this problem, Senate Bill (SB) 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) was signed into law. The legislation, in part, mandated the Department of Consumer Affairs (DCA) to establish a Substance Abuse Coordination Committee (Committee) comprised of the Executive Officers of DCA's healing arts boards, a representative from the California Department of Health Care Services, and chaired by the DCA Director. The Committee was charged with developing consistent and uniform standards in sixteen specific areas for healing arts boards to use when dealing with substance-abusing licensees, uniform standards that can be adopted into regulation, whether or not a board chooses to have a formal diversion program

The DCA Committee developed the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Uniform Standards) in April 2011, covering a wide range of issues related to substance abuse rehabilitation, including clinical diagnostic evaluation, testing frequency, standard of treatment, consequences for violations, and more.

SB 796 (Hill, Chapter 600, Statutes of 2017) required the Committee to reconvene to update the criteria for Uniform Standard #4 related to drug testing to reflect recent developments in testing research and technology. The Committee revised the DCA Uniform Standards and modified Uniform Standard #4 in March 2019.

At its March 2010 Board meeting, Board staff reported on drafting a new disciplinary guidelines document, which would include the specified areas of the DCA Uniform Standards applicable to the Board. The Board reviewed the draft disciplinary guidelines document at its October 2011, January 2012, and April 2012 Board meetings and approved proposed regulatory language to place the new disciplinary guidelines document into regulation at its July 2012 Board meeting. However, the Executive Officer transferred to another Board in December 2013 prior to filing regulatory documents with the Office of Administrative Law. The current Executive Officer started with the Board in June 2014 and had Board staff revisit the regulatory documents. Due to limited staff resources, the progress of the regulatory package was delayed in 2015.

The Board reviewed and approved revisions to the disciplinary guidelines regulatory documents at its February 2016 Board meeting. At its November 2016 Board meeting, the Board began to consider separating the disciplinary guidelines and Uniform

Standards to allow for further discussion on the implementation of the Uniform Standards. The Board reviewed and approved revisions to the regulatory documents for the Uniform Standards at its February 2017 Board meeting. Due to limited staff resources and then the COVID-19 pandemic, this regulatory package has been delayed and no further Board discussion or actions were made from 2017 to 2021.

At its August 2021 Board meeting, the Board approved to incorporate by reference into regulation the DCA document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019”.

### **Purpose, Rationale, and Benefits from this Regulatory Action**

The Board seeks to incorporate by reference the DCA’s Uniform Standards document into regulations. Incorporating the DCA’s Uniform Standards document by reference enhances the Board’s mission to protect the public by providing the Board with consistent standards in dealing with substance-abusing licensees. The Board also seeks to make various technical, non-substantive changes for the purpose of clarity, readability, and consistency. The following are the proposed changes the Board seeks to make:

#### ***Amend Section 1399.102 of Article 1 of Division 13.3 of Title 16 of the CCR (Hearing Aid Dispenser Regulations)***

Purpose: Subsection (b) is amended to add and define the term, “Board,” to the list of definitions for Division 13.3 of the CCR Title 16. The new term, “Board,” will mean Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

Anticipated Benefit/Rationale: The term “Board” is being added and defined for clarity and readability. The use of the term is also consistent with the list of definitions this Board has for the practices of speech-language pathology and audiology in section 1399.150.2 of Article 1 of Division 13.4. Subsequent subsections will be renumbered to reflect the added term and definition. The changes retain the alphabetical order of the list of definitions and makes it easier for the reader to reference the list of definitions.

#### ***Amend Section 1399.131 of Article 6 of Division 13.3 of Title 16 of the CCR (Hearing Aid Dispenser Regulations)***

Purpose: Section 1399.131 is amended to add an exception to the disciplinary guidelines related to substance-abusing licensees. The title is amended to replace the existing title with a new title that better matches the content of this section.

The paragraphs under this section will be renumbered to become subsections (a), (c), and (d) and the exception to the disciplinary guidelines related to substance-abusing

licensees is included as subsection (b). The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance-abusing licensees regulated by the Board.

Anticipated Benefit/Rationale: Adding regulation language that addresses substance abuse is required by statute and will bring uniformity to the discipline recommended by administrative law judges and imposed by the Board. It furthers the Board’s public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and shares those strict standards with licensees and the public by placing the Uniform Standards in regulation.

Subsections (a), (b), (c), and (d) will be renumbered to subsection (d), paragraphs (1) through (4) to reflect the changes in section 1399.131. These changes provide clarity that paragraphs (1) to (4) are related to the new subsection (d). The term “Board” is capitalized in subsection (a). This change is for the purpose of consistency in the use of the term found in regulations this Board has for the practices of speech-language pathology and audiology in section 1399.155 of Article 6 of Division 13.4.

***Add Section 1399.131.1 to Article 6 of Division 13.3 of Title 16 of the CCR  
(Hearing Aid Dispenser Regulations)***

Purpose: Section 1399.131.1, subsection (a) establishes that after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (Gov Code) starting at sections 11500 et seq, if the Board finds the evidence establishes an individual is a substance-abusing licensee, then the terms and conditions of the Uniform Standards shall be used in any probationary order affecting the licensee. The language incorporates by reference DCA’s Uniform Standards. The title is added to match the content of the section.

Subsection (a) is added to establish that once the Board has determined, after notice and a hearing, that an individual is a substance-abusing licensee, the Uniform Standards must be followed. Subsection (a) incorporates by reference the document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019.” Subsection (b) is added to permit the Board to impose additional probation terms and conditions not specified in the Uniform Standards in any order establishing a licensee’s conditions of probation.

Anticipated Benefit/Rationale: Adding regulation language that addresses substance abuse is required by statute. Subdivision (a) establishes that the Uniform Standards will be used to determine the terms or conditions of probation in disciplinary orders for substance-abusing licensees if the Board determines, after notice and a hearing, that the evidence establishes that the individual is a substance-abusing licensee. This increases public protection by ensuring that there are consistent standards for

disciplining substance-abusing licensees. It also ensures all substance-abusing licensees are held to the same disciplinary standards. Given the length and formatting of the document, the document is incorporated by reference. It would be unduly cumbersome, expensive, and otherwise impractical to publish the Uniform Standards document twice within the California Code of Regulations. It is available on the Board's website and from the Board upon request. The added language is consistent with other healing arts boards who have incorporated the same document into their regulations by reference.

The added language of subsection (b) gives the Board the ability to determine the probation terms and conditions based on the nature and severity of the licensee's violation. This is necessary to maintain the public safety while promoting the rehabilitation of substance-abusing licensees.

***Amend Section 1399.155 of Article 6 of Division 13.4 of Title 16 of the CCR  
(Speech-Language Pathology and Audiology Regulations)***

Purpose: Section 1399.155 is amended to add an exception to the disciplinary guidelines related to substance-abusing licensees. The title is amended to replace the existing title with a new title that better matches the content of this section. The paragraphs under this section will be renumbered to become subsections (a), (c), and (d) and the exception to the disciplinary guidelines related to substance-abusing licensees is included as subsection (b). The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance-abusing licensees regulated by the Board.

Anticipated Benefit/Rationale: Adding regulation language that addresses substance abuse is required by statute and brings uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation. This is consistent with the proposed changes for hearing aid dispensers in section 1399.131 of Article 6 of Division 13.3.

Subsections (a), (b), (c), and (d) will be renumbered to subsections (d), paragraphs (1) through (4) to reflect the changes in section 1399.155. These changes provide clarity that paragraphs (1) through (4) are related to the new subsection (d). This is also consistent with proposed changes for hearing aid dispensers in section 1399.131 of Article 6 of Division 13.3. The term "that" will be replaced with "which" in subsection (a). This change is made to be consistent with the regulations this Board has for hearing aid dispensers in section 1399.131 of Article 6 of Division 13.3.

***Amend Section 1399.155.1 of Article 6 of Division 13.4 of Title 16 of the CCR  
(Speech-Language Pathology and Audiology Regulations)***

Purpose: Section 1399.155.1 subsection (a) establishes that after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (Gov Code) starting at sections 11500 et seq, if the Board finds the evidence establishes an individual is a substance-abusing licensee, then the terms and conditions of the Uniform Standards shall be used in any probationary order affecting the licensee. The language is added to incorporate by reference DCA's Uniform Standards. The title is added to match the content of this section. Subsection (a) is added to establish that once the Board has determined, after notice and a hearing, that an individual is a substance-abusing licensee, the Uniform Standards must be followed. Subsection (a) incorporates by reference the document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019." Subsection (b) is added to permit the Board to impose additional probation terms and conditions not specified in the Uniform Standards to any order establishing a licensee's conditions of probation.

Anticipated Benefit/Rationale: Adding regulation language that addresses substance abuse is required by statute. Subdivision (a) establishes that the Uniform Standards will be used to determine the terms or conditions of probation in disciplinary orders for substance-abusing licensees if the Board determines, after notice and a hearing, that the evidence establishes that the individual is a substance-abusing licensee. This increases public protection by ensuring that there are consistent standards for disciplining substance-abusing licensees. It also ensures all substance-abusing licensees are held to the same disciplinary standards. Given the length and formatting of the document, the document is incorporated by reference. It would be unduly cumbersome, expensive, and otherwise impractical to place the Uniform Standards document as a whole within the California Code of Regulations. It is available on the Board's website and from the Board upon request. The added language is consistent with other healing arts boards who have incorporated the same document into their regulations by reference and with the proposed hearing aid dispensers regulation in section 1399.131.1 of Article 6 of Division 13.3.

BPC section 2531.02 mandates that protection of the public is the highest priority for the Board. The added language in subsection (b) gives the Board the ability to determine the probation terms and conditions based on the nature and severity of the licensee's violation. This is necessary to maintain the public safety while promoting the rehabilitation of substance-abusing licensees. This is also consistent with the proposed regulation for the hearing aid dispensers in section 1399.131.1 of Article 6 of Division 13.3.

**Adoption of “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019”  
(Incorporated by reference in Sections 1399.131.1 and 1399.155.1)**

The “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019” will be incorporated by reference in section 1399.131.1 of Article 6 of Division 13.3 and section 1399.155.1 of Article 6 of Division 13.4. This is because the Board has two separate divisions of title 16 regulations used for the licensees of the Board as of the result of the merger of the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau in 2010. The Board uses CCR Division 13.3 for hearing aid dispensers and CCR Division 13.4 for the speech-language pathologists and audiologists.

The Uniform Standards specify sixteen standards implemented by DCA to promote consistency in dealing with substance-abusing healing arts licensees and better protect the public from harm. Adopting the Uniform Standards will ensure all substance-abusing licensees are held to the same disciplinary standard.

The Uniform Standards includes standard language that must be included in every probationary order for substance-abusing licensees. This standards language includes information regarding section 315 of the Code and the Committee. The language specifies that Administrative Law Judges, parties, and staff are required to use the standard language which has been developed in accordance with the standards developed by the Committee. The language specifies that the probationary terms and conditions within the incorporated document are to be used in every case where the individual is determined to be a substance-abusing licensee. Any reference to the Board also means staff working for the Board or its designee. The document also specifies that the Board’s Disciplinary Guidelines should still be used in formulating the penalty and in considering additional terms or conditions of probation appropriate for greater public protection. The conditions contained within the Uniform Standards are required to be used in lieu of any similar standard or optional term or condition within the Board’s Disciplinary Guidelines.

**Uniform Standard #1**

Uniform Standard #1 specifies requirements for clinical diagnostic evaluation of a licensee who is on probation due to substance abuse. The Board may require a licensee who is on probation due to substance abuse to undergo a clinical diagnostic evaluation. The licensee is to be evaluated by a professional who meets the list of criteria with expertise and experience specific to substance abuse. By having a professional practitioner as the evaluator, this ensures that evaluations are conducted based on best practices and appropriate tools in assessing substance abuse. Furthermore, this will ensure that the evaluator can provide objective, unbiased, and

independent reports to the Board based on their professional opinion regarding the licensee's substance abuse, whether the licensee is a threat to themselves or others, and recommendations for treatment.

Because of the complexity of substance abuse, professional evaluations are important to the Board's ability to make informed decisions regarding the licensee's ability to safely return to practice. The report will assist the Board in determining any actions needed prior to the licensee's return to practice while maintaining the safety of the public. By requiring the evaluator to notify the Board within twenty-four (24) hours of a determination that the licensee is a threat to themselves or others, the Board will be able to quickly intervene to protect the licensee and the public. Furthermore, requiring that the final written report be provided to the Board no later than thirty (30) days after the evaluation prevents any delay in the Board's determination for the licensee's safe return to practice.

## **Uniform Standard #2**

Uniform Standard #2 specifies requirements for temporary removal from practice for each licensee who undergoes a clinical diagnostic evaluation and criteria to meet before being permitted to return to practice on a full-time or part-time basis. A licensee who undergoes a clinical diagnostic evaluation must temporarily cease practice while they are being evaluated as described in Uniform Standard #1 and conduct a drug test a minimum of two (2) times per week. The cease practice order is not considered a disciplinary action nor is it subject to adjudicative hearings pursuant to BPC Section 315.4. This allows the Board to quickly intervene to protect the public while the clinical diagnostic evaluation is pending.

To ensure public safety and consistency in dealing with substance-abusing licensees, the Board must apply the list of criteria when making its determination on the licensee's return to practice either full-time or part-time. Additionally, requiring thirty (30) days of negative test results prior to returning to practice gives added assurance that consumers will be treated by a licensee who has been deemed to have the ability to practice safely.

## **Uniform Standard #3**

Uniform Standard #3 specifies requirements that would, with the consent of the licensee who is on probation due to substance abuse, permit the Board to contact the licensee's employer. The licensee must provide the Board all contact information of their employer(s) and supervisor(s) and give the Board written consent to communicate with their employer(s) and supervisor(s). This reduces confusion about whether or not the licensee is allowed to practice. This also enhances public safety by allowing the exchange of information during the probationary period on the licensee's work status,

performance, and monitoring. By obtaining information on the licensee, the Board can quickly intervene to protect the public in the event the licensee fails to meet the terms and conditions of their probation.

#### **Uniform Standard #4**

Uniform Standard #4 specifies requirements regarding all aspects of biological testing required to ensure abstention from alcohol and drugs by a licensee who is on probation due to substance abuse. The Board may order a licensee to conduct a drug test in accordance with the listed testing schedule and standards. This ensures that licensees are treated equally and fairly in terms of how often they must test and how specimens will be collected and analyzed. Testing must be random so that the person being tested is not able to predict when they might be tested and undermine the integrity of the test with diluted or invalid specimens or failure to appear in order to avoid a positive drug test.

The Board has some discretion to alter the testing frequency schedule using the list of exemptions to the testing schedule. This allows the Board to take into consideration a licensee's situation while maintaining public protection. Furthermore, the Board has the discretion to reduce or eliminate this standard if the licensee files a petition for reinstatement or reduction of penalty pursuant to Government Code Section 11522 or statutes applicable to the Board on reinstatement or reduction of penalty. This allows the licensee to demonstrate they have made progress in their recovery prior to reinstatement or reduction of penalty and reduce or eliminate the number of drug tests the licensee must complete.

The Board will collect data two years prior to the implementation of the Uniform Standards and annually for three years following the implementation. The Board will collect the data using the non-exhaustive list of criteria on licensees subject to testing for banned substance and report to DCA and the Legislature, upon request. This will allow the Board, DCA, the Legislature, and the public to evaluate the outcomes and effectiveness of the Uniform Standards in keeping the public safe and aiding the licensee to recovery and safe return to practice.

#### **Uniform Standard #5**

Uniform Standard #5 specifies requirements regarding all aspects of group support meetings. The Board has the discretion to require a licensee who is on probation due to substance abuse to participate in group support meeting and use the list of considerations in determining the frequency of attendance at group support meetings. This enhances public protection while allowing the Board to evaluate each situation on a case-by-case basis and base decisions on the nature and severity of the licensee's violation.

Group support meetings must be led by an individual who meets the list of qualifications and requirements. Because of the complexity of substance abuse, the meeting facilitator must be qualified and experienced in the treatment and rehabilitation of substance abuse. To ensure unbiased reports, the meeting facilitator should not have a financial, personal, or business relationship with the licensee within a year prior to the treatment. Requiring the facilitator to report unexcused absences within twenty-four (24) hours and provide documentation of meeting attendance, progress, and participation to the Board ensures the licensee is meeting the terms and conditions of their probation and will assist the Board in making informed decisions regarding the licensee's ability to return to practice safely.

### **Uniform Standard #6**

Uniform Standard #6 specifies requirements in determining whether inpatient, outpatient, or other types of substance abuse treatment is necessary. The Board will use the list of criteria to determine if it is necessary for a licensee who is on probation due to substance abuse to undergo inpatient, outpatient, or other types of treatment. Many individuals who struggle with substance abuse may also have other medical issues/diagnoses that may need treatment. This allows the Board to take into consideration the clinical diagnostic evaluation and other mitigating factors to ensure the rehabilitation of the substance-abusing licensee while maintaining public safety. Establishing criteria also ensures that each person whose license is placed on probation due to substance abuse are evaluated according to the same standards while allowing for flexibility to evaluate each situation on a case-by-case basis and base decisions on the nature and severity of the licensee's violation.

### **Uniform Standard #7**

Uniform Standard #7 specifies requirements regarding worksite monitoring. The Board may require a worksite monitor to monitor a licensee who is on probation due to substance abuse at their place of employment. The purpose of this requirement is to enhance public protection by ensuring the licensee is not treating consumers while under the influence of drugs or alcohol.

The Board will use the list of requirements in determining if an individual can serve as the licensee's worksite monitor. Furthermore, the licensee must consent to the worksite monitor and the exchange of information between the worksite monitor and the Board. This ensures that the worksite monitor is qualified and can render impartial and unbiased reports to the Board. This also enhances the public safety by allowing the exchange of information during the probationary period on the licensee's work status, performance, and monitoring. By obtaining information from the worksite monitor, the Board can quickly intervene to protect the public in the event the licensee fails to meet

the terms and conditions of their probation.

### **Uniform Standard #8**

Uniform Standard #8 specifies procedures to be followed when a licensee who is on probation due to substance abuse tests positive for a banned substance. When a licensee who is on probation due to substance abuse tests positive for a banned substance, the Board will notify the licensee to cease practice and leave their place of employment, notify the licensee's employer, and worksite monitor(s), if any, that the licensee may not work. The cease practice order is not considered a disciplinary action nor is it subject to adjudicative hearings pursuant to BPC Section 315.2. This allows the Board to quickly intervene to protect the public and reduces confusion about whether or not the licensee is allowed to practice.

Furthermore, the Board will use the list of criteria to determine whether the positive test is evidence of a prohibited substance. If the substance is prohibited, the Board will refer to Uniform Standards #9 for further actions. If the substance is not prohibited, the Board will lift the cease practice order and the licensee may return to their place of employment. Establishing criteria allows the Board to contact the treating physician and treatment provider, including the group support facilitator, to confirm if a positive test result is due to a prescribed drug. This keeps the licensee and public safe from risks associated to substance abuse while allowing the Board to evaluate each situation on a case-by-case basis.

### **Uniform Standard #9**

Uniform Standard #9 specifies procedures to be followed when a licensee who is on probation due to substance abuse is confirmed to have used a banned substance. When the Board confirms that a positive test is evidence of use of a prohibited substance, the licensee has committed a major violation as defined in Uniform Standards #10 and the Board will impose the consequences described in Uniform Standards #10. The public benefits through increased protection resulting from appropriate discipline being imposed based on the nature and severity of the licensee's violation. The licensee benefits from clarity on the type of violation that a positive test for a banned substance results in and knowing the list of consequences that may be imposed for this type of violation.

### **Uniform Standard #10**

Uniform Standard #10 provides non-exhaustive lists of major and minor violations and potential consequences. The Board may use the list of violations to determine if a licensee who is on probation due to substance abuse has committed a major or minor violation and potential consequences to impose for major or minor violations. The non-

exhaustive lists give the Board discretion to determine the type of violations listed or not listed according to their nature and severity and apply consequences listed or not listed that may be appropriate to the nature and severity of the violation.

The public benefits through increased protection resulting from appropriate discipline being imposed based on the nature and severity of the licensee's violation. By providing examples of major and minor violations and consequences, the Board is ensuring consistent disciplinary actions for different types of violations. The licensee benefits from clarity on the different types of violations and potential types of consequences that may be imposed based on the type of the violations.

### **Uniform Standard #11**

Uniform Standard #11 specifies requirements for petitioning to return to practice on a fulltime basis. A licensee who is on probation due to substance abuse must meet the list of criteria before submitting an informal request to petition to return to full time practice to the Board. Establishing a list of criteria ensures that all licensees will be evaluated according to the same standard. Making the request informal protects the licensee's health information from being public information, which would occur during official petitions under the Administrative Procedures Act. Demonstrating the ability to comply with each standard of the disciplinary order before returning to practice protects the public from a licensee unfit to practice. Furthermore, it ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to fulltime practice.

### **Uniform Standard #12**

Uniform Standard #12 specifies requirements for petitioning for reinstatement of a full and unrestricted license. A licensee who is on probation due to substance abuse must meet the list of criteria before submitting an informal request to petition for reinstatement of a full and unrestricted license to the Board. Establishing a list of criteria ensures that all licensees will be evaluated according to the same standard. Making the request informal protects the licensee's health information from being public information. Demonstrating the ability to comply with each standard of the disciplinary order before returning to practice protects the public from a licensee unfit to practice. Furthermore, it ensures that licensees who have undergone treatment and have made steps towards recovery and can safely return to practice.

### **Uniform Standard #13**

Uniform Standard #13 specifies requirements for healing arts boards that use a private-sector vendor for diversion services. The Board does not have a diversion program nor does the Board use a private-sector vendor for diversion services. Therefore, this does

not apply to licensees regulated by this Board.

#### **Uniform Standard #14**

Uniform Standard #14 specifies confidentiality requirements for healing arts boards that use a private-sector vendor for diversion services. The Board does not have a diversion program nor does the Board use a private-sector vendor for diversion services. Therefore, this does not apply to licensees regulated by this Board.

#### **Uniform Standard #15**

Uniform Standard #15 specifies audit requirements for healing arts boards that use a private-sector vendor for diversion services. The Board does not have a diversion program nor does the Board use a private-sector vendor for diversion services. Therefore, this does not apply to licensees regulated by this Board.

#### **Uniform Standard #16**

Uniform Standard #16 specifies criteria and standards to determine outcomes and effectiveness of the Uniform Standards. The Board will use the list of criteria and standards to report annually to DCA and Legislature. This will aid in determining whether the Board's methods for dealing with substance-abusing licensees protects the public from harm and is effective in assisting its substance-abusing licensees in long-term recovery from substance abuse. This will ensure that the most effective methods are being utilized in dealing with the licensee's substance abuse, recovery, and ultimately their safe return to practice. Effective consistent standards for substance-abusing licensees keeps the public safe from unfit licensees.

#### **Underlying Data**

1. March 2010 Board Meeting Agenda, relevant materials, and Minutes
2. October 2011 Board Meeting Agenda, relevant materials, and Minutes
3. January 2012 Board Meeting Agenda, relevant materials, and Minutes
4. April 2012 Board Meeting Agenda, relevant materials, and Minutes
5. July 2012 Board Meeting Agenda, relevant materials, and Minutes
6. The Board's Sunset Review Report 2016
7. February 2016 Board Meeting Agenda, relevant materials, and Minutes
8. November 2016 Board Meeting Agenda and Minutes
9. February 2017 Board Meeting Agenda, relevant materials, and Minutes
10. August 2021 Board Meeting Agenda, relevant materials, and Minutes

## **Business Impact**

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

- The Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.
- The Board historically has less than one (1) percent of its licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation.

The Board's authority is over licensees and not over all businesses within the industries the Board regulates. The Board regulates over 35,000 licensees who provide services in various settings such as schools, medical, community-based facilities, and private practice. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business (e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number or types of businesses that may be impacted.

The Board is not aware of costs that businesses or individuals may incur to comply with this regulation over its lifetime as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

The Board is not aware of any other economic costs that may occur. The Board is also not aware of any effect that the proposed regulatory action will have on housing cost or impact to local agencies or federal funding to the State.

Benefits such as public safety, worker safety, and transparency are unquantifiable and cannot be easily measured or estimated but the Board expects that they will remain the same as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

## **Economic Impact Assessment**

The proposed regulatory action may have the following effects:

This regulatory proposal will not create new businesses or jobs within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

This regulatory proposal will not eliminate existing businesses or jobs within the State of California because the regulation is not a barrier to industry growth within the industries the Board regulates. The Board historically has less than one (1) percent of the licensed population per year who face disciplinary actions and are subject to drug testing as part of probation. Under these historical conditions, the Board has seen growth in its licensed population.

This regulatory proposal will not affect the expansion of businesses currently doing businesses within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

This regulatory proposal benefits the health and welfare of California residents because the regulation protects consumers from receiving services from an unfit licensee and provides the Board with an effective and consistent standard to intervene quickly and discipline and rehabilitate substance-abusing licensees.

This regulatory proposal benefits worker safety because the regulation protects the workplace from unfit licensees and provides the Board with an effective and consistent standard to intervene quickly and discipline and rehabilitate substance-abusing licensees.

This regulatory proposal does not affect the State's environment because the regulation is related to licensees and public safety within the industries regulated by this Board and not the environment.

### **Specific Technologies or Equipment**

The proposed regulatory action does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

The Board's initial determination is that no reasonable alternative to the proposed regulatory action would be 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Do not seek a regulatory change.

The Board is directed by statute to adopt the Uniform Standards. Failure to adopt the proposed regulatory action limits the Board's ability to discipline substance-abusing licensees. Furthermore, the Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. Without the proposed regulatory action, the Board will not have consistent standards in protecting the public from substance-abusing licensees.

2. Incorporate the Uniform Standards into both of the Board's Disciplinary Guidelines.

The Board has two guidelines, one for Hearing Aid Dispenser and another for Speech-Language Pathology and Audiology. Both guidelines are in need of major revision. This would further delay the implementation of the Uniform Standards and limit the Board's ability to discipline substance-abusing licensees. Furthermore, the Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. Without the proposed regulatory action, the Board will not have consistent standards in protecting the public from substance-abusing licensees.