

SUNSET OVERSIGHT REVIEW REPORT 2019 Vol. 2



**CALIFORNIA STATE
BOARD OF PHARMACY**

BE AWARE AND TAKE CARE: Talk to your pharmacist!

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Attachment A

Board Member Procedure Manual



CALIFORNIA BOARD OF PHARMACY BOARD MEMBER PROCEDURE MANUAL



CALIFORNIA STATE



BOARD OF PHARMACY

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Chapter 1

INTRODUCTION

Overview

The California State Board of Pharmacy (board) was created by the California Legislature in 1891 to protect the public by regulating the practice of pharmacy. Section 4000.1 of the California Business and Professions Code specifically establishes that:

Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The board is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the Business, Consumer Services and Housing Agency under the aegis of the Governor. The department is responsible for consumer protection and representation through the regulation of licensed professionals and the provision of consumer services. While the DCA provides administrative oversight and support services, the board has policy autonomy and sets its own policies, procedures, and regulations.

The board is presently comprised of 13 members; six are public members, and seven are pharmacists, as required by law. The seven pharmacist members and four public members are appointed by the Governor. One public member is appointed by the Assembly Speaker and one is appointed by the Senate Rules Committee. Board members may serve up to two four-year terms.

According to California law, at least five of the seven pharmacist members of the board must be pharmacists who are actively engaged in the practice of pharmacy. There must be at least one pharmacist representative from each of the following practice settings: an acute care hospital, an independent community pharmacy, a chain community pharmacy, and a long-term health care or skilled nursing facility. The pharmacist appointees shall also include a pharmacist who is a member of a labor union that represents pharmacists. A "chain community pharmacy" means a chain of 75 or more stores in California under the same ownership, and an "independent community pharmacy" means a pharmacy owned by a person or entity who owns no more than four pharmacies in California. *California Business and Professions Code section 4001(c).*

Board members fill non-salaried positions but are paid \$100 per day for each meeting day (or 8-hour day spent performing board business) and are reimbursed travel expenses.

The board's operations are guided by its five year strategic plan. The strategic plan is revised with the active partnership of all board members, staff, and interested stakeholders.

This procedure manual is provided to board members with a ready reference of



important laws, regulations, DCA policies, and board policies in order to guide the actions of the board members and ensure board effectiveness and efficiency. The executive officer will coordinate an orientation session with each new board member upon his or her appointment, to assist the new member in learning processes and procedures.

Any questions board members may have, at anytime, can be addressed to the executive officer.

General Rules of Conduct

Board Members shall not speak to interested parties (such as vendors, lobbyists, legislators, or other governmental entities) on behalf of the board or act for the board without proper authorization.

Members shall maintain the confidentiality of confidential documents and information.

Board Members shall commit time, actively participate in board activities, participate in enforcement decision making and prepare for board meetings, which includes reading board packets and all required legal documents.

Board members shall respect and recognize the equal role and responsibilities of all board members, whether public or licensee.

Board members shall act fairly and in a nonpartisan, impartial, and unbiased manner.

Board members shall treat all applicants and licensees in a fair and impartial manner.

Board members' actions shall uphold the board's primary mission – protection of the public.

Board members shall not use their positions on the board for political, personal, familial, or financial gain.

Abbreviations Used in This Manual

B&P	Business and Professions Code
Board	California State Board of Pharmacy
DCA	Department of Consumer Affairs
President	President of the Board of Pharmacy
Vice President	Vice President of the Board of Pharmacy
EO	Executive Officer
SAM	State Administrative Manual

Additional abbreviations and commonly used terms can be found in Appendix A

Chapter 2

BOARD MEETING PROCEDURES

Frequency of Meetings

(B&P Code Section 4002(b))

The board is required by law to meet at least once every four months and may meet more often as it determines necessary. The board's strategic plan directs four meetings annually. Full board meetings are generally two full days and are held in northern and southern California on an alternating basis when possible. Additionally the board shall meet once per quarter to hear petitions for modification of probation and license reinstatement.

Board Member Attendance at Board Meetings

(Board Policy)

Board members shall attend each meeting of the board. If a member is unable to attend, he or she must contact the board president or the executive officer and ask to be excused from the meeting for a specific reason. Minutes will reflect when a member is not present for a meeting. Two consecutive non-excused absences may result in a request to the appointing authority that the member be replaced.

Board Member Participation

(B & P Code Sections 106 and 106.5)

The Governor has the power to remove from office at any time any member of any board appointed by him/her for continued neglect of duties required by law or for incompetence, or unprofessional or dishonorable conduct. The Governor may also remove from office a board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Public Attendance at Board Meetings Open Meetings Act

(Government Code Section 11120 et seq.)

Board meetings are subject to the provisions of the Bagley-Keene Open Meeting Act. This act governs meetings of the state regulatory boards and meetings of committees of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included on the agenda. Board members will receive training on the Open Meeting Act during the Board Member Orientation given by the DCA.

Appendix B contains detailed information about the Open Meeting Act that has been prepared by the department's Legal Office. Updates to the Open Meetings Act are provided periodically by the department. Such updates will be provided to board members by the EO's secretary.

Attendance at general conferences that involve a discussion of broad issues and which are attended by a broad spectrum of participants are not covered by open

meeting laws so long as members of the board do not discuss among themselves matters which are, or potentially may be, before the board. On the other hand, a workshop that is focused specifically on board issues and which involve more than two board members, or where the two members have some authority to act without further action by the full board, must meet the requirements of the open meetings law.

Communications between or among more than two board members may be considered "meetings" if those communications occur in a serial fashion through a series of telephone calls or other communications (such as electronic mail) by which more than two of the board members are involved and board business is discussed (e.g., polling of board members). Such communications are prohibited.

Any general discussion of exams or disciplinary procedures shall be held in public. The board may meet in closed session to discuss examinations where a public discussion would compromise the integrity of the examination or to deliberate on disciplinary cases and to discuss pending litigation.

An annual evaluation of the executive officer is held in closed session.

If the agenda contains matters that are appropriate for closed session, the agenda must cite the particular statutory section and subdivision authorizing the closed session.

Quorum

(B&P Code Section 4002(b) and Board Policy)

Seven members of the board constitute a quorum for the transaction of business. The majority of a quorum is necessary to act on behalf of the board.

The board uses the following criteria in counting votes on a given motion or decision (this includes motions during board meetings and mail votes on disciplinary matters).

The board must have a quorum of members present to take an action.

- There must be at least seven members voting for the board to take an action or position an item.
- A motion passes if a majority of those voting votes for the measure.
- Abstentions count as votes for purposes of establishing a quorum, but do not count as votes for or against the measure. Abstentions simply mean that the abstaining board member will go along with the majority decision of the board.
- *For example, if seven members are present, and four members abstain from voting, then:*
a vote of 2 Aye, 1 Nay and 4 Abstain would mean that the motion passes (the majority vote is 2 versus 1, with 4 agreeing to go along with the majority of those voting).
- The board president may determine to vote or not vote on any matter before the board.
- In the event of a tie the motion fails.

Should a board member recuse him or herself from voting on a matter, that member is no longer counted for purposes of achieving a quorum. If this results in

a loss of a quorum, the person may participate under the “rule of necessity”, however they should not participate in the discussion and abstain from voting. If the reason for the recused is controversial or substantial (i.e., the member was a witness in the case), the board should wait until another meeting to vote on the matter. This may necessitate a special meeting.

Meeting Rules

(Board Policy)

The board generally uses Robert's Rules of Order as a guide for conducting its meetings, to the extent that this does not conflict with state law (e.g., Bagley-Keene Open Meeting Act). Questions of order are clarified by the board's attorneys.

Agenda Items

(Board Policy)

Any board member may suggest items for a board meeting agenda to the executive officer or during the "Public Comments on Items Not on the Agenda" discussion at every board meeting. The EO sets the agenda at the direction and approval of the board president and/or committee chair.

Generally agenda items for board meetings originate with one of the board's five standing committees (the Enforcement and Compounding Committee, Licensing Committee, Communication and Public Education Committee, Legislation and Regulation Committee, and the Organizational Development Committee). The committee structure is designed to allow for initial discussion and consideration. Recommendations are then formed by the committee and brought to the full board for considerations as a committee report.

Notice of Meetings

(Government Code Section 11120 et seq.)

According to the Open Meetings Act, public meeting notices (including agendas for board meetings) must be sent to persons on the board's mailing list at least 10 calendar days in advance of the meeting. The notice must include a staff person's name, work address and work telephone number who can provide further information prior to the meeting.

All meeting notices for public meetings are also posted on the board's website (www.pharmacy.ca.gov) at least 10 calendar days before the meeting.

Record of Meetings

(Board Policy)

Board meeting minutes are a summary, not a transcript, of each board meeting. The board meeting minutes shall contain summaries of how each board member voted on motions during the board meeting.

The minutes are prepared by board staff and submitted for review by board members before the next board meeting. Board meeting minutes are approved at

the next scheduled meeting of the board. The purpose of reviewing and approving the minutes at a board meeting is not to approve of actions taken by the board at the previous meeting, but rather to determine whether the minutes as drafted accurately reflect the board's discussion at the previous meeting. When approved, the minutes shall serve as the official record of the meeting.

(Board Policy)

The public-session portions of a meeting may be electronically recorded if determined necessary for staff purposes. Audio recordings shall be disposed of following board approval of the minutes. Meetings may be webcast for the public to view on the board's website at www.pharmacy.ca.gov. Members of the public may tape record, videotape or otherwise record a meeting unless too disruptive.

(Board Policy)

Due to the need for the board to maintain fairness and neutrality when performing their adjudicative function, the board shall not receive any substantive information from a member of the public regarding any matter that is currently under or subject to investigation or involves a pending criminal or administrative action.

If, during a board meeting, a person attempts to provide the board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the board cannot properly consider or hear such substantive information, and the person shall be instructed to refrain from making such comments.

If, during a board meeting, a person wishes to address the board concerning alleged errors of procedure or protocol or staff misconduct, involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the board will address the matter as follows:

- Where the allegation involves errors of procedure or protocol, the board may designate either its executive officer or a board employee to review whether the proper procedure or protocol was followed and to report back to the board.
- Where the allegation involves significant staff misconduct, the board may designate one of its members to review the allegation and to report back to the board.

At the discretion of the president or chairperson, speakers may be limited in the amount of time to present to give adequate time to everyone who wants to speak. In the event the number of people wishing to address the board exceeds the allotted time, the president or chairperson may limit each speaker to a statement of his/her name, organization, and whether they support or do not support the proposed action

Board Voting at National Association of Boards of Pharmacy Meetings*(Board Policy)*

The National Association of Boards of Pharmacy is a professional organization that supports the state boards of pharmacy in protecting public health. The National Association of Boards of Pharmacy member boards of pharmacy are grouped into eight districts that include all 50 United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, Australia, Bahamas, nine Canadian provinces, and New Zealand.

The board's president shall serve as the official delegate to the annual meeting of the National Association of Boards of Pharmacy. If the president cannot attend the meeting or is absent for a portion of the meeting, the president shall designate an alternate delegate to the meeting to vote on matters before the NABP's sessions.

Chapter 3

COMMITTEE MEETINGS

Committees of the Board

The board's strategic plan establishes five standing committees through which the board establishes its goals and organizes its activities in pursuit of ensuring the public health, safety and welfare, and to assure the provision of quality pharmacist's care. These five committees develop policy related to a board mission-related goal. The committees and their goal areas are:

- **Licensing** – Ensuring the professional qualifications of licensees. This includes that those entering the practice of pharmacy, as well as those continuing to practice, meet minimum requirements for education, experience and knowledge. The board also ensures that facilities licensed by the board meet minimum standards.
- **Enforcement and Compounding** – Protecting the public by exercising oversight on all pharmacy activities. This includes preventing violations and effectively enforcing federal and state pharmacy laws when violations occur.
- **Communication and Public Education** – Providing relevant information to consumers and licensees. This includes encouraging the public to discuss their medications with their pharmacist; emphasizing the importance of patients complying with their prescription treatment regimens; and helping pharmacists to become better informed on subjects of importance to the public.
- **Legislation and Regulation** – Advocating legislation and promulgating regulations that advance the vision and mission of the board. These activities ensure better patient care and more effective regulation of the individuals and firms who handle, dispense, furnish, ship and store prescription drugs and devices in California.
- **Organizational Development** – Achieving the board's mission and goals. This is done through strategic planning, budget management and staff development activities.

Each of these committees is comprised of at least two board members. Staff provides technical and administrative input and support to the committee. The committees are an important venue for ensuring that staff and board members share information and perspectives in crafting and implementing strategic objectives.

The board's committees allow board members, stakeholders and staff to discuss and conduct problem solving on issues related to the board's strategic goals. They also allow the board to consider options for implementing components for the strategic plan. The committees are charged with coordinating board efforts to reach board goals and achieving positive results on its performance measures.

The board president designates one member of each committee as the committee's chairperson. The chairperson coordinates the committee's work and ensures progress toward the board's priorities. The board president also designates a vice chairperson for each committee who fulfills the duties of the chairperson in their

absence.

Each committee typically meets once before a quarterly board meeting. Committee meetings are governed by the same Open Meetings Act requirements as board meetings. The committees refer policy decisions to the full board during a public meeting for a formal decision and vote. During the committee's discussion, the public is encouraged to provide comments. The board meeting agenda will list action items and discussion items of interest for each committee.

All quarterly meetings of the Enforcement and Compounding, Licensing and Communication and Public Education Committees are public meetings. This reflects the high interest the public has shown for the agenda items of these committees. The Legislation and Regulation committee generally holds at least two public meetings each year, typically in the spring and fall in order to recommend positions on introduced legislation (in the spring) or to develop legislative or regulatory proposals (in the fall). The Organizational Development Committee typically does not schedule public meetings as items within its purview are not generally appropriate for open meetings (e.g. personnel matters). Nevertheless, a report of items under the committee's purview is provided at each quarterly board meeting.

During any public committee meeting, comments from the public are strongly sought, and the meetings themselves are frequently public forums on specific issues before a committee. Board members who are not members of a committee may attend a public committee meeting as part of the audience.

It is also important to note that any time more than two board members attend a board committee meeting, that committee meeting must have been publicly noticed. The board's legal counsel works with the EO to assure any meeting that fits the requirements for a public meeting is appropriately noticed.

The board also has one standing committee with responsibilities for the California pharmacist licensing examination (the Competency Committee). This committee is described below.

Competency Committee

The board's Competency Committee is responsible for developing and grading the board's pharmacist licensure examination, the California Practice Standards and Jurisprudence Exam for Pharmacists (known as the CPJE). The committee is comprised of representatives from a cross section of professional practice as well as representatives from California schools of pharmacy. Two board members are appointed to observe the work of the committee by the board president.

Membership on this committee is professionally challenging as well as time consuming. The committee members are split geographically between Northern and Southern California. The committee meets seven times annually in two-day meetings. There is an annual meeting where the entire committee meets in one location to set goals for the year. Membership is generally eight years, and appointment is by the board president.

The Competency Committee is a stand-alone committee that is within the auspices of the board's Licensing Committee. However, meetings of the Competency

Committee are not public meetings as these meetings are for examination construction.

Committee Creation and Appointments

(Board Policy)

The president may establish additional committees or subcommittees, whether standing or special, as he or she deems necessary. The composition of the committees or subcommittee and the appointment of the members is determined by the board president in consultation with the vice president, and the EO. Any additional committee or subcommittee meetings are governed by the same Open Meetings Act requirements as board meetings.

Attendance at Committee Meetings

(Board Policy and Government Code Section 11122.5)

If a board member wishes to attend a meeting of a committee of which he or she is not a member, that board member must obtain permission from the board president or EO to attend. Therefore, requests to attend a committee meeting should be submitted to the EO at least two weeks in advance.

Board members who are not members of a committee may attend a public committee meeting as part of the audience. However, if a quorum of members of the full board are present during a committee meeting, members of the board who are not members of the board committee may attend the committee meeting only as observers.

Chapter 4

TRAVEL & SALARY POLICIES/PROCEDURES

Travel Approval

(DCA Memorandum 91-26)

Board members shall have board president approval for all travel and per diem reimbursement, except for regularly scheduled board and committee meetings to which a board member is assigned.

The DCA Travel Guide information is attached as Appendix C. Board members will be reimbursed for travel expenses incurred while performing approved board business in accordance with these reimbursement criteria.

Travel Arrangements

(Board Policy)

Travel arrangements, including hotel accommodations, flights and rental cars, are made by the EO's secretary through the state's designated travel agency. The EO's secretary will provide each board member with confirmations for all travel reservations for their review and approval. In the event that the travel reservations need to be modified or canceled the board member shall notify the EO's secretary as soon as possible so that the appropriate steps can be taken to change or cancel the reservations.

State guidelines generally prohibit reimbursement for hotel expenses if the meeting is less than 50 miles from an individual's home address, unless preapproval is secured. Board members who wish to request an exemption to stay at a hotel less than 50 miles from their home must contact the EO's secretary to pursue this exemption at least two weeks before the meeting. The exemption must be approved by the DCA before the meeting.

Out of State Travel

Out-of-state travel for all persons representing California is highly controlled and must be pre-approved by the Governor's Office. For approved out-of-state travel, board members will be reimbursed actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses at the state per diem rate.

Travel Claims

(DCA Memorandum 91-26)

Rules governing reimbursement of travel and meeting expenses for board members are the same as for management level state staff. All expenses must be claimed using the state's electronic travel claim program. The EO's secretary prepares these electronic travel claims on behalf of board members after all board and committee meetings. All claims will be provided to the board member for review and approval prior to final submission in the electronic travel claim program. Original receipts are

required for reimbursement for lodging, parking, and gasoline. Board members shall provide the required original receipts to the EO's secretary to be included with the travel claim.

In order for travel expenses to be reimbursed, board members must follow the procedures contained in DCA memoranda which are periodically disseminated by the director and are provided to board members on at least an annual basis by the EO's secretary. Questions regarding travel reimbursement policies shall be directed to the EO's secretary.

Salary Per Diem

(B&P Code Section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for board members is regulated by Business and Professions Code Section 103.

In relevant part, this section provides for the payment of salary per diem for board members "for each day actually spent in the discharge of official duties," and provides that the board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

- No salary per diem or reimbursement for travel-related expenses shall be paid to board members, except for attendance at official board or assigned committee meetings. Attendance at gatherings, events, hearings, conferences or meetings other than official board or assigned committee meetings in which a substantial official service is performed shall be approved in advance by the board president.
- The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a board or committee meeting until that meeting is adjourned. If a member is absent for a portion of a meeting, hours are then reimbursed for time actually spent. Travel time is not included in this component.
- For board-specified work, board members will be compensated for actual time spent performing work authorized by the board president. This may also include, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences; and exam item writing. Work also includes preparation time for board or committee meetings and reading mail ballots for disciplinary actions.
- Reimbursable work does not include miscellaneous reading and information gathering, committee work not related to a meeting, preparation time for a presentation and participation at meetings not related to official participation of the board.

Board members may submit their hours for which they seek reimbursement to the

EO's secretary on the Board Member Attendance Report. By board policy, board members will be reimbursed for their hours spent at board and committee meetings without submitting a Board Member Attendance Report. However, for reimbursement for all other board-sanctioned activities (including reading mail ballots for disciplinary actions) or performing board business, the hours must be submitted on the Board Member Attendance Report.

At each quarterly meeting of the board, there shall be a report of all per diem reimbursement and travel expenses claimed by each member of the board for the fiscal year.

Business and Professions Code section 103 and a Board Member Attendance Report are provided in Appendix D.

Chapter 5

OTHER POLICIES/PROCEDURES

Requests for Board Representation or Presentation

(Board policy)

If an association or individual requests board participation at an event or meeting, a written request should be submitted to the EO, as to the purpose of the function, and the reason for the request. The board president will approve such requests consistent with the board's strategic plan and if funds are available. Approval to participate will also include the extent of participation (e.g., one time meeting, presentation or continuous participation on a committee). Continued participation as a board representative should be consistent with the board's strategic plan and may need to be approved by the full board.

Prior authorization for any reimbursement must be obtained or expenses will be the responsibility of the participant.

Board members may participate on their own (i.e., as a citizen or professional) but not as an official board representative unless approved by the board president or the board. However, board members should recognize that even when representing themselves as “individuals,” their positions might be misconstrued as that of the board. For that reason, board members are cautioned to not express their personal opinions as a board policy or position or represent that the board has taken a position on a particular issue when it has not. Board members should also make every attempt to provide disclaimers that they are not representing the board.

Resignation of Board Members

(Government Code Section 1750)

In the event that it becomes necessary for a board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the director of the department, the board president, and the EO.

Duties of Officers of the Board

(B&P Code Section 4002(a))

The board shall elect from its members a president, vice president, and treasurer.

President

- Spokesperson for the Board of Pharmacy (including but not limited to) – may attend legislative hearings and testify on behalf of the board, may attend meetings with stakeholders and Legislators on behalf of the board, may talk to the media on behalf of the board, and signs letters on behalf of the board
- Meets and communicates with the Executive Officer on a regular basis
- Communicates with other board members for board

	<ul style="list-style-type: none"> business • Authors a president's message in every newsletter • Approves board meeting agendas • Chairs and facilitates board meetings • Chairs the Organizational Development Committee • Signs specified full board enforcement approval orders • Grants or denies requests for an extension of time to submit arguments to the board under the Administrative Procedure Act • Approves leave requests and FMLA requests for the EO
Vice President	<ul style="list-style-type: none"> • Is the back-up for the duties above in the president's absence • Is a member of the Organizational Development Committee
Treasurer	<ul style="list-style-type: none"> • Maintains the private board member fund for commemorative awards for board staff and board members.
Past President	<ul style="list-style-type: none"> • Is responsible for mentoring and imparting knowledge to the new board president • May attend meetings and legislative hearings to provide historical background information, as needed
Committee Chair	<ul style="list-style-type: none"> • Approves the committee agendas • Chairs and facilitates committee meetings
Vice Committee Chair	<ul style="list-style-type: none"> • Is the back-up for the duties above in the committee chair's absence

Election of Officers

(Board Policy)

The board shall elect the officers at the last meeting of the fiscal year. Officers shall serve terms of one year effective June 1, and may be reelected to consecutive terms.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the president becomes vacant, the vice president shall assume the office of the president until an election is held. Elected officers shall then serve the remainder of the term.

Board Member Disciplinary Actions

(Board Policy)

A member may be censured by the board if, after a hearing before the board, the board determines that the member has acted in an inappropriate manner.

The president shall sit as chair of the hearing unless the censure involves the president's own actions, in which case the vice president shall preside. In accordance with the Open Meeting Act, the censure hearing shall be conducted in open session.

Board Member Addresses

(DCA Policy)

Board member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority by the individual board member.

A roster of board members is maintained for public distribution and is placed on the board's Web site, using the address and telephone numbers of the board.

Written Correspondence and Mailings by Board Members

(Board Policy)

If delegated to do so by the president or EO, all correspondence, press releases, articles, memoranda or any other communication written by any board member in his or her official capacity must be provided to the EO for reproduction and distribution. The EO will maintain a copy and mail and distribute the written material.

Request for Records Access

(Board Policy)

No board member may access a licensee's, or applicant's file without the EO's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the board's office.

Communications with Other Organizations/Individuals/Media

(Board Policy)

Interested parties may request to meet with a board member on a matter or matters under the board's jurisdiction. Members must remember that the power of the board is vested in the board itself and not with any individual board member. For that reason, board members are cautioned to not express their personal opinions as a board policy or position or represent that the board has taken a position on a particular issue when it has not.

All communications relating to any board action or policy to any individual or organization, or a representative of the media shall be made only by the president of the board, his or her designee, or the EO. Any board member who is contacted by any of the above should inform the board president or EO of the contact.

If a board member receives a media call, the member should promptly refer the

caller to the board's EO. The board member should then send an email to the executive officer indicating they received a media call and relay any information supplied by the caller.

Executive Officer (EO)

(B&P Code Section 4003)

The EO is appointed by and serves at the pleasure of the board, and is exempt from civil service. The EO shall exercise the powers and perform the duties delegated by the board and vested in him or her by California pharmacy law.

- | | |
|--------------------------|--|
| Executive Officer | <ul style="list-style-type: none"> • Responsible for the financial operations and integrity of the board. • Official custodian of records. • Provides the board with advice during consideration of issues. • Liaison between the board and board staff. • Provides the board with complete, clear, and accurate reports, minutes, etc. • Responds to requests for information from board members • Keeps the board informed of progress of board programs. • Implements board policies. |
|--------------------------|--|

Executive Officer's Annual Evaluation

(Board Policy)

At the first meeting of each calendar year, the EO is evaluated by the board president during a closed session meeting of the board. Board members provide information to the president on the EO's performance in advance of this meeting by using the EO evaluation form provided by the department.

The evaluation process is based on the principle that performance should be evaluated on a regular basis in order to provide recognition of effective performance and as a tool to provide guidance in improving future performance.

If the EO is not at the maximum range of salary, the board may recommend a salary increase for the EO. To qualify for such increases, the EO must meet or exceed performance expectations, as determined by the board. The evaluation form is used to document the board's recommendation for a salary increase.

The EO evaluation form is provided in Appendix E.

Board Staff

(DCA Reference Manual)

Employees of the board, with the exception of the executive officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Board members shall not intervene or become involved in specific day-to-day personnel transactions. Personnel

matters affecting the operation of the board's duties are shared with the president and vice president during Organizational Development meetings.

Board Administration

(DCA Reference Manual)

Board members should be concerned primarily with formulating decisions on board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for board members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the executive officer.

Contact with Licensees, Applicants and Respondents

(Board Policy and Government Code section 11430.10 et seq.)

Board members shall not intervene on behalf of applicants and licensees. They should forward all contacts or inquiries to the EO or board staff without direction on how matter should be handled.

The Government Code contains provisions prohibiting *ex parte* communications. An "*ex parte*" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative or if an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members should not directly participate in complaint handling and resolution or investigations. An applicant who is being formally denied licensure, or a licensee against whom a disciplinary action is being taken, may attempt to directly contact board members.

If the communication is written, the member should read only enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, he or she should reseal the documents and send them to the EO, or forward the email.

If a board member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person he or she cannot speak to him or her about the matter. If the person insists on discussing the case, he or she should be told that the board member will be required to recuse himself or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a board member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the board's assigned attorney or EO.

Service of Legal Documents

(Board Policy)

Board members may receive service of a lawsuit against themselves and the board pertaining to a certain issue (e.g. a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the board member should accept service.

Upon receipt, the board member should notify the EO of the service and indicate the name of the matter that was served and any other pertinent information. The board member should then mail the entire package that was served to the EO as soon as possible. The board's legal counsel will provide instructions to the board members on what is required of them once service has been made.

Gifts from Licensees or Applicants

(Board Policy)

Gifts of any kind to board members or staff from any licensee or applicant with the board are not permitted.

Additionally, Government Code section 87210 contains specific requirements with respect to gifts. These requirements are among those discussed in the Ethics Course described below.

Government Code section 87210 and related sections are provided in Appendix F.

Conflict of Interest

(Government Code Section 87100)

No board member may make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any board member, who has a financial interest, shall disqualify himself/herself from making or attempting to use his/her official position to influence the decision. Any board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the board president or the EO.

Government Code Section 87100 and related sections are attached as Appendix G.

(Board Policy)

A board member who feels he or she has a potential conflict of interest in a specific case or issue should make his or her position known when the matter is discussed publicly (e.g., during a board meeting). Further the member should reinforce this position by physically leaving the room until the discussion regarding the matter is concluded. Whenever possible, a board member should notify the EO when he or she believes that the member has a conflict of interest. The EO can help refer the board member to appropriate resources for assistance. For example, the Fair Political Practices Commission is another resource.

Within 30 days of taking or leaving office as a board member, and annually before April 1 of each year, every board member must file a conflict of interest statement with the Fair Political Practices Commission filing procedures and handled by the

Department of Consumer Affairs. Questions about this process should be directed to the EO.

Ethics Training

(Government Code Sections 11146–11146.4)

Each board member must complete a course on ethics offered through the department. Upon appointment to the board, a new board member must complete the course within six months. All members must retake the course every two years during their term. Records concerning the attendance of this course must be kept on file for five years. Training information is available on (<http://ag.ca.gov/ethics/>).

Government Code Sections 11146–11146.4 are provided in Appendix H.

Sexual Harassment Prevention Training

(Government Code Section 12950.1)

Each board member must complete a sexual harassment prevention course offered through the department within six months of assuming office. Board members must complete the sexual harassment prevention course every two years during their term.

Defensive Driving Training

Each board member must complete a defensive driving course offered through the Department of General Services within six months of assuming office. Board members must complete the defensive driving course every four years during their term.

DCA's Board Member Training

(B&P Code Section 453)

The Department of Consumer Affairs provides an orientation session for new board members. The California Business and Professions Code requires that this course must be taken within one year of assuming office and within one year of any subsequent reappointment to the board. The training covers the functions, responsibilities and obligations that come with being a member of a DCA board.

The department also has a Web site for board members:

http://www.dca.ca.gov/pubs/board_members/orientation.htm

The Honoraria Prohibition

(Government Code Section 89503)

As a general rule, members of the board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Under the Department of Consumer Affairs Conflict of Interest Code, members of the Board of Pharmacy are required to report income from, among other entities, pharmaceutical professional associations and continuing education providers. Therefore, a board member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances: (1) when a honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the president so that he or she, in consultation with the EO and staff counsel, may determine whether the potential for conflict of interest exists.

Government Code Section 89503 is provided in Appendix I.

Serving as an Expert Witness

During their tenure on the board, members should refrain from acting as pharmaceutical expert witnesses in civil or criminal court cases. The reasons for this prohibition are twofold.

Acting as an expert witness for compensation would probably constitute a violation of the Standards of Ethical Conduct for gubernatorial appointees. The first ethical standard precludes a gubernatorial appointee from engaging in activity, which has the appearance of using the prestige of the state for the appointee's private gain or advantage. A professional member of the board would be in high demand as an expert witness in litigation relating to pharmacy, simply because of his or her status as a board member. Consequently, the member would likely receive more engagements as an expert witness than if he or she were not a member of the board. As such, serving as an expert witness would have the appearance of using the prestige of board-membership for private gain. Parenthetically, although the Governor's ethical standards are addressed to the conduct of gubernatorial appointees, all members of the board should be in compliance.

More importantly, acting as an expert witness would jeopardize a board member's ability to participate in the deliberation and resolution of disciplinary actions before the board. As an expert witness in a civil or criminal action against a pharmacist, a board member would be required to learn all the facts of the case at issue. If the pharmacist who is a party to the civil or criminal comes before the board in a disciplinary action, the board member who served as expert witness would be required to recuse himself or herself because of considerable *ex parte* knowledge of the case.

Request for Grants

All requests for funding/contributions to board projects shall be approved by the board president. Requests for such grants must be made by the EO at the president's direction. If a board member makes an individual request, a copy of the request shall be forwarded to the EO as soon as possible.

The mechanism for receipt, management, and dispersal of funds shall be pre-arranged and approved by the board.

Policy Positions of the Board

The following are policies adopted by the board during open meetings.

Policy: Pharmacists as Emergency Responders

Adopted October 25, 2006

The California State Board of Pharmacy wishes to ensure complete preparation for, and effective response to, any local, state, or national disaster, state of emergency, or other circumstance requiring expedited health system and/or public response. Skills, training, and capacities of board licensees, including wholesalers, pharmacies, pharmacists, intern pharmacists, and pharmacy technicians, will be an invaluable resource to those affected and responding. The board also wishes to encourage an adequate response to any such circumstance affecting residents of California, by welcoming wholesalers, pharmacies, pharmacists, intern pharmacists, and pharmacy technicians licensed in good standing in other states to assist with health system and/or public response to residents of California.

The board encourages its licensees to volunteer and become involved in local, state, and national emergency and disaster preparedness efforts. City or county health departments, fire departments, or other first responders can provide information on local opportunities. The Emergency Preparedness Office of the California Department of Health Services is a lead agency overseeing emergency preparedness and response in California, particularly regarding health system response, drug distribution and dispensing, and/or immunization and prophylaxis in the event of an emergency. At the federal level, lead contact agencies include the Department of Health and Human Services, the Centers for Disease Control, and/or the Department of Homeland Security and its Federal Emergency Management Agency (FEMA). Potential volunteers are encouraged to register and get information at www.medicalvolunteer.ca.gov (California) and www.medicalreservecor.ps.gov (federal).

The board also continues to be actively involved in such planning efforts, at every level. The board further encourages its licensees to assist in any way they can in any emergency circumstance or disaster. Under such conditions, the priority must be protection of public health and provision of essential patient care by the most expeditious and efficient means. Where declared emergency conditions exist, the board recognizes that it may be difficult or impossible for licensees in

affected areas to fully comply with regulatory requirements governing pharmacy practice or the distribution or dispensing of lifesaving medications.

In the event of a declared disaster or emergency, the board expects to utilize its authority under the California Business and Professions Code, including section 4062, subdivision (b) thereof, to encourage and permit emergency provision of care to affected patients and areas, including by waiver of requirements that it may be implausible to meet under these circumstances, such as prescription requirements, record-keeping requirements, labeling requirements, employee ratio requirements, consultation requirements, or other standard pharmacy practices and duties that may interfere with the most efficient response to those affected. The board encourages its licensees to assist, and follow directions from, local, state, and national health officials. The board expects licensees to apply their judgment and training to providing medication to patients in the best interests of the patients, with circumstances on the ground dictating the extent to which regulatory requirements can be met in affected areas. The board further expects that during such emergency, the highest standard of care possible will be provided, and that once the emergency has dissipated, its licensees will return to practices conforming to state and federal requirements.

Furthermore, during a declared disaster or emergency affecting residents of California, the board hopes that persons outside of California will assist the residents of California. To facilitate such assistance, in the event of a declared California disaster or emergency, the board expects to use its powers under the California Business and Professions Code, including section 900 and section 4062, subdivision (b) thereof, to allow any pharmacists, intern pharmacists, or pharmacy technicians, who are not licensed in California but who are licensed in good standing in another state, including those presently serving military or civilian duty, to provide emergency pharmacy services in California. The board also expects to allow nonresident pharmacies or wholesalers that are not licensed in California but that are licensed in good standing in another state to ship medications to pharmacies, health professionals or other wholesalers in California. Finally, the board also expects to allow use of temporary facilities to facilitate drug distribution during a declared disaster or state of emergency. The board expects that its licensees will similarly respond outside of the state to disasters or emergencies affecting populations outside California, and will pursue whatever steps may be necessary to encourage that sort of licensee response.

Policy: Legislative Positions*Adopted April 21, 2009*

Delegate the power to the board's president and chair of the Legislation and Regulation Committee to take board positions on emergent bills between board meetings.

Policy: Emergency Meetings for Purposes of Waiving Statutory Requirements*Adopted February 25, 2016*

In the event that the board is not able to convene a public meeting on regular notice or pursuant to the emergency meeting provisions of the Open Meetings Act, the board delegates its authority pursuant to Business and Professions Code section 4062, to the board president for a period of 30 days.

Policy: Extension of Deadline to Submit Arguments to the Board*Adopted October 29, 2013*

Allow the board president to grant or deny a request for an extension of time to submit arguments to the board under the Administrative Procedure Act. In the absence or unavailability of the president, the vice-president of the board may act upon the request.

Policy: Sale of Tobacco Products in Pharmacies*Adopted October 29, 2014*

The California State Board of Pharmacy recognizes that pharmacists are health care providers and pharmacies are in the business of improving customer health; therefore the board recommends that pharmacies and chain stores that include pharmacies eliminate the sale of tobacco, e-cigarettes and tobacco products, as these products are known to cause cancer, heart disease, lung disease and other health problems.

Policy: Warning Labels on Prescription Labels for Oral Chemotherapy Medications*Adopted January 30, 2019*

The California State Board of Pharmacy recognizes that oral chemotherapy treatment is increasingly common among cancer patients and health care providers. However, these medications pose serious risks to humans and the environment if improperly handled or disposed of. Many patients, caregivers and even health care providers may not recognize these drugs or be aware of their hazardous nature. The board supports voluntary efforts by pharmacies and clinics to improve awareness and education about oral chemotherapy medications. In addition, the board encourages pharmacists to provide specific counseling to patients and their caregivers on proper handling and disposal of OC medications.

To help patients, caregivers and health care providers recognize these medications as hazardous, the board encourages pharmacies to affix a standardized “hazardous drug” symbol to prescription labels when appropriate. The addition of the symbol would serve as an important reminder to patients and caregivers about the proper handling and disposal of the drugs.

The following represents an appropriate warning symbol:



Policy: Medication Assisted Treatment (MAT)

Adopted January 30, 2109

California law declares pharmacists health care providers who have authority and ability to provide health care services. Today pharmacists have six to eight years of collegiate education with focused experience in performing medication management. Increasingly this also includes additional residency experience.

Under California law for a number of years and in conjunction with collaborative practice agreements with prescribers, pharmacists have the ability to:

1. Design treatment plans
2. Initiate adjust and discontinue medications
3. Monitor patient progress
4. Order and review necessary laboratory tests
5. Coordinate care with other medical providers
6. Serve as expert consultants to support prescribers in making medication decisions for patients.

This skill set serves a dual purpose of positioning pharmacists so they may provide direct care to patients with opioid addiction and assist other medical providers in caring for this population, thereby expanding access to treatment. In recognition of these factors, the California State Board of Pharmacy advocates for changes in the law that will permit pharmacists to provide medication assisted treatment as part of a collaborative health care team.

Chapter 6

ENFORCEMENT OVERVIEW

Enforcement Options and Sanctions

Enforcement activities are essential for the board to meet its consumer protection mandate. The enforcement program uses a combination of education, communication and enforcement sanctions to achieve compliance with federal and state pharmacy laws. Where voluntary compliance and education are not enough, the board inspects, mediates, admonishes, cites and fines and pursues formal disciplinary action.

When the board receives a complaint or uncovers a potential violation of the law through its own efforts, the matter is investigated by staff. Investigations in the field are carried out by the board's inspectors, a statewide-dispersed group of pharmacists who are employees of the board.

During a routine inspection or investigation (which is conducted by a board pharmacist-inspector), if it is believed that a violation of pharmacy law took place, the licensee may be advised of the alleged violation by an "Order of Correction," a written document directing the licensee to comply with pharmacy law within 30 days by submitting a corrective action plan to the inspector. This process simply notifies the licensee of the violations of law that the inspector believes have occurred. This notification may not be the board's final or formal determination regarding the matter depending on the seriousness of the alleged violations. A correction order is not a citation nor is it a disciplinary action.

At this time, the licensee is provided an opportunity to provide a written response to the alleged violation. In the written response, the licensee may address the specifics of the violation, as well as provide any mitigation information that the licensee wishes to have included in any investigation report and/or a corrective action plan.

If the "Order of Correction" is for minor violations, and the inspector is satisfied with the pharmacy's compliance, the "Order of Correction" may be the only action taken. If this is the case and the pharmacy doesn't contest the order, then the licensee must maintain in the pharmacy premises a copy of the order of correction and corrective action plan for at least three years from the date the order was issued.

After the inspection or investigation is completed and the inspector makes a determination that the law has been violated, the case is referred to a supervising inspector for review. If the supervising inspector determines that there was no violation or that the violation was so minor that the only action to take would be the issuance of the "Order of Correction," then the case may be closed and the matter goes no further.

If, after review by the supervising inspector, it is determined that action may be

warranted, the case is referred for a second letter of review. This second level of review includes a review of the matter as well as a final determination of the appropriate course of action. In making this determination, the following factors may be taken in consideration:

- Gravity of the violation.
- Good or bad faith of the cited person or entity.
- History of previous violations.
- Evidence that the violations were or were not willful.
- Recognition by the licensee of his/her wrongdoing and demonstration of corrective action to prevent recurrence, e.g., new policies and procedures, protocol, hiring of additional staff, etc.
- Extent to which the cited person or entity has cooperated with the board's investigation and other law enforcement or regulatory agencies.
- Extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
- If the violation involves multiple licensees, the relative degree of culpability of each licensee is considered. In the case where a staff pharmacist may have failed to consult, the pharmacist-in-charge and the pharmacy may also be issued a citation and fine, if warranted by the circumstances.
- Any other relevant matters that may be appropriate to consider.

The type of potential actions include:

Further Investigation

It may be decided that there is insufficient evidence to determine if a violation occurred or if any action is warranted. The executive In such cases the matter may be sent back for further investigation.

Case Closure – No Further Action

It may be decided that no action is now warranted. This may occur when it is determined that there was no violation, that the violation was so minor as to not merit an action, or that the mitigating circumstances were such that it would be best not to pursue an action. The matter will then not be taken any further. (The final resolution would be the “Order of Correction.”)

Letter of Admonishment

The decision may be made to issue a letter of admonishment. This may occur when it is determined that there was a minor violation, or a violation that mitigating circumstances were such that a letter of admonishment was appropriate. The licensee would be directed to come into compliance within 30 days by submitting a corrective action plan to the board documenting compliance, or the licensee can contest the letter of admonishment to the executive officer or designee for an office conference. If an office conference is not requested, compliance with the letter of admonishment does not constitute an admission of the violation noted in the letter of admonishment. The licensee must maintain in the licensed premises a copy of the letter of admonishment and corrective action plan for at least three years from the date the letter was issued. The letter of admonishment is considered a public record for purposes of disclosure.

Citation and Fine

The executive officer may issue a citation, with or without a fine. The citation will be issued to the licensee and will include a reference to the statute or regulation

violated. It will also include a description of the nature and facts of the violation, as well as a notice to the licensee of the appeal rights. It may or may not include an order of abatement either requesting documentation of the licensee's compliance, or directing the licensee to come into compliance and specifying how that must be done.

Disciplinary Action

The executive officer or designee may determine that the violation is substantial and warrants discipline of the license. The matter is then referred to the Attorney General's Office, where, if appropriate to do so, an accusation is prepared, which identifies the alleged violations of pharmacy law. Disciplinary penalties include interim suspension orders, license revocation, voluntary license surrender, suspension, letters of reproof and probation.

Appendix J contains an overview of board members' role in disciplinary actions created by the DCA legal office.

Mail Ballots

(Government Code Section 11500)

The board must approve any decision or stipulation before the formal discipline becomes final and the penalty can take effect. Proposed stipulations and decisions are securely sent to each board member for his or her vote. For stipulations, a cover memorandum from board staff and sometimes the board's attorney (a deputy attorney general) accompanies the mail ballot. A two-week deadline is generally given for the mail ballots for stipulations and proposed decisions to be completed and returned to the board's office.

After the deadline of 15 days and after seven votes from board members have been received, a decision has been reached. If majority of the votes are to adopt a decision, the signature pages are sent to the board president, who signs the written decision document.

If two no votes are cast before the deadline, the case is set aside and not processed (even if seven votes have been cast on the decision). Instead the case is scheduled for discussion during closed session at the next board meeting. Under board policy when a member wishes to hold a case, the reason for the hold should be provided on the mail ballot. This allows staff the opportunity to prepare the information being requested.

When a ballot is received after the deadline, the vote is retained in the file but is not counted.

A sample mail ballot is provided in Appendix K.

Holding Disciplinary Cases for Discussion at Board Meetings

(Board Policy)

When voting on mail ballots for proposed disciplinary decisions or stipulations, a board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot should be marked "hold for discussion."

For a case to be held for discussion before the board's vote on the matter (this discussion will occur in closed session), two board members must mark the mail ballot "hold for discussion."

If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

If the board member is comfortable voting on the matter, but wishes to discuss the policy behind the decision or case, the ballot should be marked "Policy Issue for Discussion. I have voted above. Issue: _____." The EO will respond directly to the member. If still unresolved or if the matter is to be referred to the board, the policy issue will be placed on the agenda for discussion at the next board meeting.

Appendix A

List of Board of Pharmacy Frequently Used Acronyms:**Associations:**

- CPhA: California Pharmacists Association- represents principally the independent community pharmacists.
- CSHP: California Association of Health-System Pharmacists- represents principally hospital pharmacists
- NABP: National Association of Boards of Pharmacy- represents state boards of pharmacy, who are members. They are also the creator of the national pharmacist licensure examination (NAPLEX-the North American Pharmacist Licensure Examination)
- CRA: California Retailers Association - represents chain store pharmacies
- NACDS: National Association of Chain Drug Stores- a national group, representing chain drug stores
- ACPE: Accreditation Council for Pharmacy Education-national group that accredits schools of pharmacy in the US (the CA Board does not do this).

State Agency Acronyms:

Below are some of the major ones the board uses

- Board/BOP: almost always when used in this form is the California State Board of Pharmacy (our official name)
- DCA: Department of Consumer Affairs - our parent agency
- Agency: State and Consumer Services Agency - essentially our grandparent agency
- DOJ: California Department of Justice
- AG's Office: The Attorney General's Office, which is a subdivision of the DOJ, and is the office that prosecutes the board's investigations under the Administrative Procedure Act.
- OAL: Office of Administrative Law- the state agency that approves board rulemakings (to adopt regulations)
- OAH: Office of Administrative Hearings-the agency that holds the board's administrative hearings where we seek to restrict or remove the license of a licensee.
- CIWMB: California Integrated Waste Management Board
- CDPH: California Department of Public Health
- CHCS: California Department of Health Care Services (home of MediCal)

Principal Code Section Acronyms:

- B&P Code: California Business and Professions Code
- H&S Code: California Health and Safety Code
- Regulation section: California Code of Regulations Section (these are regulations)
- CFR: Code of Federal Regulations

General:

- **Dangerous Drugs:** drugs that are available only upon prescription of a licensed prescriber
- **Controlled Substances:** dangerous drugs that are subject to abuse and that are most highly regulated. They are statutorily classified into schedules I-V. Schedule I drugs are illicit and with no medical use (LSD, marijuana) Schedule II drugs have high medical value, but high abuse and street value (oxycontin, morphine, cocaine). Schedule III drugs have high medical value, but lower potential for abuse (codeine, vicodin) Schedule IV drugs have medical value but lesser potential for abuse (benzodiazepines) Schedule V drugs have medical value but the lowest potential of the controlled drugs for abuse.
- **OTC (over-the-counter) drugs:** are available without prescription

Categories of Board Licensees:

- **RPh:** means "registered pharmacist"
- **PharmD:** standard degree used for education of a pharmacist (typically this is a 4- 6 year degree. If 4 year, this is usually post BA or BS degree work). The recipient uses the title "doctor." Prior to 2000 in the US some colleges had the standard degree as a BS. In California since the 1970s, schools of pharmacy in this state solely awarded the higher-level PharmD degree.
- **PIC:** pharmacist-in-charge: a pharmacist who is specially designated to oversee the operations of a pharmacy. The PIC must be reported to the board for each pharmacy, and the PIC's name is printed on the pharmacy's license.
- **Pharmacist Intern-** a license issued to someone in pharmacy school gaining the 1,500 hours of mandatory experience needed to take the licensure exam or to someone working in CA pharmacy gaining experience in this state needed to qualify to take the licensure exam. The license is issued for no longer than 6 years to a student, or 2 years to others (foreign pharmacy school graduates).
- **Pharmacist Technician** -license of a pharmacy assistant, who works under the direct supervision of a pharmacist doing non-judgmental duties.
- **Designated Representative:** the individuals who are specially licensed by the board to oversee the operations of drug wholesalers or veterinary food animal drug retailers.
- **DRIC: Designated Representative-In-Charge:** the designated representative who is in charge of the operation of a drug wholesaler or veterinary food animal drug retailer
- **Wholesaler:** a licensed company in CA who ships and stores dangerous drugs, or if a Nonresident Wholesaler, a licensed company outside CA who ships dangerous drugs into CA
- **Veterinary Food Animal Drug Retailer (Vet retailers):** a specialty wholesaler who can label drugs for use on food animals or food-producing animals.

- Pharmacies: the entities that retail and dispense drugs to patients
- Clinics: medical care centers that may have a board-issued clinic license that allows these facilities to have one drug stock for all practitioners working in the clinic.
- Licensed correctional facility: a prison or correctional facility pharmacy
- Hypodermic Needle and Syringe Permit: allows a feed store to sell hypodermic needles and syringes for animal use.
- Exempt Hospital pharmacy: also known as a drug room, a dispensary in a hospital of less than 100 beds, where drugs are stored and dispensed from, but does not have pharmacist present to dispense medicines.

Staff Acronyms:

- EO: Executive Officer
- AEO: Assistant Executive Officer
- Director: Normally, the Director of the Department of Consumer Affairs
- Inspector: Board of Pharmacy investigator who is also a licensed pharmacist
- Analyst: a board employee who performs analytical work
- Technician: a board employee who performs technical or clerical duties
- President: Board member who is elected president by the board.
- Vice President: Board member who is elected vice president by the board
- Treasurer: Board member who is elected treasurer by the board. This individual is responsible for a board member contributed fund. The individual does not oversee board revenue collection.
- AG Liaison: an attorney with the AG's Office who coordinates prosecution issues on board cases with diverse attorneys at the AG's office and who advises the board about enforcement matters.
- Board Counsel: an attorney with the DCA who assists the board with disciplinary decisions under deliberation and with open meeting act issues.

Appendix B



BUSINESS CONSUMER SERVICES AND HOUSING AGENCY • GERMEN OF EDWARD G. BROWN JR.

LEGAL AFFAIRS DIVISION
 1625 N. Market Blvd., Suite S 309, Sacramento, CA 95834
 P (916) 574-8220 F (916) 574-8623 | www.dca.ca.gov



MEMORANDUM

DATE: January 5, 2015

TO: Executive Officers
 Executive Directors
 Registrars
 Bureau Chiefs
 Interested Parties

FROM:

Doreatha Johnson
DOREATHEA JOHNSON
 Deputy Director
 Legal Affairs

Subject: Public Meetings (Bagley-Keene Open Meeting Act)

The attached guide includes all statutory amendments through January 1, 2015. Please disregard all of our previous memoranda on the subject, and our Guide to the Bagley-Keene Open Meeting Act, issued January 15, 2014.

There are three changes for 2015:

1. For all action items at board meetings and meetings of committees of three or more, the law now requires boards to record the vote or abstention of each member present for that action item. This means the board's minutes must include each board member's name under the appropriate vote category (i.e., yes, no, abstention).
2. An agency is authorized to provide notice of board/committee meetings by regular mail, email or both. However, a person requesting notice has the option of choosing by which of the three methods above the person wishes to receive notice and the agency must comply with the option selected by the requester.
3. If an agency plans to web cast a meeting, then the notice of meeting must include a statement of the intent to web cast the meeting.

The last two items are required by Business and Professions Code section 101.7, which we have included behind the Open Meeting Act law attached to this memo.

We hope you find this document helpful in answering questions you may have about the requirements of the Open Meeting Act. If you have any suggestions for ways to improve the guide in the future, please let us know.

GUIDE TO THE
BAGLEY-KEENE OPEN MEETING ACT
(Includes Amendments through January 1, 2015)

Prepared by:

DIVISION OF LEGAL AFFAIRS
Department of Consumer Affairs
1625 N. Market Blvd., Suite S 309
Sacramento, CA 95834
(916) 574-8220

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GUIDE TO THE BAGLEY-KEENE OPEN MEETING ACT (Includes Amendments through January 1, 2015)

This guide is an update on the provisions of the public meetings law governing state agencies, officially called the Bagley-Keene Open Meeting Act. (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The Open Meeting Act closely parallels the Ralph M. Brown Act, which governs meetings of local government agencies. This guide includes all statutory changes through January 1, 2015. Please disregard all earlier memoranda and the previous Guide to the Bagley-Keene Open Meeting Act (distributed January 15, 2014) on this subject.

All statutory references are to the Government Code.

I. PUBLIC POLICY TO CONDUCT PEOPLE'S BUSINESS OPENLY

Section 11120 sets forth the purpose of the law:

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act."

Each board has essentially three duties under the Open Meeting Act. First, to give adequate notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized. We use the terms "agency" and "board" to mean not only boards, but also commissions and any examining committees or boards within the jurisdiction of the Medical Board of California.

II. BOARD, COMMITTEE, SUBCOMMITTEE, TASK FORCE MEETINGS

A. Definition of a “Meeting”

“Meeting” is defined in the Act as including “any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” (§11122.5(a)) The law now prohibits use by a majority of the members of a state body of direct communications or a series of communications of any kind, directly or through personal intermediaries, or technological devices (such as e-mails) to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (§11122.5(b))

B. Exemptions from Definition of Meeting

The law recognizes that not all gatherings of a majority of members of a state body at a single location constitute a meeting. Current law provides that the provisions of the Act do not apply to the following situations, **provided that** “a majority of the members do not discuss among themselves, other than as part of a scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.” (§11122.5(c))

- Individual contacts or conversations between a member of a state body and any other person. (§11122.5(c)(1))
- Attendance by a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. (§11122.5(c)(2))
- Attendance by a majority of members at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body. (§11122.5(c)(3))
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency. (§11122.5(c)(4))
- Attendance by a majority of members at a purely social or ceremonial occasion. (§11122.5(c)(5))
- Attendance by a majority of members at an open and noticed meeting of a standing committee of that body, provided the members of the body who are not members of the committee attend only as observers. (§11122.5(c)(6))

The law does not, however, prevent an employee or official from engaging in separate communications outside of a noticed meeting with members of the legislature to answer questions or provide information about a matter within the agency’s subject

matter jurisdiction – with the limitation that the person cannot communicate the comments or position of any other member.

C. Board and Committee Meetings

There are two basic types of meetings held by agencies in the Department of Consumer Affairs. The first type is a board meeting, where a quorum of the members of the board is present. The second type is a committee meeting consisting of less than a quorum of the members of the full board. Subcommittee and task force meetings are variations of committee meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. Committee and subcommittee meetings, where less than a quorum of the board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons and does not exercise any authority of a state body delegated to it by that state body. (NOTE – it is the number of persons on the committee [not the number of board members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the board should not attend the meeting, as such attendance would clearly be perceived as an Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

[Restriction on Attendance at Committee Meetings] The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the board, provided the members of the board who are not members of the committee attend only as observers. (§11122.5(c)(6)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a committee meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body 'as observers.'" The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of section 11122.5(c)(6), and the opinion of the California Attorney General, if a majority of members of the full board are present at a committee meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The board members who are not committee members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a board schedules its committee meetings seriatim, and other board members are typically present to ultimately be available for their own committee meeting, your notice of the committee meeting should contain a statement to the effect that "Members

of the board who are not members of this committee may be attending the meeting only as observers.”

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of “state body in Section 11121(c).”

III. TYPES OF MEETINGS; PURPOSE; NOTICE; OTHER REQUIREMENTS

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a “special” meeting, or an “emergency” meeting under the provisions of section 11125.5. This section of the memorandum addresses who can hold certain types of meetings, the purposes for which the meetings can be held, notice requirements, and any other special requirements or prohibitions.

A. Regularly Scheduled Meetings

1. Who May Hold a Regularly Scheduled Meeting

A board, committee, subcommittee, or task force may hold a regularly scheduled meeting. These are the business meetings that are scheduled throughout the year to conduct the usual and customary business of the board. Such meetings may generally be called by the chairperson, or by a majority of the body. However, you must refer to your particular licensing act, which may contain different provisions as to who may call a meeting.

2. Purposes for Which the Meeting May be Held

These meetings are to conduct the usual and customary business of the board, or the business of a committee, subcommittee or task force as directed by the board. The subject matter of the meetings is essentially dictated by the jurisdiction of the board as found in the board’s licensing act. There are no statutory restrictions in the Open Meeting Act on the purposes for which a regularly scheduled meeting may be held.

3. Notice Requirements for a Regularly Scheduled Meeting

a. Board Meetings

An agency is required to give at least 10 calendar days written notice of each board meeting to be held. (§11125(a).) Effective January 1, 2015, an agency is authorized to provide that notice by regular mail, email or both. However, that same section requires an agency to give a person requesting notice the option of receiving the notice by regular mail, email or both and the agency must comply with that requester's choice for receiving notice of meetings. (Business and Professions Code section 101.7.) The notice must include the name, address, and telephone number of a person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. The notice must also be posted on the Internet at least 10 calendar days before the meeting. In addition, if a meeting is to web cast, the meeting notice shall include a statement of the board's intent to web cast the meeting.

In addition to the website posting, effective January 1, 2003, the notice is required to be made available in appropriate alternate formats upon request by any person with a disability.

The notice of each board meeting must include an agenda that is prepared for the meeting. The agenda must include all items of business to be transacted or discussed at the meeting. " ... A brief general description of an item generally need not exceed 20 words. ... No item shall be added to the agenda subsequent to the provision of this notice." (§11125(b)) This provision does not, however, preclude amending an agenda provided the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. Effective January 1, 2003, the notice must include information that would enable a person with a disability to know how, to whom, and by when a request may be made for any disability-related modification or accommodation, including auxiliary aids or services. (§11125(f)) We suggest the following as standard language:

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting _____ at (916) _____ or sending a written request to that person at the Board [Address], Sacramento, California, [zip code]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The definition of "action taken" in Section 11122 is of some aid in determining what the Legislature intended by use of the words "items of business to be transacted."

"11122. As used in this article 'action taken' means a collective decision made by the members of a state body, a collective commitment or

promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action."

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Miscellaneous," etc., without specifying the particular matters thereunder, cannot be used to circumvent this requirement. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances.

* * *

"We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops.Cal.Atty.Gen. 85, 87)

Items not included on the agenda may not be discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a))

We also strongly encourage boards to include an item on their agenda for "Agenda Items for Future Meetings." This allows all board members an opportunity to request specific agenda items for a meeting. Again, these items should be discussed only to the extent necessary to determine whether they should be included as agenda items for a future meeting.

[CAVEAT: If the regularly scheduled meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

The notice and the agenda must be provided to any person who requests it. A member of the public may request notice for a specific meeting, for all meetings at which a particular subject will be discussed or action taken thereon, or for all meetings

of the agency. Mailing lists of persons who desire to be notified of more than one meeting must be maintained pursuant to Section 14911, which provides:

"14911. Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate postcard or letter to each person on the mailing list. The name of any person who does not respond to such letter or postcard, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The response of those desiring to be on the mailing list shall be retained by these agencies for one year."

Effective 1/1/98, a sentence was added to subdivision (c) of Section 11125.1 to state that "Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication." (Stats. 1997, Chapt. 949; SB 95) The Legal Office interprets this provision to supersede any provisions in particular practice acts which require newspaper publication of board or committee meetings. Boards and committees, of course, retain the discretion to publish notices in newspapers if they so chose.

b. Committee, Subcommittee or Task Force Meetings

Each agency is required to give notice of committee, subcommittee or task force ("committee") meetings to be held. However, this requirement does not apply if the committee consists of less than three persons. It is the number of persons on the committee that is determinative, not how many of the persons are board members. Thus, if a committee consisted of two board members and two other interested persons, its meetings would have to meet all the requirements of the Open Meeting Act.

Notice of committee meetings must be provided and posted on the Internet at least 10 calendar days in advance of the meeting. (§11125(a)) The notice "shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice." (§11125(c)) The notice must also include the Website address where the notice can be accessed on the Internet. In addition, if a meeting is to web cast, the meeting notice shall include a statement of the board's intent to web cast the meeting.

Although the law does not so specify, we would suggest also including in the notice the name, address, and telephone number of a contact person who can provide further information prior to the meeting. As with board meetings, there is no requirement that the notice be published in any newspaper or other periodical. However, the notice must be provided to any person or persons who have requested to be notified of the particular committee's meetings. Effective January 1, 2015, an agency is authorized to provide that notice by regular mail, email or both. However, that same section requires an agency to give a person requesting notice the option of

receiving the notice by regular mail, email or both and the agency must comply with that requester's choice for receiving notice of meetings. (Business and Professions Code section 101.7.) You may elect to send such notice to those persons on your regular mailing list.

Remember you must post your notice on the Internet at least 10 calendar days in advance of the meeting and must make the notice available in appropriate alternate formats upon request by any person with a disability.

Provision is made for certain non-emergency, but sometimes necessary, committee meetings. Where, during the course of a regularly scheduled and properly noticed board meeting, the board desires that a committee presently discuss an item of business on the agenda, the committee may do so provided (a) the specific time and place of the committee meeting is announced during the public meeting of the board, and (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board. (§11125(c))

4. Specific Requirements for Regularly-Scheduled Meetings

There are no specific requirements, other than those set forth above, for regularly scheduled board, committee, subcommittee or task force meetings.

5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting

There are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a regularly scheduled meeting.

We again remind you that, with respect to committee meetings, members of the board who are not members of the committee that is meeting may only attend the committee meeting as observers. This means these members may not sit on the dais with the committee, make any statements, or ask any questions during the committee meeting. (81 Ops.Cal.Atty.Gen. 156)

B. "Special" Meetings

SB 95 of 1997 created a new category of meeting, that being a "special" meeting.

1. Who May Hold a Special Meeting

A board, committee, subcommittee or task force may hold a special meeting.

2. Purposes for Which a Special Meeting May be Held

The only purposes for which a special meeting may be held are set forth in section 11125.4, and are drawn from the purposes for which an emergency meeting

could be held under the prior law. In essence, the Legislature recharacterized those purposes as constituting “special” circumstances rather than “emergency” circumstances. Section 11125.4 provides in part that:

“(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body.

A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider ‘pending litigation’ as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

* * *

Department of Consumer Affairs licensing boards would most likely hold a special meeting for the purposes set forth in subdivisions (1), (2), (3), (4), and (6).

3. Notice Requirements for a Special Meeting

A special meeting can be called at any time by the presiding officer or a majority of the members of the state body, provided the 10-day notice requirements of section 11125 “would impose a substantial hardship on the state body or where immediate action is required to protect the public interest.” (§11125.4(a)) The only purposes for which the meeting can be held are those set forth above.

The normal 10-day advance notice is not required for special meetings. However, notice of the special meeting is required to be provided to each member of the state agency and to persons who have requested notice of the agency's meetings as soon as practicable after the decision to hold the meeting is made. Notice to members, newspapers of general circulation, and radio or television stations must be received at least 48 hours in advance of the meeting. Notice to newspapers, radio and television stations is satisfied by providing notice to all national press wire services. Notices to the general public may be given via appropriate electronic bulletin boards or other appropriate mechanisms. (§11125.4(b)) The notice must also be posted on the Internet at least 48 hours in advance of the meeting.

The notice must specify the time and place of the special meeting and the business to be transacted. In essence, an agenda would be prepared. No business other than that noticed may be transacted. Notice is required even if no action is subsequently taken at the meeting. (§11125.4(b)) The notice must contain the Website address where the notice may be accessed on the Internet.

[CAVEAT: If the special meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

4. Specific Requirements During Special Meetings

At the commencement of a special meeting, the agency must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. The specific facts constituting the hardship or need for immediate action must be articulated. This finding must be adopted by a two-thirds (2/3) vote of the agency members present, or if less than two thirds of the members are present, by a unanimous vote of the members present. Failure to adopt the finding terminates the meeting. The agency's finding must be made available on the Internet. (§11125.4(c))

5. Specific Prohibitions on Holding a Special Meeting

As discussed above, a special meeting may only be held for the purposes set forth in section 11125.4(b). Other than the limitation on the purposes of the meeting, there are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a special meeting.

C. "Emergency" Meetings

1. Who May Hold an Emergency Meeting

A board, committee, subcommittee or task force may hold an emergency meeting.

2. Purposes for Which an Emergency Meeting May be Held

As noted above, S.B. 95 of 1997 recharacterized a number of “emergency” situations as “special” situations. This resulted in the narrowing of situations for which an emergency meeting may be held. Section 11125.5 provides an emergency meeting may be held only in the case of an “emergency situation,” defined as:

“(1) Work stoppage or other activity that severely impairs public health or safety, or both.

“(2) Crippling disaster that severely impairs public health or safety, or both.” (§11125.5(b))

3. Notice Requirements for an Emergency Meeting

An emergency meeting may be held without complying with the 10-day notice requirement in Section 11125 or the 48-hour notice requirement in Section 11125.4. However, newspapers of general circulation, television and radio stations that have requested notice of meetings shall be notified of the emergency by telephone at least one hour before the meeting. If telephone services are not functioning, notice is deemed waived. The notice must be posted on the Internet as soon as practicable after the decision to call an emergency meeting has been made. However, newspapers, television and radio must be notified as soon as possible after the meeting of the fact of the meeting, its purpose, and any action taken. (§11125.5(c))

4. Specific Requirements for an Emergency Meeting

The following are required to be posted in a public place and on the Internet for a minimum of 10 days, as soon as possible after the emergency meeting:

- * Minutes of the meeting
- * A list of persons notified, or attempted to be notified, of the meeting
- * Any action taken at the meeting
- * The rollcall vote on action taken (§11125.5(d))

5. Specific Prohibitions on Holding an Emergency Meeting

As discussed above, an emergency meeting may only be held for the purposes set forth in section 11125.5(b).

IV. CLOSED SESSIONS

A. Purposes for Which Closed Session Can be Held

"Closed" sessions were formerly called "executive" sessions. Since all references in the Open Meeting Act have been changed from "executive" session to "closed" session, throughout this memorandum we will refer to such sessions as "closed" sessions.

Section 11123 states that "All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article."

Section 11126 sets forth those specific items of business which may be transacted in closed session. Only those enumerated items of business may be conducted in closed session. An agency in the Department may convene a closed session pursuant to Section 11126 for the following purposes.

1. Personnel Matters

A board may meet in closed session to " . . . consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person unless the employee requests a public hearing." In order to consider such disciplinary action or dismissal the "employee shall be given written notice of his or her right to have a public hearing . . . which notice shall be delivered to the employee personally or by mail at least 24 hours before the meeting." (§11126(a)) If such a notice is not given any action taken during a closed session for the above reason is null and void. Once the public hearing has been held, the agency may convene into closed session to deliberate on the decision to be reached. (§11126(a)(4))

Prior to January 1, 1995, section 11126(a) did not apply to employees who were appointed to their positions, such as executive officers, executive directors, and registrars (referred to as "executive officer" for convenience). For example, any decision or deliberations made in the selection or dismissal of an executive officer previously had to be conducted in open session. (68 Ops.Cal.Atty.Gen. 34.) However, with the enactment of SB 1316 (Stats. 1994, Chapt. 845) and SB 95 (Stats. 1997, Chapt. 949), a board can now meet in closed session to consider the appointment, employment, evaluation of, or dismissal of its executive officer, unless the executive officer requests a public hearing. (§11126(a)(1), (2)) SB 1316 supersedes the conclusion reached in 68 Ops.Cal.Atty.Gen. 34. As noted above, once the public hearing has been held, the state body may convene in closed session to deliberate on the decision to be reached. (§11126(a)(4))

If the executive officer does not request a public hearing, he or she must be given the opportunity for a hearing in closed session. After the hearing, the executive

officer should be excused from the closed session, and the board may then continue in closed session to deliberate on the decision to be reached. (§11126(a)(4))

Section 11126(a) is not to be interpreted to mean that a board is required to handle civil service personnel matters itself. Normally, this function of an agency is administered by its executive officer in conjunction with the Director of Consumer Affairs, who shares authority with respect to civil service personnel.

2. Examination Matters

A board may meet in closed session to "prepare, approve, grade or administer examinations." (§11126(c)(1)) Essentially, this includes any discussion regarding the actual content of examinations, and their reliability and validity. If an agency is perusing examination samples in order to choose one over the others, this may be done in closed session. On the other hand, if an agency is discussing, for example, the general logistics of administering an examination, then this would not be proper subject matter for a closed session. A basic rule is that if a meeting concerns the grading, specific content, validity of an examination, or examination security, then it can and should be conducted in closed session.

Also, an agency may hear appeals from examinees or re-review examinations in closed session as this would be included in the "grading" of the examination.

3. Matters Affecting Individual Privacy

A committee, consisting of less than a quorum of the full board, may meet in closed session to:

" . . . discuss matters which the [committee] has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, . . . Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body." (§11126(c)(2))

Thus, review by a committee (or subcommittee of an examining committee) of an applicant's qualifications for licensure could properly be done in a closed session. Also, for example, an enforcement committee could convene in closed session to discuss an inquiry related to a particular licensee or licensees prior to any action being filed.

CAVEAT: This closed session provision does not authorize such a review by the full board. Nor does it generally authorize a committee of a board to review complaints, investigation reports, or other information to determine whether disciplinary or other action should be filed against a licensee.

To ensure that board members render an impartial and fair decision in considering an Administrative Law Judge's proposed decision, board members are precluded from involving themselves in the investigation or prosecution phase of an action. (§11430.10 *et seq.*) The board's role is that of judge in the case. If a particular board member has any significant involvement in the investigative or prosecution phases, he or she must disqualify himself/herself from participation in the board's action relative to the proposed decision, and not attempt to influence any other board member regarding the decision. Legal counsel should be consulted before any enforcement actions are discussed with individual licensees, as such discussions may impact participation by the member in a final decision on a case (§11430.60), and may require disclosures under the provisions of the state's Administrative Procedure Act. (§11430.50)

Even though these committee meetings may consist entirely of subject matter proper for closed session they are required to be noticed as discussed above.

4. Administrative Disciplinary Matters

A board may meet in closed session to deliberate on a decision in an administrative disciplinary proceeding under the Administrative Procedure Act. (§11400, *et seq.*; §11126(c)(3)) In the closed session, the board may decide whether to adopt a Proposed Decision, review a transcript of a hearing and render a decision of its own, deliberate upon evidence heard by the agency itself, or consider a stipulation.

This section does not authorize an agency to convene into closed session for the purpose of assigning cases, *i.e.* deciding whether a case should be heard by a hearing officer alone or by the agency itself with a hearing officer. This section does not authorize an agency to convene into closed session to review investigation files or complaints. Members of boards that have the discretion to hear cases should not review pending complaints or investigation files for the reasons given above.

5. Board of Accountancy Matters

The enforcement advisory committee established by the State Board of Accountancy pursuant to Business and Professions Code Section 5020 may convene in a closed session to "consider disciplinary action against an individual accountant prior to the filing of an accusation." (§11126(f)(3)) And the qualifications examining committee established by that board pursuant to Business and Professions Code Section 5023 may convene in closed session to "interview an individual applicant or accountant regarding the applicant's qualifications."

As noted above, such administrative and examining committee meetings are required to be noticed as previously discussed in this memorandum.

6. Pending Litigation

A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(§11126(e)(1)) Again, please note the very specific notice requirements discussed below when a closed session is to be held to discuss "pending litigation". Litigation means an adjudicatory proceeding before a court, administrative body, hearing officer or arbitrator. Litigation is considered to be pending if, (1) it has been initiated formally (e.g. a complaint, claim or petition has been filed) or (2) based on existing facts and circumstances and on the advice of its legal counsel, the state body believes there is significant exposure to litigation against it, or it is meeting to decide whether a closed session is authorized because of significant exposure to litigation or (3) based on existing facts and circumstances, the state body has decided or is deciding whether to initiate litigation. (§11126(e)(2))

The agency's legal counsel must submit a memorandum which complies with the requirements of Section 11126(e)(2)(C)(ii) prior to the closed session if possible, but no later than one week after the closed session. This document is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

7. Response to Confidential Final Draft Audit Report

Section 11126.2 (added effective January 1, 2005) permits an agency to meet in closed session to discuss its response to a confidential final draft audit report from the Bureau of State Audits. However, once that audit report becomes final and is released to the public, the agency may only discuss it in open session.

8. Threat of Criminal or Terrorist Activity

Effective January 1, 2006, AB 277 (Chap. 288, Stats. 2005) authorizes an agency at a regular or special meeting to meet in closed session to consider "matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body," where disclosure of those considerations could compromise or impede the safety or security of the described subjects. The law (Section 11126(c)(18)) requires the agency to authorize the closed session by a two-thirds vote of the members present at the meeting.

9. Advisory Bodies/Committees May Meet in Closed Session

To the extent a licensing board, which is defined as a "state body" in the Open Meeting Act, is authorized to meet in closed session, then committees, subcommittees, or other bodies advisory to the licensing board, which are also defined as "state bodies," may meet in closed session for the same purposes as the licensing board. (§11126(f), (4)-(6))

10. Open Session Otherwise Required

Any other business transacted by an agency must be in open session. Only for the above-mentioned reasons may a board within the Department of Consumer Affairs meet in closed session. (§11132) A board may not meet in closed session for the purpose of electing officers or to discuss the proposal or adoption of rules and regulations. Further, a board may not convene in closed session to discuss testimony received during a hearing on proposed rules and regulations. Finally, an agency may not meet in closed session because it wants to have a frank and open discussion among only members on a matter of controversy. In order for an agency to meet in closed session, the closed session must be specifically authorized by statute.

B. Notice and Reporting Requirements for Closed Sessions

1. Notice of Closed Session

When a closed session will constitute part or all of a meeting, it is important to note Government Code Section 11126.3, which requires that:

"(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. [A provision applicable to the Public Utilities Commission is not included herein.] If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126 [litigation has already commenced], the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage."

Thus, if the meeting will consist in part or in its entirety of a closed session, you must include on the notice of the meeting the above-described information. Pay particular attention to these very specific requirements if the closed session is to discuss pending litigation. Please note that to obtain legal advice in closed session concerning pending litigation, the notice must cite subdivision (e) of Section 11126 and your attorney must prepare a memorandum stating the specific reasons and legal authority for the closed session. Subdivisions of Government Code Section 11126, discussed under "Closed Sessions" above, will generally be the statutory authority cited.

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the state agency may discuss the new matter in closed session provided that postponement of the discussion would prevent the state agency from complying with any statutory, court-

ordered, or other legally-imposed deadline. The state agency must publicly announce the title of, or otherwise identify, the litigation unless to do so would jeopardize the ability to effectuate service of process, or to do so would jeopardize the agency's ability to conclude existing settlement negotiations to its advantage. (§11126.3(d))

If you intend to have a closed session during your meeting, you should first contact your Legal Division attorney to ensure that a closed session is authorized and properly noticed.

2. Reporting After a Closed Session

Section 11126.3(f), requires a state body to convene in open session after a closed session and to report as required in Section 11125.2, which states that:

“Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.”

C. Other Procedural Requirements for Closed Sessions

There are certain additional requirements that must be met when closed sessions are to be held.

1. All closed sessions must be held during a regular or special meeting (§11128); they may not be scheduled independently of a noticed meeting of the board or committee. Where, for example, a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting should be opened as a public meeting with an announcement immediately following that the agency will convene into closed session.

2. As discussed under "Notice Required," above, prior to holding the closed session the agency must announce the general reason(s) for the closed session and the specific statutory or other legal authority under which the session is held. (§11126.3(a)) With respect to litigation that has already been initiated, it must announce the title of or otherwise identify the litigation. (§11126.3(a)) Other specific notice requirements, discussed above, also apply to notices regarding pending litigation. In the closed session, only matters covered in the statement may be discussed. (§11126.3(b))

3. The agency is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. (§11126.1)

4. The minute book referenced in (3) is available only to members of the agency, or if a violation of the Open Meeting Act is alleged, to a court of general jurisdiction. (§11126.1)

5. Information received and discussions held in closed session are **confidential** and must not be disclosed to outside parties by members or staff who attended the closed session. A recent opinion of the Office of the California Attorney General concluded that:

“A local school board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed.” (80 Ops.Cal.Atty.Gen. 231)

That opinion also cited a previous opinion, in which the Attorney General stated that “We have ... routinely observed that it would be *improper* for information received during a closed session to be publicly disclosed.” (76 Ops.Cal.Atty.Gen. 289, 290-291; Emphasis in the original.)

V. MEETING BY TELECONFERENCING

Prior to January 1, 1995, the Bagley-Keene Open Meeting Act contained no provision for conducting meetings where the participating members were not physically present in one location.

Effective 1/1/95, subdivision (b) was added to Government Code section 11123 to authorize meetings by teleconference. (Stats. 1994, Chapt. 1153; AB 3467) That subdivision has been amended several times, most recently by AB 192 of 2001, and it currently provides:

"(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

"(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects

the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, 'teleconference' means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video."

A method is thus available whereby meetings may be conducted by audio or video teleconferencing provided the criteria set forth in the statute have been met. Note the restriction in subdivision (b)(1)(E) that prohibits a closed session emergency meeting. Emergency meetings in open session may be conducted by teleconference.

We emphasize that the law now requires every teleconference meeting location to be identified in the notice and agenda and to be open to the public. Most importantly, the members of the agency must attend the meeting at a public location. Members are no longer able to attend the meeting via teleconference from their offices, homes, or other convenient location unless those locations are identified in the notice and agenda, and the public is permitted to attend at those locations. Nothing prohibits additional locations, where only the public is connected to the teleconference meeting. (§11123(b)(2))

VI. DELIBERATIONS AND VOTING

Keep in mind the Open Meeting Act declaration of legislative intent that actions of state agencies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Open Meeting Act which address deliberations and voting.

A. Seriatim Calls to Individual Agency Members Prohibited

Except as authorized by the above-discussed teleconferencing statutes, telephone conference calls may not be used to avoid the requirements of the Open Meeting Act. A conference call including members of a board, committee, subcommittee or task force sufficient to constitute a majority of that state body is prohibited, except pursuant to an authorized teleconference meeting.

In a case involving the Ralph M. Brown Act, the court concluded that a series of one-to-one telephone calls between members of a local body, where the purpose of the calls was to obtain a collective commitment on an issue, constituted a violation of the Act. (*Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95) The Brown Act is the local agency counterpart to the Bagley-Keene Open Meeting Act, and decisions rendered on its provisions are frequently followed in Open Meeting Act cases.

Citing the *Stockton Newspapers, Inc.* case, the court in *Sutter Bay Associates v. County of Sutter* held that to prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of the legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. ((1997) 58 Cal.App.4th 860, 877, 68 Cal.Rptr.2d 492, 502)

Effective January 1, 2010, the Act now specifically prohibits serial communications between a majority of members “to discuss, deliberate, or take action on any item of business that is within the subject matter of the state agency.” (Emphasis added.)

B. E-Mail Prohibition

AB 192 of 2001 added subdivision (b) to section 11122.5 to provide:

"Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited."

The enactment of subdivision (b) of section 11122.5, expands upon and confirms a recent opinion of the Attorney General prohibiting the use of e-mail to reach a collective decision outside a regularly scheduled meeting. In 84 Ops.Cal.Atty.Gen. 30, the Attorney General concluded that:

"A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency,

the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board."

As noted above, interpretations of the Brown Act, which governs local public agencies, are often cited as authority in interpreting similar provisions of the Bagley-Keene Open Meeting Act.

Members of a board must refrain from calling or otherwise contacting other members on a one-to-one basis, or conducting serial meetings, in order to discuss, deliberate, or take action outside the meeting on a matter within the subject matter of the board.

C. Secret Ballot Prohibited

An agency may not vote by secret ballot in a public meeting nor vote in closed session on any matter where discussion, deliberations, or action taken is required to be in an open meeting. (68 Ops.Cal.Atty.Gen. 65, 69)

For example, the election of board officers may not be conducted by secret ballot or in closed session.

D. Voting by Proxy Prohibited

Voting by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65, 70)

E. Use of Electronic Devices During Meeting

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. Using electronic devices to communicate secretly on such a matter would violate the law. Where laptops are used by board members at the meeting because the board provides board materials electronically, the board president should make an announcement at the beginning of the meeting as to the reason for the laptops. We suggest the following (or something similar):

"You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials which are in electronic format."

F. Voting by Mail on Administrative Disciplinary Matters

As a general rule, all voting on items of business to be transacted must be done at a public meeting. However, the Administrative Procedure Act authorizes mail voting on all questions arising under that act. (Govt. Code §11526.) Thus, board members may vote by mail on proposed decisions, stipulated decisions, and other matters in connection with a formal disciplinary case. No other votes may be cast by mail. (68 Ops.Cal.Atty.Gen. 65, 69)

G. Recording and Reporting Votes

Beginning January 1, 2015, for each item on which a vote is taken, the minutes must contain a record of how each member present voted on that action item. (For example, Yes – Members A, B, & C; No – Members D & E; Abstain – Member F.)

VII. MISCELLANEOUS PROVISIONS

There are several provisions governing public meetings which do not fit under any of the above headings, but of which you should be aware.

A. Conforming Board Member's Conduct

Any person who has been appointed as a member of a state body, who has not yet assumed the duties of the office, must conform his or her conduct to the provisions of the Open Meeting Act. (§11125.95)

B. Providing Open Meeting Act to New Board Members

A copy of the Bagley-Keene Open Meeting Act must be provided to each agency member upon his or her appointment to office. Each agency should insure that a copy is given to each new member. (§11121.9.)

C. Prohibition on Placing Conditions on Public's Attendance**1. Sign-in**

No person can be required to register or sign-in or fulfill any other condition in order to attend a public meeting of an agency. While a person who wishes to make public comment may be asked to identify himself or herself for the board's record or minutes, a commenter cannot be compelled to do so or prevented from speaking because the commenter refuses to identify himself or herself.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, "it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document." (§11124)

2. Discrimination in Admittance to Meeting Facility

A meeting may not be held in any facility that prohibits the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry, or sex. (§11131)

3. Access for the Disabled

All meetings must be accessible to the disabled. (§11131)

4. Charging a Fee or Requiring a Purchase for Access

The Open Meeting Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

D. Agency Recording of the Proceedings

A tape or film record of an open and public meeting made by the agency must be made available for public inspection under the California Public Records Act, but may be erased or destroyed 30 days after the taping or recording. An inspection must be provided without charge on an audio or video tape player made available by the state agency. (§11124.1(b))

E. Public's Right to Record the Proceedings

Persons attending a public meeting have a right to record the proceedings with an audio or video tape recorder or still or motion picture camera, in the absence of a reasonable finding by the agency that the recording could not continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. (§11124.1(a))

F. Media Broadcast of the Proceedings

A state body may not prohibit or otherwise restrict the broadcast of a public meeting in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings. (§11124.1(c))

G. Webcasting

While webcasting is not required, if you plan to webcast your meeting, we encourage you to place the following statement on your agenda:

“While the board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.”

H. Taking Agenda Items Out of Order

Items listed on the agenda may be taken up out of order, provided the purpose of moving the agenda items is not to frustrate public or other input on the item. It is a good practice to note on either the top or the bottom of your agenda that “All times indicated and the order of business are approximate and subject to change,” to alert members of the public this is a possibility.

If your agency schedules a multiple day meeting and may move items scheduled for a subsequent day to an earlier day, you should provide notice of this possibility on your agenda. Suggested language is that “Items scheduled for a particular day may be moved to an earlier day to facilitate the board’s business.” Again, the purpose may not be to frustrate public or other input.

I. Opportunity for Public Comment at Meetings

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agenda item would be required at the full board meeting.
2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting an administrative regulation. (§11125.7(b))

The law specifically provides that a state agency may not prohibit public criticism of its policies, programs, or services, or of the acts or omissions of the agency. (§11125.7(c))

VIII. DISCLOSURE OF DOCUMENTS

A. Documents Distributed Prior to the Meeting

When writings which are public records are distributed to all, or a majority of all, of the members of a board or committee for discussion or consideration at a public meeting, the writings must be made available for public inspection. Generally, the records must be made available for inspection at the time of distribution to agency members. (§11125.1(a)) Records exempt from disclosure under Sections 6253.5, 6254 or 6254.7 of the Public Records Act need not be disclosed even though the subject matter of the records may be considered or discussed at the meeting. This includes records which are drafts, notes or memoranda which will not be retained by the

agency, attorney-client privileged communications, records of pending litigation and claims against the state, personnel, medical or similar files, complaint and investigation files, except for Accusations and Proposed Decisions, and any records or data relating to examinations.

B. Documents Distributed During the Meeting

When public records pertaining to an agenda item are prepared by the state body or a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the meeting. (§11125.1(b)) Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))

C. Charging a Fee for Public Documents

Under section 11126.7, an agency may not charge a fee for a notice, including the agenda, of a meeting, and may only charge those fees specifically authorized for public documents that are considered at the meeting

At its discretion, an agency may charge a fee to cover reproduction costs for providing the documents required to be made available, as discussed in paragraph (B), immediately above. If an agency charges a fee, it is limited to the direct costs of duplication authorized in Section 6257 for the reproduction of public records. (§11125.1(c))

Effective January 1, 2003, documents distributed prior to or during a meeting that are public records must be made available, upon request by a person with a disability, in appropriate alternative formats. No extra charge can be imposed for putting those documents into an alternative format.

IX. PENALTIES

Under previous law, any interested person could commence court action (mandamus, injunction, declaratory relief) to stop or prevent violations or threatened violations of the Open Meeting Act. SB 95, effective 1/1/98, added the Attorney General and the district attorney to the list of those who may commence such action. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff to be paid from the funds of the agency. (§11130.5)

SB 95 also expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek court action "to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United

States, ..." (§11130(a)) This appears to be a rather unique provision, and its implications are unknown at this time.

SB 95 further expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek a court action to compel a state agency to tape record its closed sessions. Upon a judgment of a violation of Section 11126, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), and (c))

Section 11130.3 authorizes a person to institute a court action to obtain a judicial determination that an action taken in violation of the notice provisions or the provisions governing closed sessions of the Act is null and void. Court costs and reasonable attorney's fees may also be awarded to a successful plaintiff under this section. This section reinforces the need for a specific, informative agenda as required by Section 11125.

These remedies extend to past actions of an agency. The statute of limitations for bringing an action is 90 days. (§§11130(c) and 11130.3(a)).

Section 11130.7 of the Act provides:

"Each member of a state body who attends a meeting of such body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor."
(Emphasis added.)

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11120. Public policy; legislative finding and declaration; citation of article

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 1284, p. 4333, § 4; Stats. 1981, c. 968, p. 3683, § 4.)

11121. State body defined

As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 515, § 1; Stats.1981, c. 968, p. 3683, § 5; Stats.1984, c. 193, § 38. Amended by Stats.1996, c. 1023 (S.B.1497), § 88, eff. Sept. 29, 1996; Stats.1996, c. 1064 (A.B.3351), § 783.1, operative July 1, 1997; Stats.2001, c. 243 (A.B.192), § 1; Amended

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Stats. 2003 ch 62 § 117 (SB 600)).

11121.1. State body; exclusions

As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to

Section 14380 of the Financial Code.

(Added by Stats.2001, c. 243 (A.B.192), § 2.
Amended by Stats. 2008, c. 344 (S.B. 1145), § 2, eff. Sept. 26, 2008.)

11121.2. Repealed by Stats. 2001, c. 243 (A.B.192), § 3

The repealed section, added by Stats.1981, c. 968, p. 3684, § 5.2, related to multimember body with authority from state body.

§ 11121.5. Repealed by Stats.1984, c. 1158, § 3

The repealed section, added by Stats.1994, c. 1179, § 1, amended by Stats.1981, c. 968, § 5.3; Stats.1983, c. 143, § 186, Stats.1983, c. 101, § 60, related to the treatment of state college and university student body organizations as state agencies.

11121.7. Repealed by Stats. 2001, c. 243 (A.B.192), § 4

The repealed section, added by Stats.1980, c. 1284, p. 4333, § 5, amended by Stats.1981, c. 968, p. 3685, § 6, related to representatives of the state body.

11121.8. Repealed by Stats. 2001, c. 243 (A.B.192), § 5

The repealed section, added by

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Stats.1981, c. 968, p. 3684, § 7, related to advisory bodies.

11121.9. Provision of copy of article to members of state body

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Added by Stats.1980, c. 1284, p. 4334, § 6.
Amended by Stats.1981, c. 714, p. 2659, § 175;
Stats.1981, c. 968, p. 3685, § 7.1.)

11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

(Added by Stats.1997, c. 949 (S.B.95), § 1.)

11122. Action taken

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a

positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 7.3.)

11122.5. Meeting defined; series of communications to discuss, deliberate, or take action prohibited; exceptions

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b)(1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the

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subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2)(A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a

person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

(Added by Stats.2001, c. 243 (A.B.192), § 6.
Amended by Stats.2009, c. 150 (A.B.1494), § 1.)

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11123. Meetings; attendance; teleconference option

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference

location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 7.5;

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Stats.1994, c. 1153 (A.B.3467), § 1; Stats.1997, c. 52 (A.B.1097), § 1; Stats.2001, c. 243 (A.B.192), § 7; Stats.2014, c. 510 (A.B.2720), § 1, eff. Jan. 1, 2015.)

11123.1. State body meetings to meet protections and prohibitions of the Americans with Disabilities Act

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(Added by Stats. 2002, c. 300 (A.B. 3035), § 1.)

11124. Conditions to attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting

regardless of whether a person signs, registers, or completes the document.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1981, c. 968, p. 3685, § 8.)

11124.1. Audio or video recording of proceedings; inspection of state's recording; broadcast restrictions

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the

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broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Added by Stats.1980, c. 1284, p. 4334, § 7.
Amended by Stats.1981, c. 968, p. 3685, § 9;
Stats.1997, c. 949 (S.B.95), § 2; Stats.2009, c.
88 (A.B.176), § 42.)

11125. Notice of meeting

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which

a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of

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1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request, by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1973, c. 1126, p. 2291, § 1; Stats.1975, c. 708, p. 1695, § 1; Stats.1979, c. 284, § 1, eff. July 24, 1979; Stats.1981, c. 968, p. 3685, § 10. Amended by Stats.1997, c. 949 (S.B.95), § 3; Stats.1999, c. 393 (A.B.1234), § 1; Stats.2001, c. 243 (A.B.192), § 8; Stats. 2002, c. 300 (A.B. 3035), § 2.)

11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; Franchise Tax Board; inspection; availability on the Internet; closed sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of

Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the American with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed to members of the state body by the Franchise Tax Board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who

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request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of

Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Added by Stats.1975, c. 959, p. 2238, § 4. Amended by Stats.1980, c. 1284, p. 4334, § 8; Stats.1981, c. 968, p. 3686, § 10.1. Amended by Stats.1997, c. 949 (S.B.95), § 4; Stats.2001, c. 670 (S.B.445), § 1; Stats. 2002, c. 300 (A.B. 3035), § 3.5.); Stats. 2005, c. 188 (A.B. 780), § 1.)

11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

(Added by Stats.1980, c. 1284, p. 4335, § 9. Amended by Stats.1981, c. 968, p. 3687, § 10.3.)

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11125.3. Action on items of business not appearing on agenda; notice

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or

television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

(Added by Stats.1994, c. 1153 (A.B.3467), § 2.
Amended by Stats.2001, c. 243 (A.B.192), § 9.)

11125.4. Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real

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property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required

by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The

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finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Added by Stats.1997, c. 949 (S.B.95), § 5.
Amended by Stats.1999, c. 393 (A.B.1234), § 2;
Stats.2004, c. 576 (A.B.1827), § 1.); Stats. 2007,
c. 92 (S.B. 519), § 1.)

11125.5. Emergency meetings

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested

notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

(Amended by Stats.1992, c. 1312 (A.B.2912), § 11, eff. Sept. 30, 1992; Stats.1997, c. 949 (S.B.95), § 6; Stats.1999, c. 393 (A.B.1234), § 3.)

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11125.6. Fish and Game Commission; emergency meetings; appeals of fishery closures or restrictions

(a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4

would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Added by Stats.1998, c. 1052 (A.B.1241), S 21.)

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11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c)(1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to closed sessions held pursuant to Section 11126.

(f) This section is not applicable to decisions regarding proceedings held

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pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(g) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims Board pursuant to Sections 13963 and 13963.1.

(h) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

(Added by Stats.1993, c. 1289 (S.B.367), § 2. Amended by Stats.1995, c. 938 (S.B.523), § 13, operative July 1, 1997; Stats.1997, c. 949 (S.B.95), § 7; Stats.2006, c. 538 (S.B.1852), § 248; Stats.2012, c. 551 (S.B.965), § 1.)

11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing

(a) Notwithstanding Section 11131.5, in any hearing that the State

California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

(Added by Stats.1997, c. 949 (S.B.95), § 9.; Stats. 2006, c. 538 (S.B. 1852, § 249.)

11125.9. Regional water quality control boards; compliance with notification guidelines

Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and

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telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

(Added by Stats.1997, c. 301 (A.B.116), § 1.)

§ 11126. Closed sessions.

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to

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Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing

with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed

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session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, “lease” includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential

tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the

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Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative

officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18)(A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

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(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body

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on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C)(i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or

arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual

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accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to

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the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4

(commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State

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Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1968, c. 1272, p. 2396, § 1; Stats.1970, c. 346, p. 741, § 5; Stats.1972, c. 431, p. 791, § 43; Stats.1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats.1974, c. 1254, p. 2713, § 1; Stats.1974, c. 1539, p. 3525, § 1; Stats.1975, c. 197, p. 570, § 1; Stats.1975, c. 959, p. 2238, § 5; Stats.1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats.1980, c. 1197, p. 4043, § 1; Stats.1980, c. 1284, p. 4338, § 11; Stats.1981, c. 180, p. 1096, § 1; Stats.1981, c. 968, p. 3688, § 12; Stats.1982, c. 454, p. 1842, § 40; Stats.1983, c. 143, § 187; Stats.1984, c. 678, § 1; Stats.1984, c. 1284, § 4; Stats.1985, c. 186, § 1; Stats.1985, c. 1091, § 1; Stats.1986, c. 575, § 1; Stats.1987, c. 1320, § 2; Stats.1988, c. 1448, § 29; Stats.1989, c. 177, § 2; Stats.1989, c. 882, § 2; Stats.1989, c. 1360, § 52; Stats.1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats.1991, c. 788 (A.B.1440), § 4; Stats.1992, c. 1050 (A.B.2987), § 17; Stats.1994, c. 26 (A.B.1807), § 230, eff. March 30, 1994; Stats.1994, c. 422 (A.B.2589), § 15.5, eff. Sept. 7, 1994; Stats.1994, c. 845 (S.B.1316), § 1; Stats.1995, c. 975 (A.B.265), § 3; Stats.1996, c. 1041 (A.B.3358), § 2; Stats.1997, c. 949 (S.B.95), § 8; Stats.1998, c. 210 (S.B.2008), § 1; Stats.1998, c. 972 (S.B.989), § 1; Stats.1999, c. 735 (S.B.366), § 9, eff. Oct. 10, 1999; Stats.2000, c. 1002 (S.B.1998), § 1; Stats.2000, c. 1055 (A.B.2889), § 30, eff. Sept. 30, 2000; Stats.2001, c. 21 (S.B.54), § 1, eff. June 25,

2001; Stats.2001, c. 243 (A.B.192), § 10; Stats.2002, c. 664 (A.B.3034), § 93.7; Stats.2002, c. 1113 (A.B.2072), § 1; Stats.2005, c. 288 (A.B.277), § 1; Stats.2007, c. 577 (A.B.1750), § 4, eff. Oct. 13, 2007; Stats.2008, c. 179 (S.B.1498), § 91; Stats.2008, c. 344 (S.B.1145), § 3, eff. Sept. 26, 2008; Stats.2010, c. 328 (S.B.1330), § 81; Stats.2010, c. 32 (A.B.1887), § 2, eff. June 29, 2010; Stats.2010, c. 618 (A.B.2791), § 124; Stats.2011, c. 357 (A.B.813), § 1; Stats.2013, c. 352 (A.B.1317), § 234, eff. Sept. 26, 2013, operative July 1, 2013.)

11126.1. Record of topics discussed and decisions made at closed sessions; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

(Added by Stats.1980, c. 1284, p. 4340, § 12. Amended by Stats.1981, c. 968, p. 3691, § 13.)

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11126.2. Closed session; response to confidential final draft audit report; public release of report

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats.2004, c. 576 (A.B.1827), § 2.)

11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of pending litigation; unnecessary disclosures; disclosures at open session following closed session

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the

proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

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(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required

to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

(Added by Stats.1980, c. 1284, p. 4341, § 13. Amended by Stats.1981, c. 968, p. 3692, § 14; Stats.1987, c. 1320, § 3. Amended by Stats.1997, c. 949 (S.B.95), § 10; Stats.1998, c. 210 (S.B.2008), § 2; Stats.2001, c. 243 (A.B.192), § 11.)

11126.4. Closed sessions of Gambling Control Commission; information prohibited from being disclosed by law or tribal-state gaming compact; limitations; public notice

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agenda item and shall not include discussion of any other information or matter.

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(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(Added by Stats.1970, c. 1610, p. 3385, § 1.
Amended by Stats.1981, c. 968, p. 3692, § 15.)

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(Added by Stats. 2005, c. 274 (S.B. 919), § 1.)

11126.5. Disorderly conduct of general public during meeting; clearing of room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

11126.7. Fees

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Added by Stats.1980, c. 1284, p. 4341, § 14.
Amended by Stats.1981, c. 968, p. 3692, § 16.)

11127. Application of article

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 17.)

11128. Time of closed session

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1980, c. 1284, p. 4341, § 15;
Stats.1981, c. 968, p. 3692, § 18.)

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11128.5. Adjournment; declaration; notice; hour for reconvened meeting

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

(Added by Stats.1997, c. 949 (S.B.95), § 11.)

11129. Continuance; posting notice

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 19.
Amended by Stats.1997, c. 949 (S.B.95), § 12.)

11130. Actions to prevent violations or determine applicability of article; validity of rules discouraging expression; audio recording of closed sessions; discovery procedures for recordings

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory

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relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in

a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the

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resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1969, c. 494, p. 1106, § 1; Stats.1981, c. 968, p. 3693, § 20; Stats.1997, c. 949 (S.B.95), § 13; Stats.1999, c. 393 (A.B.1234), § 4; Stats.2009, c. 88 (A.B.176), § 43.)

11130.3. Judicial determination action by state body in violation of §§ 11123 or 11125 null and void; action by interested person; grounds

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

(Amended by Stats.1999, c. 393 (A.B.1234), § 5.)

11130.5. Court costs and attorney fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the

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court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats.1975, c. 959, p. 2240, § 6.
Amended by Stats.1981, c. 968, p. 3693, § 21;
Stats.1985, c. 936, § 2.)

11130.7. Violations; misdemeanor

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

(Added by Stats.1980, c. 1284, p. 4341, § 16.
Amended by Stats.1981, c. 968, p. 3693, § 22.
Amended by Stats.1997, c. 949 (S.B. 95), § 14.)

11131. Use of facility allowing discrimination; state agency

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry, or any characteristic listed or defined in Section 11135 or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division,

bureau, board, council, commission, or other state agency.

(Added by Stats.1970, c. 383, p. 798, § 1.
Amended by Stats.1981, c. 968, p. 3693, § 23.
Amended by Stats.1997, c. 949 (S.B.95), § 15.;
Stats. 2007, c. 568 (A.B. 14), § 32.)

11131.5. Identity of victims or alleged victims of crimes, tortious sexual conduct, or child abuse; public disclosure

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats.1997, c. 949 (S.B.95), § 16.)

11132. Closed session by state body prohibited

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats.1987, c. 1320, § 4.)

CALIFORNIA BUSINESS AND PROFESSIONS CODE**§ 101.7. Number of board meetings each year; location; exemption; special meeting; notice**

(a) Notwithstanding any other provision of law, boards shall meet at least three times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its licensees.

(b) The director at his or her discretion may exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least three times in a calendar year.

(c) The director may call for a special meeting of the board when a board is not fulfilling its duties.

(d) An agency within the department that is required to provide a written notice pursuant to subdivision (a) of Section 11125 of the Government Code, may provide that notice by regular mail, email, or by both regular mail and email. An agency shall give a person who requests a notice the option of receiving the notice by regular mail, email, or by both regular mail and email. The agency shall comply with the requester's chosen form or forms of notice.

(e) An agency that plans to Web cast a meeting shall include in the meeting notice required pursuant to subdivision (a) of Section 11125 of the Government Code a statement of the board's intent to Web cast the meeting. An agency may Web cast a meeting even if the agency fails to include that statement of intent in the notice.

(Added by Stats.2007, c. 354 (S.B.1047), § 1. Amended by Stats.2014, c. 395 (S.B.1243), § 1, eff. Jan. 1, 2015.)

Appendix C

DEPARTMENT OF CONSUMER AFFAIRS TRAVEL GUIDE

Office of Administrative Services Accounts Payable Travel Unit



**January
2016**

Disclaimer

Bargaining Contracts, California Department of Human Resource (CalHR), Departmental Policy and the State Administrative Manual (SAM) sets forth the information contained in this Travel Guide. If any of the information within is in conflict with the most recent provisions set forth by the said mentioned above then those provisions will supersede this guide. Information provided in this guide is routinely updated by various control agencies. The traveler or user of this guide must always make sure they have the most current information. Click on the web links to view the most current information.

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CHAPTER 1

INTRODUCTION AND DEFINITIONS

Introduction

The purpose of this guide is to provide and define the basic travel reimbursement rules for employees who are required to travel on official State business, methods of travel that are available, and how to use them, in accordance with the State Bargaining Contracts, California Department of Human Resources (CalHR) Travel Rules for Represented Employees sections 599.615–599.638.1 of title 2 of the California Code of Regulations, and the *State Administrative Manual (SAM)* section 700. If any of the information herein is in conflict with the most recent provisions set forth by the bargaining contract or government code sections cited above, then those provisions will supersede this guide. In addition, information provided in this guide is routinely updated by various control agencies. The traveler or user of this guide must always make sure they have the most current information.

Note: The travel reimbursement program is subject to Internal Revenue Service (IRS) requirements. There are no flat reimbursement rates. All items claimed are to be for the actual amount of the expense, up to the maximum rates allowed for all State officers, employees, and agents of the State traveling on official State business.

Who can file a claim?

All Department of Consumer Affairs (DCA/Department) employees and any agent of the State (listed below) may request a travel advance and/or travel reimbursement using the appropriate Department forms and the CalATERS Global System. Certain restrictions may apply (see reference-related section for specific requirements).

Statutory Board Members are individuals appointed to serve on boards or commissions established by law. Members are appointed by the Governor, Legislature, or Department Head. Reimbursement for necessary travel expenses is based on the rates for nonrepresented employees.

Nonstatutory Board Members are individuals appointed to serve on boards, commissions, committees, or task forces that are created by agency secretaries, department directors, executive officers, or board members on an as-needed basis to fulfill the Department's mission. Reimbursement for necessary travel expenses is based on the rates for nonrepresented employees.

Proctors are intermittent hires through the State Personnel Board. Proctors administer written or physical agility exams for civil service classification. Reimbursement for necessary travel expenses is based on the rates for nonrepresented employees.

Volunteers are individuals who voluntarily perform services for the State without pay. The volunteer must sign an Oath of Allegiance, which is kept on file at the Department with the Volunteer Service Agreement. Volunteers will be reimbursed for necessary travel expenses at the rate negotiated for State employees performing comparable duties.

Terms

Short-Term Travel: Expenses incurred at least 50 miles (one-way) from headquarters and/or residence when applicable, and is less than 31 consecutive days.

Long-Term Travel: Travel that is in excess of 30 consecutive days becomes long-term travel. Specific reimbursement rates and reporting requirements apply; contact your Travel Liaison.

Per Diem Expenses: Meals, lodging, and all appropriate incidental expenses incurred may be claimed when conducting State business while on travel status.

Transportation Expenses: Various modes of transportation used while on official State business; for example, airfare, vehicle, taxi, and shuttle expenses.

Business Expenses: Charges necessary to the completion of official State business, such as business phone calls, emergency clothing, and emergency supplies. All purchases shall be justified, and if the total business expense is more than \$25, the claim must be approved by the DCA Accounting Administrator II.

Conference or Convention: A meeting with a formal agenda of persons to discuss or consult on specific work-related subjects with the purpose of exchanging views, providing lectures or dialogue, or providing or gaining skills and/or information for the good of the State. Requires an approved conference attendance request prior to attending and must be attached to the [Travel Expense Claim \(TEC\)](#).

Non-State Sponsored Conference: Planned, arranged, and funded by an outside entity.

Policies

State-Sponsored Conference: Planned, arranged, and funded by State agencies for the benefit of the State and/or outside parties for the purpose of conducting State business.

Official Established Headquarters: Shall be designated for each State officer and employee and defined as the place where the officer or employee spends the largest portion of their regular workdays or working time, or the place to which they return upon completion of special assignments. In some instances, however, it may be in the best interest of the Department to designate either an employee's residence address or an assigned geographic area as his/her headquarters. Home-as-headquarters and geographic area designations will be based upon a determination of "economic merit" for geographic and logistical circumstances where the State benefits from such a determination, either in increased efficiencies or reduced costs.

Signature Authority: The signature of the approving officer certifies that the traveler is authorized to travel, the expenses incurred were to conduct official State business, and that the items claimed are appropriate and keeping within the rules that govern State business travel. Typically, the approving officer would be the traveling employee's immediate supervisor.

The Deputy Director of Board Relations approves Board Presidents' [TECs](#). Once they have been reviewed and initialed by the Executive Officer, the Board President shall approve the Executive Officers' and the Board Members' travel claims. In the absence of the Board President, the Board Vice President shall approve the Executive Officers' and the Board Members' travel claims.

The Deputy Director of the Office of Administrative Services approves Bureau and Board Presidents', Bureau Chiefs', Division Chiefs', and Deputy Directors' travel advances, expense claims, conference requests, and authorized signature forms. Also approves for all exception-to-travel status for board and bureau and Travel Advance Requests for nonsalaried employees. In the absence of the Board President, the Board Vice President shall approve the Executive Officers' and the Board Members' travel claims.

In the extended absence of either the Deputy Director of Board Relations or the Deputy Director of the Office of Administrative Services, either can approve the above for boards and bureaus.

All approving officers must have a signature card on file with the Accounting Office before approving a claim.

Note: See DCA policy, form, and procedures posted on the [DCA Intranet](#) regarding authorized signatures.

CHAPTER 2 PER DIEM ALLOWANCES

Introduction

The State provides for reimbursement of actual and necessary out-of-pocket expenses while traveling on State business. When determining the appropriate amount of reimbursement allowed for meals, lodging, and incidentals, two criteria need to be considered: distance and time. Employees on travel status must be at least 50 miles from home/headquarters. The most direct route determines this distance.

For short-term travel status per diem (meals, lodging, and incidentals), several factors need to be considered, such as:

- The bargaining unit of the employee (represented or excluded).
- Geographical location of travel must be at least 50 miles (one-way) from where the trip begins at headquarters and/or home. Factors include: Which is the closest distance? Is travel during normal working hours or not? Is it a second worksite?
- The timeframe in which the trip started and stopped.
- The type and location of facilities used for lodging.

Lodging Rates

Short-term reimbursement rates for lodging expenses are as follows. Please review your Bargaining Unit Contract on [California Department of Human Resources \(CalHR\)](#) website for current rates.

Excluded/exempt employees and represented employees in Bargaining Units (BU) 1–21: Please review your existing Memorandum of Understanding (MOU) for current rates.

Lodging Reimbursement	Up to the Maximum Rate
Statewide (except for those listed below)	\$90 room rate plus taxes
Napa, Riverside, Sacramento Counties	\$95 room rate plus taxes
Los Angeles, Orange, Ventura Counties and Edwards Air Force Base	\$120 room rate plus taxes
Alameda, Monterey, San Diego, San Mateo, and Santa Clara Counties	\$125 room rate plus taxes
San Francisco County and City of Santa Monica	\$150 room rate plus tax

Lodging facilities include commercial hotels and motels, and residential property—short term rental, CalHR PML2015-039 Assembly Bill 229, 1/1/16–12/31/2018 (less than 30 days). All rates for reimbursement are limited to State-contracted lodging rates.

www.calhr.ca.gov/PML%20Library/2015039.pdf

Hotel Tax Waiver

The [Hotel/Motel Transient Occupancy Tax Waiver, Form 236 \(New 9-91\)](#), is available on the [DCA Intranet](#) Travel Home Page and should be used whenever possible. This form must be completed in advance and given to the hotel for its records. In most cases, employees must ask for the exemption at time of reservation. Some hotels will not honor the tax waiver.

Acceptable Receipts

Lodging receipt must indicate the establishment's name, address, and check-in/check-out dates and times, number of occupancy, room rate, taxes, and method of payment.

In the rare event where an employee chooses to use a third-party vendor (such as Priceline.com, Expedia.com, Travelocity.com, Hotels.com, etc.) to make travel arrangements, the following instructions must be strictly adhered to:

- Employees who request reimbursement for receipts from third-party vendors for lodging expenses related to a State-approved relocation or for lodging expenses incurred while traveling on State business, must provide a valid receipt from the third-party vendor and the commercial lodging establishment where the employee stayed.

Both receipts are required in order to properly substantiate a valid business expense.

Sharing a Room

When sharing a room with another State employee, each person can claim half the room rate or one employee can claim the entire amount and reference the other person in the comment section. Both employees should file their travel expense claims ([TECs](#)) at the same time and a copy of the other's claim should be attached to their own.

Meal Rates

There are no flat reimbursement rates. All items claimed are to be for the ACTUAL AMOUNT OF EXPENSE, up to the following maximum reimbursement amounts listed below. The employee (or agent of the State) shall not claim reimbursement for any meals provided by or included in the cost of the hotel stay, airfare, and conference or convention registration fee and/or provided by the terms stated in a State contract. Please review your Bargaining Unit Contract on [California Department of Human Resources \(CalHR\)](#) website for current rates.

Excluded/exempt employees and represented employees in Bargaining Units (BU) 1–21, please review your existing MOU for current rates (see following table).

Expense	Maximum Reimbursement	Expense	Maximum Reimbursement
Breakfast	\$7	Dinner	\$23
Lunch	\$11	Incidental	\$5

Less Than 24 Hours

The following table shows conditions under which a represented or nonrepresented employee may be reimbursed for meals while on travel status, if the trip is less than 24 hours:

Starts Trip on OR Before	Returns from Trip on OR After	Entitled To
6 a.m.	9 a.m.	Breakfast
4 p.m.	7 p.m.	Dinner

NOTE: Board and committee members are entitled to meals, including lunch, on a one-day trip only when attending official scheduled board or committee meetings. These meal expenses are excused from the travel status mileage requirement, but all time requirements are applicable; for example, start trip at or before 11 a.m. and end at or after 2 p.m. to claim lunch. In addition, meals on trips of less than 24 hours will be reported as a taxable fringe benefit as required by the Internal Revenue Service (IRS).

More Than 24 Hours

If a trip is more than 24 hours but less than 31 consecutive days, a represented or nonrepresented employee is entitled to breakfast, lunch, and dinner for every full 24-hour period of time while on travel status. The following table shows the meal entitlements for the last fractional period of time:

Starts Trip on OR Before	Returns from Trip on OR After	Entitled To
6 a.m.	8 a.m.	Breakfast
11 a.m.	2 p.m.	Lunch
5 p.m.	7 p.m.	Dinner

Incidentals

Incidental reimbursement is allowed for every full 24 hours of travel up to the maximum amount allowed per Bargaining Unit Contract for actual necessary expenses. Incidentals include expenses for fees and tips for services such as porters, baggage carriers, and hotel staff. No other items may be claimed as an incidental. Department of Human Resources CalHR PML 2015-003 and Internal Revenue Service (IRS) in IRS Publication 463.

Business-Related Meals

In rare instances, the cost of business-related meal expenses may be allowed. It must be clearly shown that it was impractical to conduct the State's business during working hours and that the meal took place in conditions beyond the employee's control. Justification should be provided on the [TEC](#).

The statement must include the purpose or goal of each business-related meal and the unusual conditions that justify payment. The employee may claim expenses not to exceed the breakfast, lunch, or dinner allowance, whichever meal was consumed. The amount must be supported by a voucher or receipt for represented employees. Claims must include the establishment, the persons in attendance, and the business conducted during the meal period. No reimbursement is allowed for the meal if the employee claims per diem for that day.

Allowable meals may include: Participants from different cities hold a luncheon to allow one or more of them to make connections on a scheduled flight; an employee is required to go to lunch as a member of a group, such as a board or commission where official business is conducted; the meeting does not adjourn during the lunch and the employee has no choice of place to eat.

Non-allowable meals include: Two or more employees go to lunch together and continue their business as an incidental to the meal; the meal is strictly for public relations purposes; departments call meetings with their own and/or other department employees to conduct State business; the meeting could have taken place during regular working hours.

Receipts

Although the Department of Consumer Affairs (DCA) does not require receipts for most meals or incidentals (except as noted above), the traveler must retain all their meal and incidental receipts for IRS purposes.

Overtime Meals and Rates

Overtime meal reimbursement is allowed when the employee works two excess hours either consecutive or contiguous to regular scheduled work hours. Rates and terms are defined by each bargaining unit contract as stated below. In determining the overtime hours worked for meal compensation, do not include any breaks for meals. Only one meal allowance may be claimed each day unless the employee has worked a minimum of 16 hours. For every six additional hours worked in excess of ten hours, another meal allowance may be claimed, not to exceed three overtime meals within 24 hours.

Bargaining Unit	Rate	Consecutive*	Contiguous*
7 & 10	\$7.50	X	
1, 4, 11 & 14	\$8.00		X
2, 9, 12, 16 & 19	\$8.00	X	
Excluded & 21 (exempt FLSA)	\$8.00	X	

Definitions

Consecutive: Works either two hours before or two hours after normal work hours on a regular scheduled workday; works two hours in excess of normal work hours on weekends, holidays, or regular scheduled day off (RDO).

Contiguous: Works two or more hours in excess of the number of hours worked on regular scheduled workday.

Excluded: Work Week Group Exempt (WWGE) and Represented Employees Exempt from Fair Labor Standards Act (FLSA) are only entitled to overtime meals for extended arduous work.

*Arduous Work OT Meal**

Meals for Extended Arduous Work: On those rare occasions when an employee who is in a Work Week Group other than Work Week Group 2 would be required to physically or mentally work ten hours or more (not including any breaks for meals) for an extended period of time. The employee, with approval of the appointing authority, may claim the actual cost of an arduous work meal up to \$8. Such meals should only be approved when it is clear that the work schedule is consistently in excess of a normal full-time schedule. Occasional extra hours worked, consistent with the nature of other than a Work Week Group 2 schedule, do not meet the criteria for Extended Arduous Work Meals.

Excess Lodging Policy and Procedure

Request for reimbursement of lodging expenses in excess of the State-specified rates, excluding taxes, must be received ten days prior to the trip. Approval is required from the DCA Accounting Administrator II if less than \$150 and the CalHR if more than \$150. The [Excess Lodging Rate Request \(STD 255C\)](#) form located on [DCA Intranet](#) should be completed and contain the following:

- A list of at least three hotels contacted using the [Concur CalTravel Store](#) website to obtain State rate lodging. Contact additional hotels if no State rate hotels are found within the work area.
- Supporting documentation that a reasonable effort was made to locate lodging at State-specified rates. Using only higher-rate hotels in the documentation cannot be considered reasonable efforts.
- Explain any applicable reasons for the State business need for an exception to the State's standard lodging rate.
- Obtain all required signatures and submit the request to the DCA Travel Unit at least ten working days prior to the trip, when possible.
- Employees who incur expenses in excess of standard reimbursement will be responsible for the difference if the excess lodging request is denied.
- Attach agendas for any approved conference or convention that would assist in the travel justification.

Reasonable Accommodation

Reasonable Accommodation can be obtained with supporting documentation through DCA Human Resources Health & Safety Unit when travel requirements are a hardship to the employee for medical reasons. Please obtain the Reasonable Accommodation approval prior to the trip.

Exception to Travel Status Policy

It is the policy of the DCA to adhere to the rules and regulations as defined by the CalHR regarding the approval of requests for reimbursement within 50 miles of the employee's home or headquarters when conducting official State business. Extreme acts of God and nature that place the employee in harm's way are automatic and will be approved after the fact, when fully documented ([SAM section 0715 CALHR PML 93-28](#)).

Note: All exceptions to travel status reimbursements will be reported as a taxable fringe benefit as required by the IRS.

Exception Authority, Limits and Criteria

The CalHR delegated the exception to travel status authority to the Director of DCA, who delegated the authority to the Deputy Director. There is no other allowable signature authority for this delegation. This delegation is extended with the provision that it will be administered according to the criteria, considerations, and record-keeping requirements as stated below. All exceptions are subject to audit by CalHR. Exceptions are to be granted in advance of the occurrence by the appointing power.

This delegation does not extend to the approval of meals or lodging at either the home or headquarters location. There is no allowance for any increase in the standard short-term travel reimbursement rates for meals and lodging or partial exceptions, such as lodging allowance without meals. When exceptions meet all the requirements and are granted by the Deputy Director, the employee is entitled to full short-term travel reimbursement rates. This exception is not to be used in lieu of overtime for one-day travel.

Exception requests will be considered under a limited number of circumstances when the employee is required to be away from his/her home and headquarters locations for more than a single day, but less than 50 miles. These include the nature of the work performed, the hours of work, or the apparent road/weather conditions make it impractical for the employee to return home or to the headquarters location at night.

The CalHR has guidelines for an exception approval criterion that includes reasonable commute mileage. State departments are expected to demonstrate that every consideration has been given to minimize the cost to the State through responsible planning and scheduling.

Exception Process

A written request must be submitted in advance of the occurrence to the Accounting Office for review and submission to the Deputy Director. The Executive Officer or the Division/Bureau/Program Chief must approve all exception requests. Requests must contain the following information for each attendee:

- Name and classification of employee(s) requesting exception. If the time period and reason for expense are the same, submit a group request listing each employee's name, classification, the time period, and reason.
- Name and address of the location where expenses will be incurred.
- Name of the sponsor of the event.
- Reason(s) for the exception request; attempts made to reduce the costs.
- Amount of the anticipated expenses, including tax.
- For a conference or convention, with more than one attendee, explain why one employee could not achieve the goal and attach a training and development request with approval.

Provide copies of the agenda, conference/convention announcements, and map/mileage printouts. Once the exception request has been processed, a copy will be forwarded to the requesting office by the DCA Accounting Office. The requesting office must maintain a record of each request for the standard five-year record retention schedule.

CHAPTER 3
TRANSPORTATION*Introduction*

The cost of transportation while on official State business should be accomplished by using the most economical means for the State, according to the [*State Administrative Manual*](#) general travel policies. All transportation costs related to State business travel should be entered on all [travel expense claims](#) [TECs](#).

Transportation expenses consist of:

- Commercial airfares
- Private vehicle use
- Commercial rental car use
- Gasoline for State or rental cars
- Taxis, shuttles, or streetcar fares
- Parking of State, rental, or privately owned vehicles
- Bridge and road tolls
- Emergency repairs (State cars only)
- Commuting transit/vanpool (employee benefit) use

Supervisor's Responsibility

It is the supervisor's responsibility to ensure the method chosen for travel on State business is in the best interest of the State and not for the employee's convenience.

Determining the Most Economical Mode of Travel

When determining the most economical mode of transportation, the following costs should be considered:

- Employee's time
- Expenses for transportation (airline, bus, train, parking, shuttle, tolls, etc.)
- Expenses for meals, incidentals, lodging, and any other State business expense
- Urgency of the situation
- If the employee must carry specialized equipment
- Number of stops and amount of equipment
- Number of people to be transported (is it more economical?)

- Driving time one-way (is it more than two hours?)
- Availability of transportation to and from the destination
- Overtime wages

Cost Comparison

Reimbursement will be made for the mode of transportation which is in the best interest of the State, considering direct expenses as well as the employee's time. If the employee chooses a more expensive mode of transportation, reimbursement will be for the least expensive mode of travel. Expenses incurred at the travel destination will be reimbursed based on the actual business expenses incurred while at that location. A [cost comparison](#) must:

- Be completed and attached to the [TEC](#), showing both methods of travel.
- Include the least costly methods of travel for those expenses actually being substituted.
- Include only the expenses of traveling from one location to another. Do not include any worksite expenses. Expenses incurred onsite are to be claimed separately.
- An employee choosing to use a more expensive mode of transportation will only be reimbursed for the amount it would have cost for the most economical mode of travel.
- A [cost comparison](#) showing actual cost incurred vs. the most economical mode and cost must be submitted with an employee's [TEC](#). The [cost comparison form](#) is provided in Appendix A for your convenience.

Example of Cost Comparison

The most common cost comparison is when the employee chooses to drive their personal vehicle vs. using normal air transportation. For example, when an employee drives (having obtained supervisor's prior approval) to Los Angeles from Sacramento, the comparison is computed from the point the employee would normally have left on travel status in Sacramento to the point of landing in Los Angeles. Please note all cost comparisons should be calculated using the current mileage rate and State rates for airfare if applicable.

Air Costs		Vehicle Costs	
Ticket roundtrip	\$216.00	Mileage: City-to-city roundtrip:	
Mileage to/from airport		720 miles x 54 cents per mile = <u>\$388.80</u>	
30 miles x 54 cents per mile=	\$16.20		
Parking	<u>\$10.00</u>		
Total	<u>\$242.20</u>		

Reimbursement

The least expensive method of transportation will be reimbursed on the [TEC](#).

The time requirement for meals and lodging would be allowed for the time the employee would have left and returned had they flown. Additional meal and lodging expenses incurred as a result of using an alternative method of transportation is at the employee's own expense.

Exception

An exception to the least-expensive requirement would be if an employee has a reasonable accommodation approval through the Department of Consumer Affairs (DCA/Department) Health and Safety Office, which prevents the employee from specific modes of travel, such as air travel.

Request guidance from the Accounting Office Travel Unit (calaters@dca.ca.gov) when special circumstances arise prior to commencing the trip.

Direct and Indirect Travel Arrangements

All travel arrangements for air, auto rental, and lodging for official State business must be made through the Department's approved travel agency, Concur CalTravelStore. See the [Management Memorandum](#) regarding the travel policy for all State agencies.

Air Travel

Before making airline reservations, be aware of the contract rates and where to book your flights. The State contracted rate includes airfare for origination and destination points known as city pairs for within California, out of State, and international destinations. The contract rates are unrestricted one-way fares and are not subject to limited seating.

When booking on Southwest Airlines, you should only select "Want to Get Away" and "Anytime" flights. You should never select Business Class-type flights; if selected, you will be responsible for the difference in cost.

The 2014–16 contract fares are with Alaska Airlines, Delta Air Lines, JetBlue, United Airlines, and Virgin America, and 2014–16 for Southwest Airlines. You must purchase your airline tickets through the CalTravelStore, the certified State travel agency, using your Department's centralized American Express Business Travel Account (BTA). The CalTravelStore website contains the online booking tool Concur Travel (formerly Cliqbook), the online booking tool for all airline travel.

All travel arrangements for official State business must be made through the Department's approved travel agency, CalTravelStore (www.caltravelstore.com).

Current Airfare Contract: www.travel.dgs.ca.gov

DGS Air Travel Services: **Air Travel Information**

www.dgs.ca.gov/travel/Programs/Airfare.aspx

State Administrative Manual (SAM) section 741: **Air Travel**

www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/741.pdf

SAM section 8422.115: **Airline Itinerary Requirements**

www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/741.pdf

California Department of Human Resources (CalHR) Policy: **Method of Travel**

www.calhr.ca.gov/employees/Pages/travel-method.aspx

Airport Parking

Employees parking at the airport must use the most economical parking available. However, if the board, bureau, or division determines that additional parking costs above the lowest-cost option are in the best interest of the State, a justification explaining the necessity for the additional cost shall be submitted with the employee's [TEC](#). Without a receipt, reimbursement is limited to \$10. Please note: [TECs](#) submitted without the required justification may be cut by the State Controller's Office (CalHR PML 2007-024).

Agencies/departments may consider the following items when determining if additional parking costs are in the best interest of the State:

- The direct expense; and
- The officer's or employee's time.

Please contact your Department's Travel Liaison to initiate the start of your CalTravelStore profile. You must complete your registration before booking your travel.

Please use the links below for training and more information:

For security reasons, every traveler will need to contact their board or bureau Travel Liaison to initiate their CalTravelStore profile. Your user ID is your Department e-mail address. You must use your Department e-mail address as your user ID to have access to our Department's company ID. This e-mail address will be your user ID for future access to the reservation system. After you receive your temporary password, you can complete your profile and book your trips. In addition, you'll need to change the temporary password to ensure your account is secure. Once you've established a user ID and password, the system will request that you complete the profile. After you've completed the profile, you must save the information before you attempt to book a trip. The CalTravelStore has a travel reservation guide and video to help; they are provided on the website and link below.

After the initial profile setup, you'll access the reservation system at www.caltravelstore.com. Click on "Concur Login" to complete your profile.

[Concur Travel demonstration](#) (video) and [Concur Interactive Training](#).

Concur Travel FAQs:

www.caltravelstore.com/pages/concur-travel-faqs

Non-Employee Reservations

You can make reservations for non-State employees conducting State business for your program, such as subject matter experts, volunteers, witnesses, or contractors, and receive State rates when using the DCA State-contracted travel service agency. One-time travelers should be booked as a guest traveler; no profile should or needs to be established.

Frequent Flyer Programs

Employees who earn travel premiums (frequent flier miles/points) while on official State business may now use these travel premiums for their personal use. The value of these premiums will not be reimbursed to the employee if used for State business.

See Personnel Management Liaisons (PML) Memorandum 2005–051

www.calhr.ca.gov/PML%20Library/PML2005051.pdf

Receipts

Airline itinerary or passenger receipts should include the traveler's name, dates and times of travel, destination, and amount of airfare. This document must be submitted with the employee's [TEC](#). The cost should always be entered on the claim as "Commercial Airfare," and "Department Paid" should be selected for payment type.

Privately Owned Aircraft Usage SAM 0743 and 0746

www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/743.pdf

www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/746.pdf

Travel on official State business may be by privately owned/rented/leased aircraft whenever this is the least costly means or is in the best interest of the State.

Employees must first obtain supervisor and agency approval. Employee pilots shall certify at least yearly to their employing agency that they have the required liability insurance during the period of official travel. These required limits are shown on [STD 265](#). Use [STD 265](#) for certification and insurance:

http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/746.pdf.

In all cases, the aircraft must be certified in accordance with Federal Aviation Administration regulations and properly equipped for the type of flying to be performed.

State employees who pilot aircraft on official State business must meet the requirements of [CalHR Rule 599.628](#) and [SAM 0747](#).

Reimbursement: **SAM 0744**

www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/744.pdf

The reimbursement rate for employee privately owned aircraft is 50 cents per statute mile. Mileage is computed on the shortest air route from origin to destination, using airways whenever possible. Enter "Air Miles" and mileage on the [TEC](#). For expenses other than mileage, substantiate the expense with a voucher. Landing and parking fees are paid except at the site where the aircraft is normally stored.

State-Owned, Privately Owned, and Commercially Owned Rental Vehicle Use

Agencies determine who will drive on official State business and the vehicle type to be used: State-owned, privately owned, or commercially owned vehicles. The definition of "use of a State vehicle in the conduct of State business" includes the use of State vehicles "when driven in the performance of, or necessary to, or in the course of, the duties of State employment and shall include the operation of State-owned or leased vehicles as commute vehicles in a carpool or vanpool program authorized by a State agency." ([SAM 0750 Vehicle Use](#))

State vehicles may be authorized when two or more employees are traveling together; the trip includes intermediate stops not feasible for public transportation; the schedule of public carriers does not fit the itinerary; transportation is not available at the destination; or an employee must carry specialized tools, books, etc.

Privately owned vehicles may be used by employees on official State business if this is approved by the DCA. If the use is not less costly, the supervisor may authorize the use, but the payment will be for the less-costly alternative. No agency will require an employee to use their privately owned vehicle unless this is a formal condition for employment.

The following circumstances are prohibited uses of State vehicles:

- Using the State vehicle for anything other than conducting State business.
- Carrying in the vehicle non-Departmental employees, friends, or family members.
- Using the vehicle for private or recreational use.

Commercially owned rental vehicles may be rented when a State vehicle is not available and automobile travel is essential. The employee must return the rental car at the end of each work week State business is concluded. Refer to the [Department of General Services \(DGS\) website](#) to view the rental car contract and ensure adherence to State policy. (See Appendix.)

Commercial Rental Cars

Transportation Services: SAM Section 4100

<http://sam.dgs.ca.gov/TOC/4100.aspx>

CalHR Policies for Method of Travel

www.calhr.ca.gov/employees/Pages/travel-method.aspx

DGS Fleet Handbook (Page 5)

www.documents.dgs.ca.gov/ofa/handbook.pdf

DGS Rental Car Policies and Procedures

www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx

The State contract vendor for rental vehicles is Enterprise Rent a Car. The current contract is effective January 2015, per DGS Travel Bulletin 15-01. Click on www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx for more information.

Commercial Car Rental Car Rates as of January 2015: www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx for more information.

The rental of alternative fuel vehicles is encouraged and their rental rate should be the same.

For the complete rental car contract, click on www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx.

Car Rental Reservation Information

Rental Car reservation must be made on [Concur CalTravelStore \(www.caltravelstore.com\)](http://www.caltravelstore.com).

In order to receive the contract rate, employees are required to provide a current driver license and a second form of ID to ensure a smooth delivery of service when renting a vehicle. Acceptable second forms of ID can be an employee issued identification badge, a business card, a copy of a travel itinerary booked through CALtravelstore or Concur (the online reservation tool), or an authorization letter on Department letterhead. Reservations are required to be made in advance on Concur.

Employees must NOT:

- Extend rental agreements for personal business and pay the difference. When extending business trips for personal reasons, the employee must stop the State rental agreement and initiate a new personal rental agreement. See more information regarding personal use on page XX.
- Agree to purchase insurance. Insurance is included in the State contracted rates.
- Agree to purchase the fuel service option or prepaid fuel (i.e., a flat refueling rate).
- Agree to purchase higher rate, non-economy cars.
- Carry unauthorized, non-State employees in a rental or State vehicle. If travel plans change, please cancel the reservation.

Insurance

The State contract includes insurance and employees should not accept additional insurance. Employees using a noncontracted vendor may not have insurance included in their rental rate. The employee will be personally responsible for the insurance costs when choosing to use a noncontracted vendor.

In the event an at-fault accident occurs when renting a noncontract vehicle, the employee and the Department may be legally responsible for all damages sustained by others as well as property damage to the rental vehicle. More information on SAM Insurance and Surety Bonds is available at <http://sam.dgs.ca.gov/TOC/2400.aspx>.

Receipts

DCA policy requires the final rental car receipt be attached to the expense reimbursement claim (STD 262 or CalATERS), whether charged to the Department or paid by the employee. The receipt must indicate the amount charged and payment method. Precalculations or reservation agreements are not acceptable. ([SAM section 8422.115](#), <http://sam.dgs.ca.gov/TOC.aspx>)

Forms of Payment

The contract requires use of either the Corporate Rental Business Traveler Account (CRBTA) or the travelers Corporate American Express card. Use of cash or the traveler's personal credit card will not guarantee the State contract rate or the State's insurance coverage.

The following "exceptions" will required State departments to submit to the State Controller's Office (SCO) a [Short-Term Vehicle Justification Form](#) , signed by the employee's supervisor:

- Renting a vehicle larger than the intermediate size
- Renting a vehicle from a noncontracted vendor
- Needing physical or medical accommodations
- Refueling charges incurred at rental branches

All employees are required to refuel the rental car vehicle. When refueling the rental car, the employee must submit a detailed gasoline receipt for reimbursement. Gasoline receipts must show the date of purchase, method of payment, and an expense breakdown: number of gallons, price per gallon, and extended total purchased amount. Prepaid fuel receipts are not acceptable for reimbursement.

The SCO approval form should be attached to the invoice and travel expense claim associated with the justification. State departments are no longer required to receive approval from the DGS Statewide Travel Program. The Short-Term Vehicle Justification Form is available at www.dgs.ca.gov.

Rates include unlimited mileage and are not subject to blackout dates. Contracted vehicle rates information is available at www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx. Examples of vehicles are listed in parentheses shown on the list below. The Maximum Cap Rate (MCR) includes the base rate, all fees, all charges, in addition to airport fees, vehicle license fees and, State, city and county, or local surcharges that apply to the commercial car rental industry as a whole and identified by airport. Sales tax and refueling charges are not included in the contract rate.

Short-Term Commercial Car Rental Cost Table
Base Rate with \$300,000 Insurance for Short-Term Rentals
 (Effective March 1, 2016)

Vehicle Class Type	Daily	Weekly	Max Cap Daily
Compact (Nissan Versa, Toyota Yaris)	\$33	\$132	\$50
Mid-Size/Intermediate (Toyota Corolla, Nissan Sentra)	\$33	\$132	\$50
Full-Size (Chevy Impala, Nissan Altima)	\$35	\$140	\$53
FWD/Sport Utility Vehicle (Ford Escape, Jeep Liberty)	\$56	\$224	\$78
Minivan (Chrysler Town and Country, Dodge Grand Caravan)	\$56	\$224	\$78
Pick-Up Trucks (Chevy Silverado, Ford F150)	\$70	\$280	\$94
Plug-In Hybrid Electric Vehicle/Zero Emission Vehicle	\$42	\$168	\$62
Hybrid Eclectic Vehicle	\$42	\$168	\$62

Note: The State of New York is exempt from the Base Rate listed above. Such rates are subject to open market rates quoted at time of actual car rental.

Private Vehicle Authorization and Use

The *SAM* requires that before any employee (including a board member) uses a privately owned vehicle to conduct State business, that employee must obtain authorization in writing from his or her supervisor and certify that the vehicle will be operated in compliance with [SAM section 0753](#).

An Authorization to Use Privately Owned Vehicle form ([STD 261](#)) should be completed and on file with the immediate supervisor. The [STD 261](#) form must be updated and re-signed annually.

Employees should be aware that the insurance maintained by the State is for the liability above the amount of the employees' policies. All employees driving on State business must carry evidence of liability insurance coverage. Mileage rates paid to employees include an amount that reimburses employees for maintaining minimum insurance coverage.

Mileage Rate Reimbursement

The following table shows the mileage reimbursement rates for privately owned vehicles:

1/1/2013–12/31/2013	56.5 cents per mile
1/1/2014–12/31/2014	56 cents per mile
1/1/2015–12/31/2015	57.5 cents per mile
1/1/2016– Current	54 cents per mile

Alternate Worksite Mileage

When an employee's regular work assignment requires reporting to a second location other than headquarters (e.g., a training site), mileage reimbursement is limited to the actual mileage incurred less their normal commute distance.

Airport Dropoff

When an employee is driven to a common carrier and no parking expenses are incurred during the employee's absence, they may claim mileage reimbursement at double the number of miles from headquarters or residence, whichever is less, while the employee actually rides in the vehicle.

If travel commences or terminates one hour before or after normal work hours, or on a regularly scheduled day off, mileage may be computed from the residence.

Minimal parking expenses for pickup will be allowed, with justification and/or notation on the [TEC](#).

Motor Vehicle Accident Reporting

All accidents involving a State-owned vehicle, or any vehicle being used on State business ([SAM section 0757](#)), must be reported. Report all accidents immediately to your manager and to the DCA Business Services Office. Accidents must be reported within 48 hours to the Office of Risk and Insurance Management on a [STD 270](#) form:

<http://www.documents.dgs.ca.gov/ofa/CallCenter/DGSFleetFactsPamphlet.pdf>. State reporting requirements are in addition to a regular police report as required by law.

Accident reimbursement claims require special approval and processing. Therefore, contact the DCA Travel Unit for guidance.

Overtime and Callback Mileage

Callback or scheduled overtime mileage incurred on a normal day off, from your home to established headquarters, is reimbursable and the reimbursement is a reportable fringe benefit.

State Vehicle Emergency Repairs

Emergency State vehicle repairs can be reimbursed on a [TEC](#) with the appropriate receipt and written justification or explanation of the event. Repairs require Fleet Administration approval. For non-emergency car repairs, the employee should have the vendor bill the program directly.

Taxis and Shuttles

Taxis and shuttles should be used for trips within a reasonable distance (ten to 15 miles). Reimbursement can be made on a [TEC](#) for the actual cost of the expense with a receipt, or for no more than \$10 without a receipt. General Service charge cards are accepted for taxis and shuttle services within the Sacramento and Fresno areas. Tips or gratuities to drivers are not reimbursable since they are included in the incidental allowance. However, tips or gratuities for exceptional services, such as loading/unloading substantial luggage or multiple exam material, is allowable with written justification and receipt.

Uber and Lyft

Per CalHR PML2015-039 Assembly Bill 229, effective 1/1/2016–12/31/2018, Uber and Lyft are acceptable State travel modes of transportation. An original detailed receipt is required to be attached to the claim for reimbursement. www.calhr.ca.gov/PML%20Library/2015039.pdf

Zipcars are not authorized to use for State travel transportation.

Parking and Tolls ([SAM section 0755](#))

Parking and tolls in excess of \$10 require a receipt and may be paid for:

- Day parking when the trip is away from the headquarters office and residence.
- Overnight public parking when the traveler is on travel status.
- Callback or scheduled overtime on a normal day off.

Commuting Transit and Vanpool

Employees who commute to and from work via public transportation or qualifying vanpools may be eligible for up to a 75-percent discount on public transit passes up to a maximum reimbursement of \$65 per month. Reimbursement is based on actual cost supported by a receipt or proof of purchase. Visit www.calhr.ca.gov/employees/Pages/miscellaneous-programs.aspx for more information.

Part-time employees' reimbursement may be prorated to correspond to their appropriate work schedule. Daily passes may be utilized for part-time employee reimbursement.

The State will pay \$100 per month to the primary driver of a qualifying vanpool consisting of seven to 15 people in lieu of the vanpool/transit rider incentive. A qualifying vanpool must meet both Internal Revenue Service (IRS) section 132 and CalHR 599.936 criteria: www.calhr.ca.gov/employees/Pages/miscellaneous-programs.aspx.

CHAPTER 4

BUSINESS EXPENSES AND RECEIPTS

Business Expenses

Business expenses are costs that are necessary for the completion of State business. Examples:

- Phone calls more than \$1 or calls totaling more than \$5. The Department of Consumer Affairs (DCA/Department) phone log can be used for logging calls when there is no official receipt provided (see “Justification for Reimbursement for Telephone Charges” in the Appendix).
- Approved training request for all out-service courses and in-State conferences and conventions. Reimbursement for training classes will be processed after completion of the training class.
- When physical examinations are required for pre-employment or as a condition of employment, the State will provide or pay for them. The applicant must pay for any services beyond the approved level for such services. For information on the current rate, see [SAM section 0191: www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap100/191.pdf](http://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap100/191.pdf).
- Excessive porter or baggage handling, such as for several boxes of exam materials, will be reimbursed with a receipt and justification.
- Professional licenses in occupational fields that may be required by the functions of a specific position, or is beneficial to the performance of an employee’s duties, for actual cost of the application or renewal fee.
- Each department, commission, board, or agency may reimburse an employee for up to the maximum allowed per BU Contract for membership dues in job-related professional societies or associations of the employee’s choice or for a job-related professional license fee, in recognition of the professional nature of employees. Both parties agree and understand that a different amount of reimbursement, if any, may be provided to employees in the same or similar situation.
- State Bar Dues – [CalHR Rule 599.921](#)
 - Employee designation: Manager, supervisor, confidential, and excluded.
 - References: [CalHR Rule 599.921](#) and PML2015-32.
Upon certification by the appointing power that the actual practice of law is required for the performance of duties of a specific position, employees shall be reimbursed for up to \$380 of the State Bar membership fee of \$430 for the cost of annual membership fees and specialty fees of the State Bar Association.
 - The State does not pay:
 - The \$10 portion that funds the State Bar’s lobbying efforts or communications with voluntary bar associations.
 - The \$40 contribution for the Legal Services Assistance option, line 23 of the State Bar coupon.
 - Optional donations to the Conference of Delegates of California Bar Associations, Foundation of the State Bar, or the California Supreme Court Historical Society.
 - Penalties resulting from late payment of dues, unless the State is responsible for the late payment.
 - For employees who work less than full time, or less than one year, the Department may prorate the reimbursement.

Valid Receipts

A valid receipt consists of the establishment's name, address, itemized expenses, including the total amount due and method of payment. When submitting a travel expense claim ([TEC](#)), the claimant is required to include original, itemized receipts for all State business expenses, unless specifically noted and accepted in another section of this *Travel Guide*.

Reimbursement requires proof of payment by the employee. If the receipt does not show the employee paid for the expense, attach other viable information such as the canceled check, bank, or credit card statement. For security purposes, blacken out all nonrelated charges and only retain the employee's name, bank name, and the specific charge you are claiming.

Required Receipts

Receipts shall be submitted for every item of expense of \$1 or more, except as noted in this chapter.

DCA policy is for all receipts to be attached to the [TEC](#), whether paid directly (to the vendor or establishment) by the State or paid by the employee. Examples are airline itineraries, final rental car expense receipts, etc.

Not Required

The employee must retain copies of all receipts, including those original receipts not required for reimbursement by the Department, for Internal Revenue Service (IRS) purposes.

Receipts are NOT required for reimbursement of actual expenses as a result of conducting State business for the following expenses:

- Per diem meals and incidentals
- Overtime meals
- Up to the published railroad and bus fares of less than \$10 when travel is within the State
- Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi shuttle or hotel bus fares, and parking fees of \$10 or less for each continuous period of parking or each separate transportation expense

Lost Receipts

In the absence of a receipt, reimbursement will be limited to the nonreceipted amount or the published expense, when lower than the nonreceipted amount.

Odd-Size Receipts

If receipts are small, tape them to an 8 ½-inch x 11-inch sheet of paper so they will be the same size as the travel claim. More than one receipt can be on a sheet of paper as long as they do not overlap. Do not tape the receipts to both sides of the paper.

CHAPTER 5 REPORTABLE TAX ITEMS

Introduction

Various reimbursements of State business expenses and fringe benefits are subject to Federal and State income taxes and applicable Social Security and Medicare taxes. The Department of Consumer Affairs (DCA/Department) is required to report qualifying business expense reimbursements as income to the State Controller's Office each month.

Note: It is the State and Department's policy to adhere to all Internal Revenue Service (IRS) reporting requirements.

Reportable Items

The following items are the most common reportable employer-provided benefits:

- Overtime meals
- Callback mileage, including overtime mileage
- Meals on a one-day trip where there is no sleep period
- Department-approved exceptions to the 50 miles travel status radius rule
- Long-term assignments that exceed 30 consecutive days at one location for a period of more than one year. Contact the DCA Travel Unit for details when appropriate
- The personal use of State vehicles for commute miles
- Personal use of a State-provided electronic device
- Travel advances that are not cleared within 30 days of the travel date
- Relocation: Contact the DCA Travel Unit (calaters@dca.ca.gov) for details when appropriate

Note: Any nonreceipted expense, such as meals and incidentals, becomes reportable *if* the IRS conducts an audit and finds no receipts in the employee's file.

Reportable Withholdings

Below is a grid showing the percentages of taxes withheld from each agency, along with an example of the withholdings based on a \$66 reporting item. The actual total amount withheld from the \$66 item is \$26.58 for a represented employee. This amount would be deducted from the employee's next available pay warrant.

W-2s

Type of Tax	Withholding Rate	Monthly Value	Actual Withholding
Federal	25.0%	\$66	\$16.50
State	6.6%	\$66	\$4.36
*SSI	6.2%	\$66	\$4.10
Medicare	1.45%	\$66	.96
**SDI	1.0%	\$66	.66

*Supplemental Security Income: Not applicable to Safety or Peace Officer Retirement.

**State Disability Insurance: Applicable to Service Employees International Union (SEIU)-represented employees only. Click on http://SCO.ca.gov/ppsd_ppm.html for the Payroll Procedure Manual (PPM) Long Term Travel Section N141 to see most recent rates.

The reportable reimbursements will be listed under "Other Income," or will be noted as "Included in Box 1" on the employee's W-2 form.

It is the employee's responsibility to maintain all reportable receipts with their records for IRS audit purposes.

Capturing Reportable Items

There are many ways of capturing and reporting reportable items each month. Examples:

- Overtime meals, callback mileage, and meals on a one-day trip are captured at the time of the Travel Expense Claim ([TEC](#)) audit, and reimbursement is made.
- Department-approved exemptions to the "50 miles travel status radius" rule and long-term assignments that exceed 30 consecutive days are captured at the time that paperwork is submitted for approval to the Executive Office and the reimbursement of the [TEC](#) is made.
- Reporting personal mileage and/or use of a State vehicle is the responsibility of the employee. The IRS has determined that normal commute miles to and from work in a State vehicle are to be considered personal use. Only employees whose primary responsibilities are investigative law enforcement activities while they are performing law enforcement duties fit the IRS guidelines for exemption from reporting personal use of State vehicles. However, when these employees commute to and from the office for their office days or do not perform qualifying law enforcement activities on the way to or from work, the commute is reportable. All other employees who are permanently or temporarily assigned State vehicles must report personal use and/or their normal commute use. Each employee who drives a State vehicle is required to submit a monthly Employee Certification, Personal Use of State Provided Vehicles Form, to the DCA Accounting Office by the fifth day of the following month in which the personal use was incurred. Note: This requirement applies to all employees who drive a State vehicle; it is not limited to those employees whose assigned cars are stored at home or in off-site parking.

- Reporting personal use of a State-provided electronic device is the responsibility of the employee. Each employee who uses State-provided equipment for any personal use should prepare a memo stating the type of usage and the actual or estimated cost of the usage to be reported. To avoid the reporting of this type of fringe benefit, the employee can submit a personal check with the memo to reimburse the Department for their personal use.
- All travel advances are to be temporary. Any outstanding travel advances over 90 days are considered long term and should be treated as wages or compensation; therefore, reported as taxable income.
- Reporting “relocation” taxable items varies depending on the type of expenses that occur; i.e., moving of household goods, sale of residence, etc. For actual reporting requirements, contact the DCA Accounting Office’s Travel Unit (calaters@dca.ca.gov) for details.
- Continuing Medical Education (CME) expense reimbursement is a taxable fringe benefit for part time, full time, and intermittent Bargaining Unit (BU) 16 represented employees. CME expense reimbursement has been considered a taxable fringe benefit by the IRS since the program was established by the California Department of Human Resource and BU 16 representatives. This program does not meet the criteria to be non-taxable business expenses under Internal Revenue Code (IRC) 127. All reimbursements made under this program will be issued in advance as payroll checks near the beginning of each fiscal year.”

CHAPTER 6

OUT-OF-STATE, OUT-OF-COUNTRY, AND AMENDED CLAIMS

Introduction

There are additional requirements and/or approvals when filing out-of-State, out-of-country, or amended Travel Expense Claims ([TECs](#)).

Out-of-State Travel (OST)

Before any State employee may travel out of State on official State business, specific written approval must be given by the Director, the Agency Secretary, the Department of Finance, and the Governor’s Office. Click on the link below for more information about *State Administrative Manual (SAM)* section 0710: www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap700/710.pdf. Approval must be obtained if either one of the following conditions exist:

1. The employee is on State time.
2. The employee is representing the State in an official capacity or is acting in such a capacity that it will be perceived that he or she is representing the State.

If either of these two criteria exist, approval is necessary regardless of whether the State is paying for the employee’s travel expenses. The trips are limited to the approved number of persons, days, and funds as specified for each blanket request. Expenses exceeding the blanket limits will require an approved blanket substitution request to cover the overages prior to travel. Any cost incurred prior to the blanket approval will be at the employee’s own expense.

OST expenses must be submitted separately from in-State travel and note the approved blanket number on the claim. Actual lodging expense, supported by a receipt and the standard meal and incidental reimbursement, may be claimed for travel outside of California. Contact the DCA Budget (go to [DCA Intranet](#), under Office of Administrative Services) or Accounting Office (calaters@dca.ca.gov) if you do not know the blanket number or require additional information. Refer to SAM 0760–0765 at <http://sam.dgs.ca.gov/TOC/700.aspx>.

Out-of-Country Travel

Employees will be reimbursed for actual lodging expenses, supported by a receipt, and will be reimbursed for actual meal and incidental expenses subject to maximum rates in accordance with the published government rates for foreign travel for the dates of travel. Failure to furnish lodging receipts will limit reimbursement to meals only. The government rates change monthly. Click on aoprals.state.gov for current reimbursement rates.

There is no allowance for blanket substitution of funds or authority for out-of-country trips. Any expenses that exceed the individual trip authority or funds will be at the traveler's expense. Claims must be submitted separately with the (approved) individual out-of-country trip request number written on the claim. Contact the [DCA Budget Office](#) if you do not know the trip number or require additional information.

Amended Claims

When filing an amended claim, the following steps should be taken:

1. Submit a new claim.
2. Write "AMENDED CLAIM" in uppercase letters at the top of the claim.
3. Claim only the amount not submitted on the original claim.
4. Attach a copy of the original claim to the new claim.
5. Attach any required information, receipts, or justification not submitted with the original claim.
6. Obtain all required approval signatures and submit the claim to Accounting Office Travel Unit for payment.

CHAPTER 7 TRAVEL AND EVIDENCE ADVANCES

Travel Advances

Short-term advances may be issued prior to the time travel is actually performed, to employees who must travel on State business. Refer to SAM [8116](#) and 8117.

- Submit the travel advance request on CalATERS Global. In the event of non-access to CalATERS Global, please complete the [Request for Travel Advance \(AISD-008\)](#) form and send it to the DCA Accounting Office within 10 to 15 working days prior to the date of travel. Original signatures are required.
- Per the Governor's order, all departments are to keep outstanding travel advance balances (accounts receivables) to a minimum (<http://gov.ca.gov/news.php?id=16991>). Because of this order, DCA has limited travel advance amounts to lodging, meals, and airport parking that are fixed expenses in an effort to keep the outstanding receivables amount at a minimum. The employee will receive reimbursement for other expenses after the processing of their [Travel Expense Claim \(TEC\)](#).
- If the trip is canceled, the advance must be returned immediately to the Accounting Office. If the travel advance check is cashed, a personal check or cashiers must be submitted as payment.

- For employees who are not required to travel on more than one trip per month, additional advances will not be issued for future travel unless the outstanding advances have been cleared. Departments may issue additional travel advances for employees who are required to travel on multiple trips within a month. Additional advances will not be allowed if the employee does not submit a [TEC](#) or return the excess advance amount within ten days of each trip.
- All advances must be cleared by submitting a [TEC](#) within ten days after the date of travel. If the advance exceeds the expense claim, to clear the advance, the employee must submit a check with the claim, money order (payable to DCA), or cash for the difference. If the claim exceeds the advance, the employee will receive the balance due them by check within ten to 15 working days.
- Add a notation regarding the advance information in section 11 or in the Note Section on CalATERS Global of the [TEC](#). (Example: March travel advance \$200.) Do not deduct the advance amount from your claim total; the auditor will make the adjustment when the claim is processed for payment.
- Any outstanding advances of more than 15 days may be deducted from your next month's salary warrant per [SAM 8116.1](#). The DCA Accounting Office will notify the employee before this process occurs. The notification letter will allow the employee time to clear the advance balance. Failure to clear advances may preclude future advances being issued until the outstanding advances are cleared. Direct deposit will be canceled for those employees with uncleared balances to collect any advance balances not cleared within a reasonable time.
- Travel advances that are not cleared within 15 days must be reported as taxable income ([SAM 8116.3](#)) Taxes due will be withheld from the next available payroll warrant and reported as taxable income on the employee's W-2. When the advance is cleared, there is no method to refund the withheld taxes to the employee.
- Some restrictions apply to seasonal or part-time employees (including board and committee members) who may not be issued travel advances. Exception requests are granted, by approval of the Deputy Director, on a limited basis.

CHAPTER 8

FILING REQUIREMENTS

Claim Form and Correction Instructions

All Travel Expense Claims must be submitted on the [CalATERS Global](#) System. A [CalATERS Global Training Request](#) form should be completed and sent as an attachment to CalATERS@dca.ca.gov to establish a [CalATERS Global](#) User ID and temporary password. There are two types of claims that can be submitted on the [CalATERS Global](#) System.

1. **Regular Travel Expense Claim**—Only one trip per claim should be entered on a Regular Travel Expense Claim (TEC). These claims consist of per diem, lodging, and mode of transportation cost to and from destinations. Expense reimbursements are determined by the date and time the trip started/ended, therefore this information must be entered for each trip. If a traveler traveled on more than one trip, each trip must be

entered on a separate claim. The claim will be returned to the traveler or travel liaison for correction if more than one trip is entered on this type of claim.

2. **Non-Travel Expense Claim**—Consists of multiple days and months, up to a full fiscal year (July 1, 2014–June 30, 2015). These claims consist of only parking, mileage, airfare, rental car/gas for rental car, business expenses, training, etc. This claim **would not include** meals, incidentals, or lodging. Please make sure when submitting this type of claim the amount is \$10 or more for budget and department cost efficiency.

The [CalATERS Global](#) TEC Transmittal should have the proper report name, index number, month and year of travel, original signature of the approver, dates, times, amounts, mode of transportation, purpose, normal work hours, etc. Original detailed receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original [CalATERS Global](#) Travel Expense Claim and required receipts should be sent to the Accounts Payable/Travel Unit for processing.

In the event the employee is new to the Department of Consumer Affairs and does not have a [CalATERS Global](#) User ID established, a [Travel Expense Claim \(TEC\) \(std262\) Form](#) (Rev. 09/2007) can be completed to submit their first request for reimbursement of State-related travel expenses. The original and one legible copy should be submitted to the Accounts Payable/Travel Unit for processing. Keep a third copy for your records with any non-required original receipts. All [TEC \(std262\) Forms](#) should be completed in ink or typewritten. The original signature of the claimant and the approving officer are required to be completed in ink in the appropriate area of the form. For minor corrections, line-out the incorrect information and write in the corrected information. The claimant must initial all corrections. Travel claims with correction fluid or correction tape in critical areas of the form (affecting the reimbursement amount) will not be accepted. Travel claims may be returned as auditable if submitted with numerous changes or if it is difficult to read.

When to Submit Travel Expense Claims—TECs should be filed at least once a month, but not more than twice in one month. If the amount claimed for any one month does not exceed \$10, filing can be deferred until the next month's travel or until June 30, whichever comes first. Several trips may be entered on one [TEC STD 262 Form](#). Only one Regular Trip at a time can be submitted on [CalATERS Global](#). When more than one trip is being listed on the [TEC STD 262 Form](#), a blank line should be left between each trip. Trips that start at the end of one month and extend into the next month should be submitted after the trip has concluded. Although it is acceptable to put several trips on one claim, the following expenses must be submitted on a separate [TEC](#): Out of State, out of country, long-term assignment, evidence and relocation expenses. Please label the [TEC](#) header when filing reimbursement claims for other than short-term travel.

All claims for the current fiscal year must be submitted by the published year-end deadline. Do not combine fiscal years. If a trip overlaps June and July, two separate [TEC STD 262](#) or [CalATERS Global](#) claims must be completed and submitted, one for each month. However, they should be submitted together for audit purposes.

Required Information

The [TEC STD 262](#) must be completed in its entirety, including heading, dates, time, amounts, mode of transportation, purpose, normal work hours, etc., and have the claimant's and the authorized approving officer's original signatures. Itemized expenses and original receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original [TEC STD 262](#) and required receipts should be sent to the Accounts Payable/Travel Unit for processing.

CHAPTER 9
COMPLETING A TRAVEL EXPENSE CLAIM

Introduction

The [Travel Expense Claim \(TEC\)](#) Form, STD 262, requires various information, including employee information, trip information, reimbursement amounts, authorizations, and justifications be provided. This chapter provides a step-by-step description of what is required to complete a [TEC](#).

Employee Information

This information describes to whom, classification, bargaining unit, and where expenses should be charged.

Field	Enter Into Field
Claimant's Name	First name, middle initial, last name
Social Security Number or Employee Number*	13-digit position number or write "on file"
Department	Department of Consumer Affairs
Position	Civil service classification (title)
CB/ID Number	Bargaining unit number for represented employees OR Confidential, exempt, board/committee member, volunteer, or other specific title
Division or Bureau	Board, committee, program, division, or unit name
Index Number	Index/PCA number (contact the Department of Consumer Affairs [DCA] Accounting Office for assistance if you do not know your Index/PCA number)
Residence Address* (including city, state, and ZIP code)	Home address (do not use P.O. Box) <i>If confidential, contact the DCA Accounting Office for guidance.</i>
Headquarters Address (city, state, and ZIP code)	Complete headquarters (work) address
Phone Number	Office phone number (include area code)

* Refers to the Privacy Statement provided on the reverse side of the form.

Trip Information, Miscellaneous Information and Justifications, and Authorized Signatures

This section requests information regarding the when, where, and why the expenses occurred.

Field	Enter into Field																		
1	Normal Work Hours: Use the 24-hour clock																		
2	Private Vehicle License Number: Enter the license number of the private vehicle used on State business																		
3	Mileage Rate Claimed: Enter the rate claimed for private vehicle use																		
4	Month/Year: Month number (January = 1, December = 12) and four-digit year																		
5	Date: Day of the month (one day per line) Time: Departure and return (using the 24-hour clock)																		
6	Location Where Expenses Were Incurred: (A brief statement describing the purpose may be entered immediately below the last entry for each trip.)																		
7	Lodging: Enter actual cost of lodging, plus tax (up to the maximum reimbursement)																		
8	Meals: Enter actual cost of meals (up to the maximum reimbursement)																		
9	Incidentals: Enter actual cost of incidentals (up to the maximum reimbursement)																		
10 (A)	Transportation: Enter the cost of transportation, if paid by employee																		
10 (B)	Transportation: Enter the method of transportation, using the following codes: <table border="1"> <thead> <tr> <th>Type</th><th>Code</th></tr> </thead> <tbody> <tr> <td>Railway</td><td>R</td></tr> <tr> <td>Bus, air porter, light rail, Bay Area Rapid Transit (BART)</td><td>B</td></tr> <tr> <td>Commercial airline</td><td>A</td></tr> <tr> <td>Privately owned vehicle (motorcycles not allowed)</td><td>PC</td></tr> <tr> <td>Private air</td><td>PA</td></tr> <tr> <td>State car</td><td>SC</td></tr> <tr> <td>Rental car</td><td>RC</td></tr> <tr> <td>Taxi</td><td>T</td></tr> </tbody> </table>	Type	Code	Railway	R	Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B	Commercial airline	A	Privately owned vehicle (motorcycles not allowed)	PC	Private air	PA	State car	SC	Rental car	RC	Taxi	T
Type	Code																		
Railway	R																		
Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B																		
Commercial airline	A																		
Privately owned vehicle (motorcycles not allowed)	PC																		
Private air	PA																		
State car	SC																		
Rental car	RC																		
Taxi	T																		
10 (C)	Transportation: Enter carfare, bridge road tolls, or parking expenses																		
10 (D)	Transportation: Enter the number of miles driven with private and State vehicles, and then enter the amount due for private vehicles only																		
11	Business Expense: Enter any other expenses necessary for completion of State business, with justification as required. <u>Note:</u> Expenses more than \$25 require Office of Administrative Services authorization. The DCA Accounting Office will obtain signatures.																		
12	Total Expenses for Day: Enter the total expenses for that day																		
13	Subtotals: Enter the total expenses for each column																		
14	Purpose of Trip, Remarks, and Details: Enter the justification and miscellaneous information, such as: <ul style="list-style-type: none"> Explanation of business expenses Phone expenses, including place, party, and number called Receipt justification, if needed Justification for obtaining rental cars, other than a compact, or use of a noncontract vendor Travel advances received 																		

15	Claimant's original signature and date signed
16	Approving Officer's original signature and date signed
17	Special expense signatures are obtained by the DCA Accounting Office

APPENDIX
RESOURCE MATERIALS AND FORMS

Resource Materials

Subject	Issue Date	Expires	Number
Approval of Excess Lodging Rates	12/19/2013		California Department of Human Resources (CalHR) (Personnel Management Liaisons [PML] 2013-044) www.calhr.ca.gov/PML%20Library/2013044.pdf
FLSA Guidelines	04/16/2004		DCA DPM-PERS 02-06 http://inside.dca.ca.gov/offices/oas/hr/labor_rel.html
Travel and Relocation–Lodging Receipts	07/01/2014		www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx CalHR PML 2013-022 www.calhr.ca.gov/PML%20Library/2013026.pdf
Vanpool Incentives	10/22/2002 09/27/2002 04/02/2002		DPA PML 2002-069 www.dpa.ca.gov/textdocs/freepmls/PML2002069.txt CalHR PML 2002-064 (www.dpa.ca.gov/textdocs/freepmls/PML2002064.txt) CalHR PML 2002-021 (www.dpa.ca.gov/textdocs/freepmls/PML2002021.txt)

The list below includes memos, policies, procedures, and websites with information regarding travel reimbursement rules and regulations.

Useful Websites and Addresses

Useful Websites	Internet Addresses
Department of General Services State Administrative Manual Forms	www.dgs.ca.gov http://sam.dgs.ca.gov/TOC/700.aspx www.dgs.ca.gov/osp/Forms.aspx
California Department of Human Resources Bargaining Unit Contracts Personnel Management Letters (PMLs)	www.calhr.ca.gov/Pages/home.aspx www.calhr.ca.gov/Pages/home.aspx
Travel Agency	www.caltravelstore.com

List of Related Forms

The travel forms mentioned in this Travel Guide are available on the [Department of Consumer Affairs \(DCA\) Intranet](http://inside.dca.ca.gov/forms/subject.html#travel) at <http://inside.dca.ca.gov/forms/subject.html#travel> and in this Appendix.

Form	Number	DCA Intranet and/or Internet Links
Authorization to Use Privately Owned Vehicles on State Business	STD 261	www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf
Cost Comparison Page	N/A	http://inside.dca.ca.gov/forms/oas/cost_comparison.pdf
Excess Lodging Rate Request/Approval	STD 255C	www.documents.dgs.ca.gov/dgs/fmc/pdf/std255C.pdf
Conference Attendance Request	N/A	http://inside.dca.ca.gov/forms/oas/conf_attend.pdf
Hotel/Motel Transient Occupancy Tax Waiver	STD 236	www.documents.dgs.ca.gov/dgs/fmc/pdf/std236.pdf
Justification for Reimbursement for Postage Charges	AISD 12	http://inside.dca.ca.gov/forms/oas/postal_charges.pdf
Justification for Reimbursement for Telephone Charges	AISD 11	http://inside.dca.ca.gov/forms/oas/phone_charges.pdf
Request for Travel Advance	AISD 008	http://inside.dca.ca.gov/forms/oas/travel_advance.pdf
Travel Advances and Travel Expenses Policy	SAM Chapter 8100	www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap8100/8116.pdf www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/rev427sept14/chap8100/8116.1.pdf
Travel Expense Claim	STD 262	www.documents.dgs.ca.gov/dgs/fmc/pdf/std262.pdf

Appendix D

California Business and Professions Code Section 103

103. Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

ATTENDANCE REPORT**BOARD MEMBER:** _____**MONTH:** _____Please report the **actual** time you spent attending meetings or performing board business.

Pre-Meeting Preparation (please list meeting)	Date	# Hours	# Minutes
1.			
2.			
3.			
4.			
5. Reviewing Board Packet			

Meetings Attended (DO NOT INCLUDE BOARD OR COMMITTEE MEETINGS)	Date	Hours in Meetings (do not include meal and/or travel times)			
		Start Time:	End Time:	# Hours	# Minutes
1.					
2.					
3.					
4.					
5.					

Mail Ballots/Transcripts & Documents Reviewed	Date	# Hours	# Minutes
1.			
2.			
3.			
4.			
5. Review of Transcript—Case #			

You will be paid in eight-hour increments at the end of each month; any portion of hours remaining will be carried over into the next month.

To the best of my knowledge and belief, the information stated is accurate.

Signature: _____ **Date:** _____

Appendix E



PERFORMANCE APPRAISAL

FOR

EXECUTIVE
OFFICER

(including
Executive Director
and
Registrar)

*Prepared by
Department of Consumer Affairs
Office of Human Resources
1625 N. Market Blvd. Suite N-321
Sacramento, CA 95834
(Revised February 2015)*



Executive Officer PERFORMANCE APPRAISAL

INSTRUCTIONS

1. The DCA Performance Appraisal process system is based on the principle that performance should be evaluated on a regular basis in order to provide recognition of effective performance and as a tool to provide guidance in improving future performance.
2. If the Executive Officer (hereafter, "EO", which includes Executive Director and Registrar) is not at the maximum range of salary, the Board, Committee or Commission (hereafter, "Board") may recommend a salary increase for the EO. To qualify for such increases, the EO must meet or exceed performance expectations, as determined by the Board. This form is used to document the Board's recommendation for a salary increase.
3. To indicate the rating of any performance factor, an "X" mark should be placed in the appropriate rating column and in the "Overall Rating" column on each page. Additional spaces have been provided to accommodate other critical performance factors identified by the Board.
4. Comments to the Executive Officer should:
 - Be constructive and provide guidance for future performance;
 - Include factual examples of work especially well or poorly done, and
 - Give specific suggestions for performance improvement.
5. The Overall Ratings must be consistent with the factor ratings and comments, but there is no prescribed formula for computing the Overall Rating.
6. Overall Comments may consist of a summary of comments from specific categories, general comments or comments on other job-related factors which the rater wishes to discuss. Additional pages may be attached.
7. The Board President/Chairperson will discuss the appraisal with the EO and give him or her a signed copy. In signing the appraisal, the EO merely acknowledges that s/he has reviewed the appraisal and has discussed it with the rater. His/her signature does not indicate agreement with the ratings or comments.
8. The original copy of the appraisal, signed by both the Board President/Chairperson and the EO, will be maintained by the Department of Consumer Affairs, in the Executive Officer's Official Personnel File.



EXECUTIVE OFFICER PERFORMANCE APPRAISAL RATING SYSTEM

The rating system consists of five (5) Ratings Categories, as defined below:

Outstanding

Performance significantly exceeds the Board's expectations due to the efforts and ability of the Executive Officer when considering the job in its entirety. Significantly above-standard performance may be exhibited by consistently completing assignments in advance of deadlines; implementing plans and/or procedures to increase efficiency or effectiveness of work; working independently with little direction; and consistently meeting Board goals.

Above Average

Performance exceeds the Board's expectations due to the efforts and ability of the Executive Officer when considering the job in its entirety. Performance is beyond what is expected of an Executive Officer in this position.

Average

Performance of the Executive Officer meets the minimum expectations of the Board. The Executive Officer adequately performs the duties and responsibilities of the position.

Needs Improvement

The Executive Officer's performance fails to meet the Board's minimum expectations due to lack of effort and/or ability when considering the job in its entirety. Performance requires improvement in numerous and/or important aspects of the position.

Not Applicable

Rater is unable to assess the Executive Officer in this area, or the area is not applicable to the employee's job.



Executive Officer
PERFORMANCE APPRAISAL
 OVERALL RATING

NAME OF EO:

NAME OF BOARD:

DATE OF BOARD MEETING WHEN RATING OCCURRED:

The overall rating must be consistent with the factor rating and comments, but there is no prescribed formula for computing the overall rating. The rating system is described on page 2.

☐ **OUTSTANDING**

☐ **ABOVE AVERAGE**

☐ **AVERAGE**

☐ **NEEDS IMPROVEMENT**

OVERALL COMMENTS *(Attach additional pages, if necessary)*

I HAVE PARTICIPATED IN A DISCUSSION OF OVERALL JOB PERFORMANCE

EO Signature: _____

Date: _____

Chairperson/President Signature: _____

Date: _____

Salary Increase recommendation (if applicable):

☐ No increase ☐ No increase (at maximum) ☐ Recommended Increase: _____%

Effective Date of Salary Increase: _____



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	1. Relationship with the Board	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Maintains respect and trust of Board members.					
2	Provides Board with advice during consideration of issues.					
3	Keeps Board informed of progress of Board programs on a regular basis.					
4	Remains impartial and treats all Board members in a professional manner.					
5	Functions as an effective liaison between Board and Board Staff.					
6	Provides Board with complete, clear, and accurate reports, minutes, etc.					
7	Responds promptly to requests for information from Board members.					
8	Is readily available to Board members.					
9	Responds appropriately to constructive suggestions from Board members.					
	OVERALL RATING: Relationship with the Board					

Comments: (Attach additional pages, if necessary)



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	2. Execution of Board Policy	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
	Understands and compiles with the overall policies, laws and regulations of the Board.					
	Implements Board policies.					
	Efforts lead toward successful accomplishment of goals.					

Comments: (Attach additional pages, if necessary)



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	3. Board Programs	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Ensures effective and efficient management of enforcement programs.					
2	Keeps Board apprised of enforcement program and process developments.					
3	Maintains security of examination process.					
4	Monitors validity/defensibility of examinations and provides appropriate recommendations for action.					
5	Monitors and identifies trends in candidate qualifications, pass/fail rates, etc.					
6	Resolves problems which arise in the exam process.					
7	Keeps Board apprised of exam program and process developments.					
8	Keeps Board apprised of licensing program and process developments.					
	OVERALL RATING: Board Programs					

Comments: (Attach additional pages, if necessary)



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	4. Governmental Relations	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Keeps the Department of Consumer Affairs informed of Board issues, problems, and accomplishments.					
2	Maintains a positive working relationship with other State Agencies.					
3	Manages Board legislative program and efforts.					
4	Manages sunset review process.					
5	Acts a liaison and participates in national organizations, federations or alliances.					
6	Represents the Board effectively before the Legislature.					
	OVERALL RATING: Governmental Relations					

Comments: (Attach additional pages, if necessary)



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	5. Administrative Functions	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Plans, organizes and directs Board administrative functions and staff.					
2	Provides oversight, direction and management of the Board's annual budget, expenditures and revenues.					
3	Keeps Board apprised of budget developments.					
4	Identifies, recommends and, as directed, seeks necessary changes to laws and regulations through proposed legislation and/or the Office of Administrative Law (OAL).					
5	Ensures compliance and enforcement of departmental, state and federal policies and procedures.					
6	Develops and executes sound personnel practices and procedures.					
	OVERALL RATING: Administrative Functions					

Comments: (Attach additional pages, if necessary)



Executive Officer
PERFORMANCE APPRAISAL

Performance Factor		Ratings				
	6. Public Liaison	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Represents the Board before the public.					
2	Directs consumer outreach programs.					
3	Manages Board's public relations effort.					
4	Directs liaison with educational institutions.					
5	Solicits and gives attention to problems and opinions of all groups and individuals.					
6	Represents the Board before industry associations to provide information regarding the Board's laws, regulations, programs and policies.					
	OVERALL RATING: Public Liaison					

Comments: (Attach additional pages, if necessary)

Appendix F

Government Code section 87200-87210

87200. This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

87201. Every candidate for an office specified in Section 87200 other than a justice of an appellate court or the Supreme Court shall file no later than the final filing date of a declaration of candidacy, a statement disclosing his or her investments, his or her interests in real property, and any income received during the immediately preceding 12 months.

This statement shall not be required if the candidate has filed, within 60 days prior to the filing of his or her declaration of candidacy, a statement for the same jurisdiction pursuant to Section 87202 or 87203.

87202. (a) Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming the office, file a statement disclosing his or her investments and his or her interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. Every person who is appointed or nominated to an office specified in Section 87200 shall file such a statement not more than 30 days after assuming

office, provided, however, that a person appointed or nominated to such an office who is subject to confirmation by the Commission on Judicial Appointments or the State Senate shall file such a statement no more than 10 days after the appointment or nomination.

The statement shall not be required if the person has filed, within 60 days prior to assuming office, a statement for the same jurisdiction pursuant to Section 87203.

(b) Every elected state officer who assumes office during the month of December or January shall file a statement pursuant to Section 87203 instead of this section, except that:

- (1) The period covered for reporting investments and interests in real property shall begin on the date the person filed his or her declarations of candidacy.
- (2) The period covered for reporting income shall begin 12 months prior to the date the person assumed office.

87203. Every person who holds an office specified in Section 87200 shall, each year at a time specified by commission regulations, file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement filed under this section or Section 87202. The statement shall include any investments and interest in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

87204. Every person who leaves an office specified in Section 87200 shall, within thirty days after leaving the office, file a statement disclosing his investments, his interests in real property, and his income during the period since the previous statement filed under Sections 87202 or 87203. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

87205. A person who completes a term of an office specified in Section 87200 and within 45 days begins a term of the same office or another such office of the same jurisdiction is deemed not to assume office or leave office.

87206. If an investment or an interest in real property is required to be disclosed under this article, the statement shall contain:

- (a) A statement of the nature of the investment or interest.
- (b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged.
- (c) The address or other precise location of the real property.
- (d) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000) but does not exceed ten thousand dollars (\$10,000), whether it exceeds ten thousand dollars (\$10,000) but does not exceed one hundred thousand dollars (\$100,000), whether it exceeds one hundred thousand dollars (\$100,000) but does not exceed one million dollars (\$1,000,000), or whether it exceeds one million dollars (\$1,000,000).
- (e) In the case of a statement filed under Sections 87203 or 87204, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.
- (f) For purposes of disclosure under this article, "interest in real property" does not include the principal residence of the filer or any other property which the filer utilizes exclusively as the personal residence of the filer.

87207. (a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

- (1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

87208. Except in statements required by Section 87203, investments and interests in real property which have been disclosed on a statement of economic interests filed in the same jurisdiction within

the previous 60 days may be incorporated by reference.

87209. When a statement is required to be filed under this article, every person specified in Section 87200 shall disclose any business positions held by that person. For purposes of this section, "business position" means any business entity in which the filer is a director, officer, partner, trustee, employee, or holds any position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.

87210. No person shall make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.

Appendix G

Government Code section 87100

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Appendix H

Government Code Sections 11146-11146.4

11146. For purposes of this article, the following terms have the following meanings:

(a) "State agency" has the same meaning as set forth in Section 82049, but does not include the Legislature.

(b) "Filer" means each member, officer, or designated employee of a state agency who is required to file a statement of economic interests under either Article 2 (commencing with Section 87200) or Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 because of the position he or she holds with the agency.

11146.1. Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials.

11146.2. Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to Section 11146.1 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with subdivision (a) of Section 81008 and otherwise subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

11146.3. Except as set forth in Section 11146.4, each filer shall attend the orientation course required in Section 11146.1, as follows:

(a) For a filer who holds a position with the agency on January 1, 2003, not later than December 31, 2003 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2005.

(b) For a person who becomes a filer with the agency after January

1, 2003, within six months after he or she becomes a filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

11146.4. (a) The requirements of Section 11146.3 shall not apply to filers with a state agency who have taken an equivalent ethics orientation course through another state agency or the Legislature within the time periods set forth in subdivision (a) or (b) of Section 11146.3, as applicable.

(b) State agencies may jointly conduct and filers from more than one state agency may jointly attend an orientation course required by Section 11146.1, as long as the course content is relevant to the official duties of the attending filers.

(c) Before conducting each orientation course required by Section 11146.1, state agencies shall consult with the Fair Political Practices Commission and the Attorney General regarding appropriate course content.

Appendix I

Government Code Section 89503

89503. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).

(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

(e) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(g) The limitations in this section are in addition to the limitations on gifts in Section 86203.

Appendix J

Overview of Board Member Role in Disciplinary Actions

<p>Administrative Proceedings B&P Code, §§ _____ Gov. Code, § 11500 <i>et seq</i></p>	<p>An administrative proceeding refers to any action to deny, restrict or revoke a license. The proceeding begins when the Executive Officer files a charging document – usually a Statement of Issues (to deny a license) or an Accusation (to restrict or revoke a license). Rarely, the EO issues a citation, which may be appealed through an administrative proceeding.</p>
<p>Most Common Types of Decisions: Default, Stipulation, Proposed Decisions</p>	<p>If the licensee fails to respond to a charging document, a default decision is prepared and submitted the Board members for vote. If the licensee and the Executive Officer agree to particular enforcement outcome, a stipulation is prepared and presented to the Board members for vote. If neither of the above occurs, the case is sent to a formal hearing before an administrative law judge (ALJ). After considering the evidence from the hearing (usually documents and witness testimony), the ALJ issues a proposed decision (a recommended resolution), which is then presented to the Board members for vote.</p>
<p>Review of Decisions Gov. Code § 11500, <i>et seq.</i>; B&P Code, § _____; Title 16, C.C.R. § _____</p>	<p>Board members, by majority vote of a quorum, must approve any decision (proposed decision, stipulation or default) before the decision becomes final and the formal discipline (penalty), if any, can take effect.</p> <p>Each Board member reviews any decision presented for vote. Each case is evaluated on a case-by-case basis, but things a member might consider:</p> <ol style="list-style-type: none"> 1. Whether the Board’s highest priority, protection of the public, is effected by the decision; 2. Whether the Board’s Disciplinary Guidelines are satisfied or whether variation is warranted; 3. Whether the standards of practice were used as a basis for reaching the decision; and 4. Whether the decision may be reasonably and practically implemented and 5. Whether the case contains factual or legal errors.
<p>Member Questions and Communications about Decisions Gov. Code § 11430.10, <i>et seq.</i></p>	<p>Communications with staff concerning pending proceedings, including decisions, are limited by the provisions of the Administrative Procedure Act. There are two parties to any disciplinary proceeding – complainant (the Executive Officer and other staff) and respondent (the licensee). The Board members decide the case and therefore act as judges. To avoid the fact or appearance of bias or impropriety, communications between one party (staff or the licensee) and Board members are limited.</p>

	<p>There are two common exceptions to this restriction. First, staff may answer questions of procedure and ministerial questions (<i>e.g.</i>, when is a vote due, when will a decision become effective).</p> <p>Second, EO or other board staff or the Deputy Attorney General may communicate about stipulated decisions – and only stipulated decisions – <u>only</u> to explain why the stipulated decision should be adopted.</p> <p>Board members may direct questions about a decision to the Board’s legal counsel, who is not involved in the investigative stage of the proceeding. Questions about permissible or impermissible communications should also be directed to legal counsel.</p>
<p>Mail Ballots Gov. Code, § 11526 Board policy</p>	<p>Proposed decisions, stipulations and default decisions are generally mailed (electronically or otherwise) to each Board member for voting. The Board member may vote to adopt, reject (non-adopt) or seek to hold the case (discussed in detail below).</p> <p>A ____ calendar day deadline is generally given for a mail ballot to be completed and returned to the Board’s office. Board staff reviews the ballots and, if there is not a request to hold, and a quorum of votes has not been received by the Board, prepares the decision for the President’s signature.</p>
<p>Holding Disciplinary Cases for Closed Session Board Meetings Board Policy</p>	<p>When voting on a mail ballot, a Board member may wish to discuss a particular aspect of the decision before voting. If two members mark their ballot to “hold for discussion,” the case will be scheduled for the closed session of the Board’s next meeting. At the time the ballot is prepared, the Board member should record his or her concern. Recording the concern facilitates the discussion by allowing staff, legal counsel and other members an opportunity to prepare to respond to the concern as appropriate. Since there can also be a delay before the next meeting, it can also help preserve the member’s memory about his or her concerns.</p> <p>When a matter is held for closed session, Board legal counsel will be present to advise and assist the Board.</p>
<p>Closed session: Stipulations</p>	<p>If the board is deliberating about what to do with a stipulation, it can</p> <ul style="list-style-type: none"> • Adopt • Reject and set for hearing • Make counter offer and if accepted, will dispose of the matter •
<p>Closed session: Proposed Decision</p>	<p>If a board is deliberating on a Proposed Decision, it can</p> <ul style="list-style-type: none"> • Adopt the proposed decision of the ALJ

	<ul style="list-style-type: none"> Reject (Non-adopt) the proposed decision and after review of the transcripts and the record and develop its own decision Remand (return) the decision to the ALJ for the taking of additional evidence. The proposed decision must address all points of evidence submitted. If it does not, the decision can be returned to the ALJ for additional consideration Make technical or minor changes to the proposed decision. Mitigate (lessen, reduce) the proposed penalty <p>NOTE: Board cannot increase cost recovery.</p>
Closed Session: Rejection (non-adoption) Gov. Code, § 11517	If the Board votes to reject a Proposed Decision of an ALJ, absent specific direction to the contrary from the Board, the transcript and exhibits of hearing will be ordered and it will provide an opportunity for written argument. The Executive Officer will fix the date for submission of written argument to ensure Board members have time to review any materials prior to a Board meeting. The board meets in closed session to determine the outcome of the case and board counsel writes the decision.
Petition for Reconsideration Gov. Code, § 11521	<p>At any time before the effective date of the decision, the board on its own motion or either of the parties may request reconsideration.</p> <p>The board may grant a stay of up to 30 days to allow a party to file a petition for reconsideration.</p> <p>The EO, president or full board may grant a stay of up to 10 days to consider a petition for reconsideration.</p> <p>If granted for a case in which a hearing was held, the record (transcript and exhibits) is ordered. The members deliberate in closed session to determine if they would like to issue a revised decision.</p>
Appeals of Decisions (Writs of Mandamus) Gov. Code, § 11523	<p>In the event one of the parties believes there to be legal basis to challenge a board decision, the party may file an appeal though a writ of mandamus.</p> <p>In the event the court remands the matter to the board for further action, the board allows written argument. After considering argument, the board deliberates in closed session about the decision to take. Board counsel sits with the board and writes any new decision.</p>
Petitions for Penalty Relief Gov. Code, § 11522; B&P Code, § _____	If a licensee files a petition for penalty relief (for either reinstatement or modification or termination of existing probation), as long as that petition meets statutory requirements, the matter

Board Policy	will be heard by the Board members themselves at a Board meeting. Absent direction to the contrary, an ALJ sits with the members to preside over the hearing.
Enforcement Actions – Disclosure to the Public Gov. Code, § 6250, <i>et seq.</i> B&P Code, §125.9 Department of Consumer Affairs' <i>Guidelines for Access to Public Records</i>	Enforcement actions, including citation and disciplinary actions, are a matter of public record.

Appendix K

IN THE MATTER OF THE ACCUSATION AGAINST:	Date: XXXX, 2018
John Smith, RPH 000001 CASE NO. 00001	DUE DATE: XXXX, 2018

ORDER TYPE*:

- ☐ **DEFAULT DECISION**
- ☐ **PROPOSED DECISION**
- ☐ **STIPULATED SETTLEMENT**

Pharmacist License No. RPH 00001 issued to Respondent **John Smith** shall be publicly reprovved. Respondent subject to additional terms and conditions as indicated in the decision.

I VOTE: _____ **YES: I would affirm the decision**

_____ **NO: I would not affirm the decision OR I vote to hold for discussion at next meeting. Please note concerns here:**

_____ **ABSTAIN OR RECUSE DUE TO CONFLICT**
If recusal, explain conflict:

COMMENTS:

_____ **POLICY ISSUE FOR DISCUSSION. I have voted above.**

ISSUE:

BOARD MEMBER SIGNATURE

PRINT NAME

DATE

Appendix L

CALIFORNIA LAW PROHIBITS WORKPLACE DISCRIMINATION AND HARASSMENT

The California Department of Fair Employment and Housing (DFEH) enforces laws that protect you from illegal discrimination and harassment in employment based on your actual or perceived:

- **Ancestry**
- **Age** (40 and above)
- **Color**
- **Disability** (physical and mental, including HIV and AIDS)
- **Genetic information**
- **Gender, gender identity, or gender expression**
- **Marital status**
- **Medical condition** (genetic characteristics, cancer or a record or history of cancer)
- **Military or veteran status**
- **National origin** (includes language use and possession of a driver's license issued to persons unable prove their presence in the United States is authorized under federal law.)
- **Race**
- **Religion** (includes religious dress and grooming practices)
- **Sex** (includes pregnancy, childbirth, breastfeeding and/or related medical conditions)
- **Sexual orientation**

The California Fair Employment and Housing Act (Government Code sections 12900 through 12996) and its implementing regulations (California Code of Regulations, title 2, sections 11000 through 11141):

- **Prohibit harassment** of employees, applicants, unpaid interns, volunteers, and independent contractors by any persons and require employers to take all reasonable steps to prevent harassment. This includes a prohibition against sexual harassment, gender harassment, harassment based on pregnancy, childbirth, breastfeeding and/or related medical conditions, as well as harassment based on all other characteristics listed above.
- **Require that all employers provide information** to each of their employees on the nature, illegality, and legal remedies that apply to sexual harassment. Employers may either develop their own publications, which must meet standards set forth in California Government Code section 12950, or use a brochure from the DFEH.
- **Require employers with 50 or more employees and all public entities to provide sexual harassment and abusive conduct prevention training** for all supervisors.
- **Prohibit employers from limiting or prohibiting the use of any language** in any workplace unless justified by business necessity. The employer must notify employees of the language restriction and consequences for violation. Also prohibits employers from discriminating against an applicant or employee because he or she possesses a driver's license issued to a person who is unable to prove his or her presence in the United States is authorized under federal law.
- **Require employers to reasonably accommodate** an employee, unpaid intern, or job applicant's religious beliefs and practices, including the wearing or carrying of religious clothing, jewelry or artifacts, and hair styles, facial hair, or body hair, which are part of an individual's observance of his or her religious beliefs.
- **Require employers to reasonably accommodate employees or job applicants with a disability** to enable them to perform the essential functions of a job.

- **Permit job applicants, unpaid interns, volunteers, and employees to file complaints** with the DFEH against an employer, employment agency, or labor union that fails to grant equal employment as required by law.

- **Prohibit discrimination** against any job applicant, unpaid intern, or employee in hiring, promotions, assignments, termination, or any term, condition, or privilege of employment.

- **Require employers, employment agencies, and unions** to preserve applications, personnel records, and employment referral records for a minimum of **two years**.

- **Require employers to provide leaves** of up to four months to employees disabled because of pregnancy, childbirth, or a related medical condition.

- **Require an employer to provide reasonable accommodations** requested by an employee, on the advice of her health care provider, related to her pregnancy, childbirth, or a related medical condition.

- **Require employers of 50 or more persons to allow eligible employees to take up to 12 weeks leave** in a 12-month period for the birth of a child; the placement of a child for adoption or foster care; for an employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition. The law also requires employers to post a notice informing employees of their family and medical leave rights.

- **Require employment agencies to serve all applicants equally**, refuse discriminatory job orders, and prohibit employers and employment agencies from making discriminatory pre-hiring inquiries or publishing help-wanted advertisements that express a discriminatory hiring preference.

- **Prohibit unions from discriminating** in member admissions or dispatching members to jobs.

- **Prohibit retaliation** against a person who opposes, reports, or assists another person to oppose unlawful discrimination.

The law provides for remedies for individuals who experience prohibited discrimination or harassment in the workplace. These remedies include hiring, front pay, back pay, promotion, reinstatement, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages, and emotional distress damages.

Job applicants, unpaid interns, and employees: If you believe you have experienced discrimination or harassment you may file a complaint with the DFEH.

Independent contractors and volunteers: If you believe you have been harassed, you may file a complaint with the DFEH.

Complaints must be filed within one year of the last act of discrimination/harassment or, for victims who are under the age of 18, not later than one year after the victim's eighteenth birthday.

For more information contact (800) 884-1684; TTY (800) 700-2320; videophone for the hearing impaired (916) 226-5285; contact.center@dfeh.ca.gov; or www.dfeh.ca.gov.

Government Code section 12950 and California Code of Regulations, title 2, section 11013, require all employers to post this document. It must be conspicuously posted in hiring offices, on employee bulletin boards, in employment agency waiting rooms, union halls, and other places employees gather.

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or voice recording as a disability-related accommodation for an individual with a disability. To discuss how to receive a copy in an alternative format, please contact the DFEH at the telephone numbers or e-mail address above.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
 800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfef.ca.gov

FAMILY CARE AND MEDICAL LEAVE (CFRA LEAVE) AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA-eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement—for pregnancy disability it is to the same position and for CFRA it is to the same or a comparable position—at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your child, parent or spouse, who has a serious health condition, before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, the basic minimum duration of the leave is two weeks, and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.



The *Unruh Civil Rights Act* provides protection from discrimination by all business establishments in California.



Department of Fair Employment and Housing

The Department is not an advocate for either the person complaining or the person complained against. DFEH represents the State of California. DFEH will, if possible, try to assist both parties to resolve the complaint. If a voluntary settlement cannot be reached, and there is sufficient evidence to establish a violation of the law, DFEH may issue a civil complaint and litigate the case in state or federal court.

This law provides for a variety of remedies that may include the following:

- Out-of-pocket expenses
- Cease and desist orders
- Damages for emotional distress
- Statutory damages
- Attorney's Fees and Costs
- Punitive Damages

Court-ordered damages may include a maximum of three times the amount of the complainant's actual damages.

Persons wishing to file directly in court may do so without contacting DFEH.

For more information, contact

DFEH toll free at

(800) 884-1684

Email at contact.center@dfeh.ca.gov

TTY number at **(800) 700-2320**

or visit our web site at

www.dfeh.ca.gov

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.



State of California

Department of Fair Employment & Housing

DFEH-167 (11/14)

Public Access Discrimination and Civil Rights

The *Unruh Civil Rights Act* provides protection from discrimination by **all** business establishments in California, including housing and public accommodations. The term "business establishments" may include governmental and public entities as well.

What DFEH Does

The Department of Fair Employment and Housing (DFEH) enforces these laws by:

- Investigating harassment and discrimination complaints;
- Assisting involved parties to voluntarily resolve complaints;
- Prosecuting violations of the law; and
- Educating Californians about the laws prohibiting harassment and discrimination by providing written materials and participating in seminars and conferences.

Protections Under the Law

The language of the *Unruh Civil Rights Act* specifically outlaws discrimination in housing and public accommodations based on sex, race, color, religion,



The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

ancestry, national origin, mental or physical disability, age, medical condition, genetic information, marital status, or sexual orientation. However, the California Supreme Court has held that protections under the Unruh Act are **not necessarily restricted** to these characteristics. The Act is meant to cover all arbitrary and intentional discrimination by a business establishment on the basis of personal characteristics **similar** to those listed above.

The law also protects the rights of individuals with disabilities to use streets, highways, and other public places; public conveyances; places of public accommodation, amusement or resort, and housing accommodations; and guide, signal, or service animals or alternative accommodations for persons with disabilities.

The law provides a clear distinction between the rights of a business to refuse service based on **conduct** as opposed to personal characteristics. The misconduct or disruptive behavior of particular individuals may be grounds for refusing to do business with them or denying them services.

Senior Housing

The *Unruh Civil Rights Act* also contains provisions regulating the establishment of specialized housing designed to meet the physical and/or social needs of senior citizens.

Housing that meets these requirements is exempt from the familial status and age provisions of the *Fair Employment and Housing Act* and may, therefore, legally exclude households with children. Similar provisions are provided for senior citizen mobile home parks under federal fair housing laws.

Businesses Covered Under the Law

This law requires "Full and equal accommodations, advantages, facilities, privileges or services in **all** business establishments." This includes, but is not limited to, the following places:

- Hotels and motels
- Nonprofit organizations that have a business purpose or are a public accommodation
- Restaurants
- Theaters
- Hospitals
- Barber shops and beauty salons
- Housing accommodations
- Public agencies
- Retail establishments

Examples of Unruh Act Violations

The following examples represent potential violations of the *Unruh Civil Rights Act*. Other situations may also qualify as Unruh Act violations depending on the specific circumstances.

- A hotel charges a \$100 service fee only

to guests of a certain racial group but not to other guests of the hotel.

- A doctor refuses to treat a patient who has been diagnosed as HIV positive.
- A same-sex couple is denied a table at a restaurant even though there are vacant tables available and other customers are seated immediately.
- A visually impaired individual is told his service animal is not allowed in a store.

Filing a Complaint

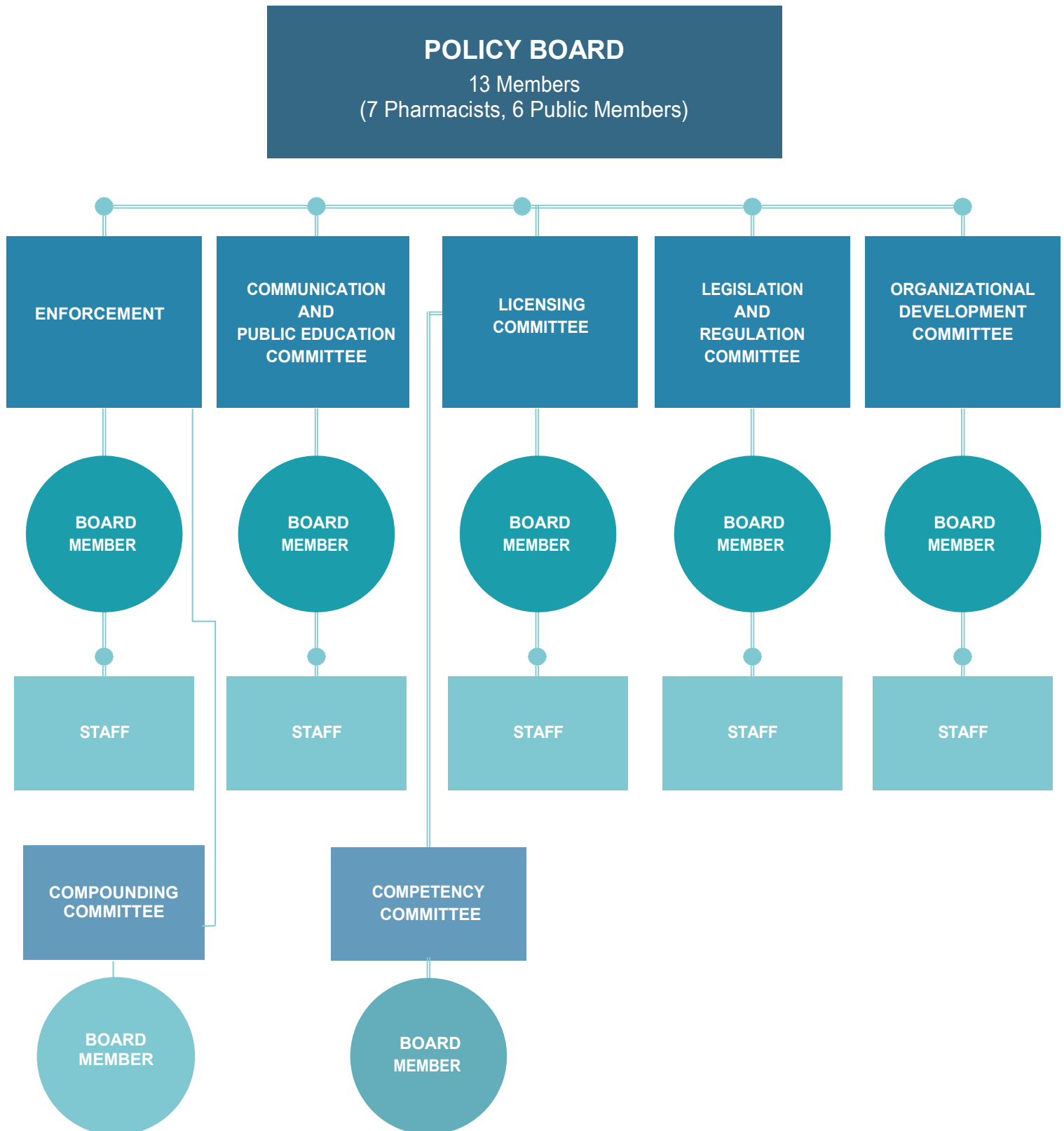
If you believe you are a victim of illegal discrimination, you can file a complaint with DFEH by following these steps:

- Contact DFEH by calling the toll-free number at (800) 884-1684 to schedule an appointment.
- Be prepared to present specific facts about the alleged harassment or discrimination.
- Provide copies of documents that support the charges in the complaint.
- Keep records and documents about the complaint, such as receipts, stubs, bills, applications, and other materials.

Complaints must be filed within **one year** from the last act of discrimination. DFEH will conduct an impartial investigation.

Attachment B

Board Organization Chart



Attachment C

Major Studies

- ❖ Review of the National Exams for the Certification of Pharmacy Technicians

BOARD OF PHARMACY

REVIEW OF NATIONAL EXAMINATIONS FOR THE CERTIFICATION OF PHARMACY TECHNICIANS

Pharmacy Technician Certification Exam (PTCE)

Exam for the Certification of Pharmacy Technicians (ExCPT)



OFFICE OF PROFESSIONAL EXAMINATION SERVICES



BOARD OF PHARMACY

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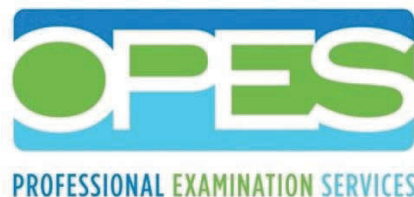
Exam for the Certification of Pharmacy Technicians (ExCPT)

This report was prepared and written by the
Office of Professional Examination Services
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Heidi Lincer-Hill, Ph.D., Chief

Judy Geer, Personnel Selection Consultant



EXECUTIVE SUMMARY

Licensing boards and bureaus within the California Department of Consumer Affairs (DCA) are required to ensure that national examination programs selected for use in the California licensure process comply with psychometric and legal standards. The California Board of Pharmacy Board) requested that the DCA Office of Professional Examination Services (OPES) complete a comprehensive review of the Pharmacy Technician Certification Board's (PTCB) Pharmacy Technician Certification Exam (PTCE) and the National Healthcareer Association's (NHA) Exam for the Certification of Pharmacy Technicians (ExCPT). At present there are three routes from which candidates may select to become certified pharmacy technicians in California, only one of which requires successful completion of an examination.

This examination review was conducted to help the Board determine whether to include acceptance of ExCPT certification as a requirement for certification for all candidates. The review evaluated the applicability of the PTCE and the ExCPT for use in California and identified how well the relevant areas of California pharmacy technician practice are covered by the examinations.

In 2010 the Board of Pharmacy of the State of Texas adopted the PTCE as its licensing instrument for pharmacy technicians. As part of its decision-making process, the Texas board contracted with three psychometricians to conduct a thorough review of the development process for both the PTCE and the ExCPT. OPES requested and reviewed a copy of the Texas study in order to determine whether (a) occupational analyses, (b) examination development, (c) passing scores, (d) test administration, (e) examination performance, and (f) test security procedures meet professional guidelines and technical standards. OPES found that the procedures used to establish and support the validity and defensibility of the PTCE's and the ExCPT's examination program components listed above do meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing (APA Standards)* and the California Business and Professions (B&P) Code Section 139.

OPES requested additional information from both PTCB and NHA in order to review the specifics of their examinations and examination development processes. Both examination providers complied with OPES's request and provided detailed confidential and proprietary reports as well as sample test items for review by participants in OPES's examination review.

Because pharmacy technicians work under the direct supervision of pharmacists, the Board arranged for the convening of two panels comprised of licensed pharmacists and pharmacy technicians to serve as subject matter experts (SMEs). The purpose of the SME panels was to review the examination content of the PTCE and the ExCPT, and to compare this content to the requirements of practice for pharmacy technicians in California. Because pharmacy technicians' practice settings can affect the knowledge

required of entry-level practitioners, the SMEs were selected based on their geographic location, experience, and practice settings.

It should be noted that there are different requirement standards for entry-level pharmacy technicians depending on the practice setting. A consistent issue with this examination review project was to attempt to reach consensus among practicing pharmacists and pharmacy technicians regarding the specific level of task and knowledge proficiency required for licensure/certification. There is at present no occupational analysis for the practice of pharmacy technicians specific to California.

During meetings of both SME panels, participants were asked to complete task and knowledge surveys for both examinations. Each panel of SMEs was able to examine the results of their respective surveys and to determine the extent to which important aspects of practice in California are covered by each examination provider's respective examination plan.

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CHAPTER 1. INTRODUCTION

PURPOSE OF THE COMPREHENSIVE REVIEW

Licensing boards and bureaus within the California Department of Consumer Affairs (DCA) are required to ensure that national examination programs selected for use in the California licensure process comply with psychometric and legal standards. The public must be confident that candidates passing a certification examination have the requisite knowledge and skills to competently and safely practice in their respective professions.

The California Board of Pharmacy (Board) requested that the DCA Office of Professional Examination Services (OPES) complete a comprehensive review of the Pharmacy Technician Certification Board's (PTCB) Pharmacy Technician Certification Exam (PTCE) and the National Healthcareer Association's (NHA) Exam for the Certification of Pharmacy Technicians (ExCPT). The purpose of the review was to determine if the PTCE and/or the ExCPT examinations adequately assess competencies relevant to practice in California and whether the examinations meet professional guidelines and technical standards outlined in *Standards for Education and Psychological Testing (Standards)*¹ and the California Business and Professions (B&P) Code Section 139. In addition to the review, OPES was asked to identify if there are areas of California pharmacy technician practice not covered by the PTCE and ExCPT examinations.

Both PTCB and NHA submitted their occupational analysis procedures and results for use in this review.

OPES, in collaboration with the Board, requested documentation from PTCB and NHA to determine whether (a) occupational analyses², (b) examination development, (c) passing scores³, (d) test administration, (e) examination performance, and (f) test security procedures met professional guidelines and technical standards outlined in the *Standards* and B&P Code Section 139.

¹ American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). *Standards for Educational and Psychological Testing*. Washington, DC: American Education Research Association.

² An occupational analysis is also known as a job analysis, practice analysis, or task analysis.

³ A passing score is also known as a pass point, cut score, or standard score.

CHAPTER 2. OCCUPATIONAL ANALYSIS

STANDARDS

The most relevant Standard relating to occupational analysis, as applied to credentialing or licensing examinations, is:

Standard 14.14

The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge of skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted. (p. 161)

The comment following Standard 14.14 emphasizes its relevance:

Comment: Some form of job or practice analysis provides the primary basis for defining the content domain. If the same examination is used in the licensure or certification of people employed in a variety of settings and specialties, a number of different job settings may need to be analyzed. Although the job analysis techniques may be similar to those used in employment testing, the emphasis for licensure is limited appropriately to knowledge and skills necessary for effective practice. In tests used for licensure, skills that may be important to success but are not directly related to the purpose of licensure (e.g., protecting the public) should not be included. (p. 161)

California B&P Code Section 139 requires that every California licensure board, bureau, commission, and program report annually on the frequency of their occupational analyses and the validation and development of examinations. The DCA Examination Validation Policy states:

Occupational analyses and/or validations should be conducted every three to seven years, with a recommended standard of five years, unless the board, program, bureau, or division can provide verifiable evidence through subject matter experts or similar procedure that the existing occupational analysis continues to represent current practice standards, tasks, and technology.

Additionally the *Principles for the Validation and Use of Personnel Selection Procedure* (Society of Industrial and Organization Psychology, 2003) notes:

When selection procedure is designed explicitly as a sample of important elements in the work domain, the validation study should provide evidence that the selection procedure samples the important work behaviors, activities, and/or worker KSAOs necessary for performance on the job, in job training, or on specified aspects of either. This provides the rationale for the generalization of the results from the validation study to prediction of work behaviors. (p. 21)

FINDINGS

OPES reviewed the occupational analyses for the two examinations and found them to be consistent with professional standards.

Occupational Analyses – Methodology and Timeframe

The purpose of occupational analyses is to identify the important procedures and tasks commonly performed by entry-level pharmacy technicians. The methodology used to conduct each occupational analysis study was a survey.

Finding 1. OPES reviewed the occupational analyses for the two examinations and found that the timeframes in which each analysis study was conducted are considered to be current, valid, and legally defensible.

Occupational Analysis – Development of Survey Instrument and Sampling Plan

OPES reviewed the occupational analyses for the two examinations and found them to be consistent with professional standards.

Finding 2. OPES reviewed the occupational analyses for the two examinations and found the methodology used by both PTCB and NHA to develop the survey instrument met professional guidelines and technical standards.

Finding 3. OPES reviewed the occupational analyses for the two examinations and found the development of the sampling plans was reasonable and meets professional standards.

Occupational Analysis – Survey Results

After administering the surveys, PTCB and NHA collected the data and analyzed the survey results.

Finding 4. OPES reviewed the occupational analyses for the two examinations and found respondents consisted of practicing pharmacy technicians and pharmacists from throughout the U.S.

Occupational Analysis – Final Examination Plan/Specifications (Content Outline)

The content outlines for the PTCE and ExCPT are based on the results of the occupational analyses performed by PTCB and NHA. Examination committees for their respective examination plans reviewed the results of their occupational analyses and developed the content plans and relative weightings.

Finding 5. OPES reviewed the occupational analyses for the two examinations and found the linkage between critical competencies required by entry-level pharmacy technicians in California and the major content areas of the examinations demonstrates a sufficient level of content coverage for use as a valid measure of entry-level knowledge.

CHAPTER 3. EXAMINATION ANALYSIS

STANDARDS

Examination development includes many steps within an examination program, from the development and evaluation of an occupational analysis to scoring and analyzing questions (items) following the administration of an examination. Specific activities evaluated in this section include item writing, linking items to the content outline/plan, developing the scoring criteria, and developing examination forms.

The Standards most relevant to examination development, as applied to credentialing or licensing examinations, are:

Standard 3.6

The type of items, the response formats, scoring procedures, and test administration procedures should be selected based on the purposes of the test. . . . The qualifications, relevant experiences, and demographic characteristics of expert judges should also be documented. (p. 44)

Standard 3.7

The procedures used to develop, review, and try out items, and to select items from the item pool should be documented. If the items were classified into different categories or subtests according to the test specifications, the procedures used for the classification and appropriateness and accuracy of the classification should be documented. (p. 44)

Standard 3.11

Test developers should document the extent to which the content domain of a test represents the defined domain and test specifications. (p. 45)

Finding 6. OPES reviewed the technical summary reports for the two examinations and found the criteria used to develop the two tests are consistent with professional guidelines and technical standards.

Examination Development – Size of Item Banks

Finding 7. OPES reviewed the occupational analyses for the two examinations and found the number of items maintained within the item banks is consistent with professional guidelines and technical standards.

CONCLUSIONS

Given the findings, the examination development activities conducted by PTCB and NHA meet professional guidelines and technical standards.

CHAPTER 4. PASSING SCORES

STANDARDS

The passing score of an examination is the score that represents the level of performance that divides those candidates for licensure who are minimally competent and those who are incompetent.

The Standards most relevant to passing scores, or cut scores, for credentialing or licensing examinations are:

Standard 4.19

When proposed score interpretations involve one or more cut scores, the rationale and procedures used for establishing cut scores should be clearly documented. (p. 59)

Standard 4.21

When cut scores defining pass-fail or proficiency categories are based on direct judgments about the adequacy of item or test performance or performance levels, the judgmental process should be designed so that judges can bring their knowledge and experience to bear in a reasonable way. (p. 60)

Standard 14.15

Estimates of the reliability of test-based credentialing decisions should be provided. (p. 162)

Standard 14.17

The level of performance required for passing a credentialing test should depend on the knowledge and skills necessary for acceptable performance in the occupation or profession and should not be adjusted to regulate the number or proportion of persons passing the test. (p. 162)

The supporting commentary on passing or cut scores in the *Standards*, (Chapter 4-- Scales, Norms, and Score Comparability states that there can be no single method for determining cut scores for all tests and all purposes. The process should be clearly documented and defensible. The qualifications and the process of selection of the judges involved should be part of the documentation. A sufficiently large and representative group of judges should be involved, and care must be taken to ensure that judges understand what they are to do.

In addition, the supporting commentary in the *Standards*, Chapter 14--Testing in Employment and Credentialing states that the focus of credentialing standards in “levels of knowledge and performance necessary for safe and appropriate practice” (p. 156). “Standards must be high enough to protect the public, as well as the practitioner, but not so high as to be unreasonably limiting” (p. 157).

Passing Scores – Purpose, Use of Subject Matter Experts, and Methodology

The process of establishing passing scores for licensure exams relies upon the expertise and judgment of SMEs.

Finding 8. The PTCE and ExCPT tests incorporate minimum competency standards by which candidate competency can be evaluated.

Finding 9. The training of the SMEs and the application of appropriate methods of establishing cut scores are consistent with professional guidelines and technical standards.

CONCLUSIONS

Given the findings, the passing score procedures implemented by PTCB and NHA demonstrate a sufficient degree of validity, thereby meeting professional guidelines and technical standards.

CHAPTER 5. TEST ADMINISTRATION

STANDARDS

The Standards most relevant to the test administration of credentialing or licensing examinations are:

Standard 3.22

Procedures for scoring and, if relevant, scoring criteria should be presented by the test developer in sufficient detail and clarity to maximize the accuracy of scoring. Instructions for using rating scales or for deriving scores obtained by coding, scaling, or classifying constructed responses should be clear. This is especially critical if tests are scored locally. (p. 45)

Standard 3.24

When scoring is done locally and requires scorer judgment, the test user is responsible for providing adequate training and instruction to the scorers and for examining scorer agreement and accuracy. The test developer should document the expected level of scorer agreement and accuracy. (p. 45)

Standard 5.1

Test administrators should follow carefully the standardized procedures for administration and scoring specified by the test developer, unless the situation or a test taker's disability dictates that an exception should be made. (p. 63)

Standard 5.6

Reasonable efforts should be made to assure the integrity of test scores by eliminating opportunities for test takers to attain scores by fraudulent means. p. 64)

Standard 8.2

Where appropriate, test takers should be provided, in advance, as much information about the test, the testing process, the intended test use, test scoring criteria, testing policy, and confidentiality protection as is consistent with obtaining valid responses. (pp. 86-87)

Finding 10. OPES reviewed the technical summary reports of PTCB and NHA and found that the test administration, test center, registration of candidates, special accommodations, and standardized delivery systems meet professional guidelines and technical standards.

Finding 11. The examination security measures relating to test administration appear to meet professional guidelines and technical standards.

CONCLUSION

Given the findings, the test administration activities conducted by PTCB and NHA appear to meet professional guidelines and technical standards.

CHAPTER 6. EXAMINATION SCORING AND PERFORMANCE

STANDARDS

The Standards most relevant to examination performance of credentialing or licensing examinations, as applied by the *Standards*, are:

Standard 2.1

For each total score, subscore, or combination of scores that is to be interpreted, estimates of relevant reliabilities and standard errors of measurement or test information functions should be reported. (p. 31)

Standard 3.9

When a test developer evaluates the psychometric properties of items, the classical or item response theory (IRT) model used for evaluating the psychometric properties of items should be documented. The sample used for estimating item properties should be described and should be of adequate size and diversity for the procedure. The process by which items are selected and the data used for item selection, such as item difficulty, item discrimination, and/or item information, should also be documented. When IRT is used to estimate item parameters in test development, the item response model, estimation procedures, and evidence of model fit should be documented. (pp. 44-45)

Finding 12. OPES reviewed the examination scoring and performance methodology for the two examinations and found them to be consistent with professional standards.

CONCLUSION

Given the findings, the examination scoring and performance activities conducted by PTCB and NHA appear to meet professional guidelines and technical standards.

CHAPTER 7. INFORMATION AVAILABLE TO CANDIDATES

STANDARDS

The Standards most relevant to candidate information, as applied by the *Standards* to credentialing or licensing examinations, are:

Standard 5.5

Instructions to test takers should clearly indicate how to make responses. Instructions should also be given in the use of any equipment likely to be unfamiliar to test takers. Opportunity to practice responding should be given when equipment is involved, unless use of the equipment is being assessed. (p. 63)

Standard 8.1

Any information about test content and purposes that is available to any test taker prior to testing should be available to *all* test takers. Important information should be available free of charge and in accessible formats. (p. 86)

Standard 8.2

Where appropriate, test takers should be provided, in advance, as much information about the test, the testing process, the intended test use, test scoring criteria, testing policy, and confidentiality protection as is consistent with valid responses. (p. 86)

Websites for both examinations provide candidates with detailed information on the testing process. Both examination providers supply candidates with detailed handbooks or guidebooks that explain the procedures for the application process, what information will be tested, test center information including registration requirements, security measures, and score reporting.

Finding 13. The PTCB and ExCPT websites provide extensive information to candidates regarding all aspects of the examination and testing process. Candidates can access application forms, test plans, study guides, and information regarding renewing their certifications. Test scheduling and contact information are readily available.

CONCLUSION

Given the findings, the information provided to candidates about the PTCE and ExCPT certifications is comprehensive and meets professional guidelines.

CHAPTER 8. TEST SECURITY

The Standards most relevant to test security, as applied to credentialing or licensing examinations, are:

Standard 5.6

Reasonable efforts should be made to assure the integrity of test scores by eliminating opportunities for test takers to attain scores by fraudulent means. (p. 64)

Standard 5.7

Test users have the responsibility of protecting the security of test materials at all times. (p. 64)

Finding 14. OPES reviewed the examination security measures for the two examinations and found them to be consistent with professional standards.

CONCLUSION

The examination security measures relating to test administration appear to meet professional guidelines and technical standards.

CHAPTER 9. COMPARISON OF THE PTCE AND ExCPT EXAMINATION CONTENT PLANS

UTILIZATION OF EXPERTS

Two two-day meetings were convened by OPES on August 15-16, 2013, and October 3-4, 2013, to evaluate and compare the PTCB's Pharmacy Technician Certification Exam (PTCE) and the NHA's Exam for the Certification of Pharmacy Technicians (ExCPT) examination plans. The Board recruited 15 SMEs to participate in the meeting using guidelines generated by OPES. Subject Matter Expert Selection Guidelines can be found in Appendix 1. Due to the nature of the supervisory aspects of practice, SMEs were comprised of pharmacists and pharmacy technicians. Of the total 15 participants, seven were licensed pharmacists and eight were pharmacy technicians.

Another consideration in the selection of SMEs is the perception that job tasks vary depending on work settings; this results in the requirement to test a wide range of knowledge within the practice. While there are many possible workplaces in which pharmacy technicians may practice, the two commonly identified settings which represent two sides of an apparent dichotomy appear to be hospital and retail. Therefore, SMEs were also recruited on the basis of their practice settings. Their titles and work environments broke down as follows:

Profession	Work setting	
	Hospital	Retail
Pharmacy technician	4	4
Pharmacist	3*	5*

**One pharmacist identified himself as being experienced in both environments.*

The SMEs represented both Northern and Southern California, and included participants from urban and rural areas. They had been licensed from 6 to 20+ years (mean = 15 years licensed), and worked as pharmacists or pharmacy technicians in various settings. The SMEs completed workshop participation paperwork, security agreements, and separate agreements addressing the proprietary and confidential materials provided by both examination providers. The Subject Matter Expert Participant Agreement can be found in Appendix 2. Completed documents as well as SME personal data forms are on file at OPES.

Note that due to the small number of SMEs involved in the review process, conclusions by one or both panel meetings are included in this report.

An OPES facilitator gave an orientation to each group and stated the purpose of the meetings, the project background leading to the review of the examinations, and the role of the SMEs. The SMEs were then given task and knowledge surveys of both examinations and were asked to evaluate the contents of each examination's plan. The SMEs were asked to examine the two plans for comprehensiveness as applied to the practice of pharmacy technicians in California and also to determine whether any important aspects of California practice were omitted by either examination plan.

After reviewing the results of their surveys, the OPES facilitator led the two groups' respective discussions about the application of the PTCE and the ExCPT examination plans to the practice of pharmacy technicians in relation to each SME's own work experience/settings. A further discussion addressed how well each examination plan captured the tasks and knowledge relevant to pharmacy technician practice in general in California, while disregarding, to the extent possible, the requirements of specific job settings.

During the first panel meeting, the SMEs expressed the opinion that their single most troubling concern was that newly licensed pharmacy technicians are entering the workplace with poor basic mathematical skills. This deficiency represents a significant gap in the skill set required to adequately perform many of the tasks of a pharmacy technician. The SMEs at the second panel meeting agreed with this opinion and were able to review and critique five sample mathematical questions from each of the two examinations.

DELETION OF TASK AND KNOWLEDGE STATEMENTS

An important part of the examination review process was to discover which parts of the examination did not fulfill the requirements for the purpose of licensing pharmacy technicians in California. Numerous statements were identified as topics that would not be appropriate for a California licensing examination. The explanation for the identification of these statements is described below.

The wording of examination plan statements in both examinations occasionally presented challenges to the SMEs that made it difficult for the SMEs to evaluate. In some instances the lack of clarity in the terms used caused confusion (e.g., "remote verification system"). In other instances the use of multiple action verbs in statements (e.g., "Assess, prioritize, and disseminate. . .") made the statements difficult to rate

since the SMEs found that not all the verbs were relevant to their practice or experience.

The SMEs were instructed on the purpose of licensing examinations and the nature of the subject matter that is relevant to public protection. During their scrutiny of the examination plans, the SMEs identified statements that represented knowledge unrelated to the issue of public protection.

The SMEs were also informed that licensing examinations should be written at an entry level of difficulty and are intended to help identify candidates who have mastered enough of the fundamentals of a practice or profession to protect the public from harm. The SMEs indicated a number of statements tested candidates beyond entry level.

The SMEs identified statements in which some or all of the content reflects practices that are illegal for a pharmacy technician in California to perform. Note that OPES received and evaluated lists of both task and knowledge statements from both examination providers. The task list from PTCB contained four statements thought by the SMEs to be illegal practice in California. This list was included in the confidential materials supplied by PTCB; therefore, those statements are not displayed in this report.

Each statement was ranked by its importance and frequency by the SMEs through a survey evaluation process. The SMEs were tasked with determining at which point in the hierarchy of statements the ratings reflected information that was too insignificant or irrelevant to pharmacy technicians. Statements not meeting the threshold of criticality were highlighted.

The SMEs also detected statements that were written beyond the scope of practice of pharmacy technicians in California. In some of these cases the SMEs felt the statements reflected more of a pharmacist's rather than a pharmacy technician's responsibility.

Also, as a consequence of the SMEs' deliberations, numerous statements were deemed extraneous to practice in California.

The rationale behind deleting statements can be found in the color-coded chart legend box that appears below:

Lack of relevance to public protection
Beyond entry level of difficulty
Illegal practice for pharmacy technicians
Below threshold of criticality to practice
Beyond the scope of pharmacy technician practice

The list of the knowledge, skills, and abilities KSAs) for the PTCE appears in Appendix 3. Once the surveys were completed the SMEs were asked for their comments and impressions of each examination. SME comments regarding the PTCE examination plan appear in Appendix 4. The list of tasks and KSAs for the ExCPT appear in Appendices 6 and 7 respectively. SME comments regarding the ExCPT examination plan appear in Appendix 8.

Note that due to the small number of SMEs involved, determinations by one or both panel meetings are indicated on the task and KSA lists. While reviewing the results of their surveys, SMEs emphasized that the evaluations were influenced by the work experience of those in attendance. Also note that in some instances more than one reason could be cited (e.g., a statement might score below the threshold of criticality due to being beyond the scope of practice).

In addition to completing all the objectives assigned in the first meeting, SMEs at the second panel meeting were given access to sample mathematical questions from both examinations. SME comments regarding the reviewed questions for the PTCE appear in Appendix 5; comments regarding the reviewed mathematical questions from the ExCPT appear in Appendix 9.

CHAPTER 10. CONCLUSIONS

Due to issues identified at the two SME panel meetings, it was not possible for either group to give either examination an unqualified endorsement.

Each panel meeting ended with a discussion regarding the SMEs' overall impressions of the two examinations. It was clear during both discussions that the SMEs were keenly aware of the divergent requirements for pharmacy technicians depending on the employment setting. A major challenge to creating a national examination for pharmacy technicians is the identification of the core knowledge that effectively represents the spectrum of pharmacy technician work settings. As was stated at one meeting, "Due to the dichotomy between ambulatory and institutional settings, it is difficult to adequately assess minimum competence of both in the same examination."

While the SMEs believed that the ExCPT effectively covers a broader middle ground of retail and hospital setting responsibilities, they felt that the PTCE covered more inpatient work setting responsibilities. The SMEs agreed that in some cases tasks that were given lower ratings were still important to pharmacy technician practice in hospital settings; these identified tasks will be performed less often if at all in retail settings.

A major concern of the SMEs was the lack of a requirement for an educational/practical component for certification; at present PTCB requires neither. It was stated by SMEs that certification based on passing an examination, which can be obtained with the help of an online examination preparation service that requires no pharmacy-related education or experience, should not be accepted as the equivalent of the educational and/or practical backgrounds required of other avenues to certification. The SMEs expressed concern that there may be an overreliance on merely passing an examination, especially if that examination does not adequately represent the competency required of pharmacy technicians to fulfill the responsibilities once hired.

As a condition of registration, candidates pursuing ExCPT certification, in addition to being at least 18 years of age and possessing a high school diploma or equivalent, must also demonstrate completion of a training program or have at least 12 months of pharmacy-related experience within the last 36 months.

The SMEs who participated in the two meetings expressed their overall recommendations as follows:

Panel 1	Panel 2
<ul style="list-style-type: none"> • Require graduation from an accredited pharmacy technician course through an educational institution.* • Pass the Exam for Certification of Pharmacy Technicians (ExCPT examination). 	<ul style="list-style-type: none"> • Implement educational and/or practical experience standards as a requirement to sit for any [certification] examination to demonstrate an appropriate skill level to protect the public and secondarily to help overcome overreliance on an examination as the sole determinant of the competence of the technicians.

**The graduation requirement recommendation from Panel 1 could be considered met if the ExCPT's training program could be equated with that of an accredited pharmacy technician course through an educational institution.*

Despite the equivocal results of the review of the PTCE and the ExCPT examinations, the Board has a number of options from which to choose with regard to the certification requirements for pharmacy technicians.

OPTION 1:

Create and implement a California version of the pharmacy technician certification examination, and include an education/practical experience requirement to the application process.

Primary benefits:

- The examination would include only those topics considered critical and relevant to pharmacy technician practice in California and would avoid any question of illegal practices appearing on the examination.
- California-wide standards for education/practical experience could be established that would enhance certification overall as a representation of a standard of competence not currently uniformly required.
- Would deter candidates from pursuing certification through the use of "certification mill" websites that require no pharmacy-related education or experience and that may bestow certification on candidates unable to fulfill the responsibilities of the job.

Practical considerations:

- Would require a complete occupational analysis in order to develop an examination plan.
- Would require a complete examination development cycle to create an item bank and create an examination.
- Would require the expense of developing minimum education/practical experience requirements.
- Would require ongoing expense to generate and administer examinations as well as the expense of the test application process.
- There is a potential dearth of reference materials that can be referenced during examination development.

OPTION 2:

Accept certification from both the PTCB and the NHA provided that the examination providers can assure the Board that no questions concerning tasks considered illegal in California will appear on versions administered to California candidates.

Primary benefits:

- There are test administration systems in place for both examinations.
- Candidates would be given the opportunity to select the examination that may be more relevant to the work setting of their choice.
- May assist potential employers by selecting candidates whose certification more appropriately matches the requirements of their work settings.
- The ExCPT examination has a pharmacy technician-related education/practical experience component in its application process.

Practical considerations:

- It is unknown whether the examination providers are capable of making modifications to their examinations to accommodate California candidates.
- There is no requirement for education and/or practical experience for PTCE certification.
- There is no deterrent against using online certification mill websites that require no education/practical experience in their application process.

OPTION 3:

Modify the Board's acceptance of PTCB certification only by requiring an additional education and/or practical experience component; obtain assurance from the examination providers that no items regarding practices considered illegal in California will appear on examinations administered to California candidates; **and** accept candidates' certification results from the ExCPT examination with its current education/practical experience component.

Primary benefits:

- There are test administration systems in place for both examinations.
- Candidates would be given the opportunity to select the examination that may be more relevant to the work setting of their choice.
- May assist potential employers by selecting candidates whose certification more appropriately matches the requirements of their work settings.
- The ExCPT examination has a pharmacy technician-related education/practical experience component in its application process.
- The addition of an education/practical experience component to PTCE certification would serve to help enhance pharmacy technician practice overall as a representation of a standard of competence not currently uniformly required.
- Would increase the professionalism of the practice, thereby increasing public protection, by helping to ensure that qualifications important to fulfilling the requisite tasks of a pharmacy technician are met.

Practical considerations:

- The expense of developing and administering an education/practical experience component to the Board's processing of PTCE candidates unless borne by PTCB.
- The expense of communicating application process changes as well as the cost of their implementation.

CHAPTER 11. RECOMMENDATION

OPES recommends that the Board consider the criticality of conducting an occupational analysis for the practice of pharmacy technicians prior to deciding on an Option from Chapter 10. The concerns uncovered during the course of this review and discussed in this report are indicative of some fundamental issues that the Board could resolve through an occupational analysis. It is apparent that only by obtaining a thorough current knowledge of practice in California can the Board reach a thoughtful decision that would benefit practitioners and consumers in this State.

Such an analysis could provide the Board with firsthand knowledge of the full breadth of the practice and, therefore, would assist the Board to more accurately evaluate the common knowledge required of pharmacy technicians regardless of work setting. By having a complete list of critical tasks performed by practitioners, the decision to accept either or both national examinations with or without stipulations could be made with more assurance and on a more empirical basis.

Conducting an occupational analysis would also fulfill the requirements of Business and Professions Code Section 139 and would assist the Board in its goal of ensuring that its pharmacy technician certification program meets legal, technical, and professional standards.

APPENDIX 1

SUBJECT MATTER EXPERT SELECTION GUIDELINES

SUBJECT MATTER EXPERT SELECTION GUIDELINES

Board of Pharmacy
Pharmacy Technician Certification Examination
Audit Subject Matter Expert Selection Guidelines

As various practitioners are considered for inclusion in the workshops to compare the certification examinations of the Pharmacy Technician Certification Board (PTCB) and the National Healthcareer Association's (NHA) Exam for the Certification of Pharmacy Technicians (ExCPT), here are a few guidelines we would like to offer to aid in the selection of participants to optimize the results of the workshop.

- The subject matter experts (SMEs) should be evenly divided between pharmacists and pharmacy technicians if not more heavily weighted toward pharmacy technicians. Although pharmacy technicians are closely supervised by pharmacists, it is imperative we obtain and consider the input of practicing pharmacy technicians.
- The SMEs selected for the workshop should represent a broad spectrum of work experience and backgrounds in different environments to reflect the composition of practitioners throughout the State.
- The SMEs should represent differing lengths of licensure. It is particularly desirable to have newer licensees attend to gain from their more current exposure to coursework in preparing for the licensure examination.
- No SME should be in a position either at the work site or in a more formal setting to teach candidates or help prepare candidates to sit for any certification examination.
- No SME should be in a position that could be deemed a conflict of interest, nor should any SME have a vested interest in having the California Board of Pharmacy select one examination over the other.
- No SME should be in a position to gain from exposure to proprietary information from the PTCB or the NHA/ExCPT that is shared at the workshop.
- No SME with ties to either the PTCB or the NHA/ExCPT should be recruited to attend the workshops.
- Prospective SMEs should be advised before attending the workshop that they will be asked to disclose all their work and professional affiliations and to sign a nondisclosure document at the commencement of the meeting.

APPENDIX 2

SUBJECT MATTER EXPERT PARTICIPANT AGREEMENT

SUBJECT MATTER EXPERT PARTICIPANT AGREEMENT

Board of Pharmacy
Subject Matter Expert Participant Agreement

As a participant as a subject matter expert (SME) in the Office of Professional Examination Services' (OPES) audit of the National Healthcareer Association's (NHA) Examination for the Certification of Pharmacy Technicians (ExCPT) and the Pharmacy Technician Certification Board's pharmacy technician certification examinations, you may be exposed to certain proprietary information about either or both examinations. Due to the nature of the audit that is being conducted on behalf of the California Board of Pharmacy, it is necessary to obtain your agreement with the following restrictions in order for you to participate.

Your signature on this document attests that you comply with the following requirements:

- SMEs may not be in a position either at the work site or in a more formal setting to teach candidates or help prepare candidates to sit for any certification examination.
- SMEs may not be in a position that could be deemed a conflict of interest, nor have vested interests in having the California Board of Pharmacy select one examination over the other.
- SMEs may not be in a position to gain from exposure to proprietary information from the PTCB or the NHA/ExCPT that is shared at the workshop.
- SMEs may not have any relationship nor affiliation with either the PTCB or the NHA/ExCPT.
- SMEs must disclose all their work and professional affiliations on the examination security form at the commencement of the meeting.
- SMEs agree to keep all information discussed confidential.

(Printed name)

(Witness printed name)

Signature

(Witness signature)

Date signed

(Date witnessed)

APPENDIX 3

**PHARMACY TECHNICIAN CERTIFICATION EXAMINATION (PTCE)
MASTER LIST OF KNOWLEDGE AND SKILLS**

Note: The color coding on the following pages is an elaboration of the concerns SMEs expressed regarding the applicability of a number of the statements to pharmacy technician practice in California. (See page 16.)

PHARMACY TECHNICIAN CERTIFICATION EXAMINATION (PTCE) MASTER LIST OF KNOWLEDGE AND SKILLS

Lack of relevance to public protection
Beyond entry level of difficulty
Illegal practice for pharmacy technicians
Below threshold of criticality to practice
Beyond the scope of pharmacy technician practice

1. Pharmacology for Technicians	
1.1	Generic and brand names of pharmaceuticals
1.2	Therapeutic equivalence
1.3	Drug interactions (e.g., drug-disease, drug-drug, drug-dietary supplement, drug-OTC, drug-laboratory, drug-nutrient)
1.4	Strengths/dose, dosage forms, physical appearance, routes of administration, and duration of drug therapy
1.5	Common and severe side or adverse effects, allergies, and therapeutic contraindications associated with medications
1.6	Dosage and indication of legend, OTC medications, herbal and dietary supplements
2. Pharmacy Law and Regulations	
2.1	Storage, handling, and disposal of hazardous substances and wastes (e.g., MSDS)
2.2	Hazardous substances exposure, prevention and treatment (e.g., eyewash, spill kit, MSDS)
2.3	Controlled substance transfer regulations (DEA)
2.4	Controlled substance documentation requirements for receiving, ordering, returning, loss/theft, destruction (DEA)
2.5	Formula to verify the validity of a prescriber's DEA number (DEA)
2.6	Record keeping, documentation, and record retention (e.g., length of time prescriptions are maintained on file)
2.7	Restricted drug programs and related prescription-processing requirements e.g., thalidomide, isotretinoin, clozapine)
2.8	Professional standards related to data integrity, security, and confidentiality e.g., HIPAA, backing up and archiving
2.9	Requirement for consultation (e.g., OBRA 90)
2.10	FDA's recall classification
2.11	Infection control standards (e.g., laminar air flow, clean room, hand washing, cleaning counting trays, countertop, and equipment) (OSHA, USP 795 and 797)
2.12	Record keeping for repackaged and recalled products and supplies (TJC, BOP)
2.13	Professional standards regarding the roles and responsibilities of pharmacists, pharmacy technicians, and other pharmacy employees (TJC, BOP)

2.14	Reconciliation between state and federal laws and regulations
2.15	Facility, equipment, and supply requirements (e.g., space requirements, prescription file storage, cleanliness, reference materials) (TJC, USP, BOP)
3. Sterile and Non-Sterile Compounding	
3.1	Infection control e.g., hand washing, PPE)
3.2	Handling and disposal requirements (e.g., receptacles, waste streams)
3.3	Documentation (e.g., batch preparation, compounding record)
3.4	Determine product stability e.g., beyond use dating, signs of incompatibility
3.5	Selection and use of equipment and supplies
3.6	Sterile compounding processes
3.7	Non-sterile compounding processes
4. Medication Safety	
4.1	Error prevention strategies for data entry e.g., prescription or medication order to correct patient)
4.2	Patient package insert and medication guide requirements (e.g., special directions and precautions)
4.3	Identify issues that require pharmacist intervention (e.g., DUR, ADE, OTC recommendation, therapeutic substitution, misuse, missed dose)
4.4	Look-alike/sound-alike medications
4.5	High-alert/risk medications
4.6	Common safety strategies (e.g., tall man lettering, separating inventory, leading and trailing zeros, limit use of error prone abbreviations)
5. Pharmacy Quality Assurance	
5.1	Quality assurance practices for medication and inventory control systems (e.g., matching National Drug Code (NDC) number, bar code, data entry
5.2	Infection control procedures and documentation, (e.g., personal protective equipment [PPE], needle recapping
5.3	Risk management guidelines and regulations (e.g., error prevention strategies)
5.4	Communication channels necessary to ensure appropriate follow-up and problem resolution (e.g., product recalls, shortages
5.5	Productivity, efficiency, and customer satisfaction measures
6. Medication Order Entry and Fill Process	
6.1	Order entry process
6.2	Intake, interpretation, and data entry
6.3	Calculate doses required
6.4	Fill process (e.g., select appropriate product, apply special handling requirements, measure, and prepare product for final check
6.5	Labeling requirements (e.g., auxiliary and warning labels, expiration date, patient specific information)

6.6	Packaging requirements (e.g., type of bags, syringes, glass, pvc, child resistant, light resistant)
6.7	Dispensing process (e.g., validation, documentation and distribution)
7. Pharmacy Inventory Management	
7.1	Function and application of NDC, lot numbers and expiration dates
7.2	Formulary or approved/preferred product list
7.3	Ordering and receiving processes (e.g., maintain par levels, rotate stock)
7.4	Storage requirements (e.g., refrigeration, freezer, warmer)
7.5	Removal (e.g., recalls, returns, outdates, reverse distribution)
8. Pharmacy Billing and Reimbursement	
8.1	Reimbursement policies and plans (e.g., HMOs, PPO, CMS, private plans)
8.2	Third party resolution (e.g., prior authorization, rejected claims, plan limitation)
8.3	Third party reimbursement systems (e.g., PBM, medication assistance programs, coupons, and self-pay)
8.4	Healthcare reimbursement systems (e.g., home health, long-term care, home infusion)
8.5	Coordination of benefits
9. Pharmacy Information System Usage and Application	
9.1	Pharmacy-related computer applications for documenting the dispensing of prescriptions or medication orders (e.g., maintaining the electronic medical record, patient adherence, risk factors, alcohol drug use, drug allergies, side effects)
9.2	Databases, pharmacy computer applications, and documentation management (e.g., user access, drug database, interface, inventory report, usage reports, override reports, diversion reports)

APPENDIX 4

**SME COMMENTS REGARDING
PHARMACY TECHNICIAN CERTIFICATION EXAM (PTCE)
EXAMINATION PLAN**

SME COMMENTS REGARDING
PHARMACY TECHNICIAN CERTIFICATION EXAM (PTCE)
EXAMINATION PLAN

1	According to the examination plan basic mathematics may not be tested sufficiently to determine candidates' math skills in calculating doses/dilutions/supplies.
2	Lack of knowledge of laws and regulations specific to California.
3	Medication error prevention/remediation issues are not adequately addressed.
4	Inadequate coverage of hospital-setting issues.
5	Contains more inpatient tasks and more statements on sterile compounding [than on the ExCPT examination plan].
6	Health Insurance Portability and Accountability Act (HIPAA) coverage appears adequate.
7	Inventory geared toward outpatient settings.
8	Inpatient settings allow limited tech-check-tech; outpatient settings do not.
9	More tasks are written out of scope or beyond minimum competence for California practice [than on the ExCPT examination plan].
10	Multiple tasks contained in single statements should have been separated into separate statements.
11	Much tech activity is skill based and not tested adequately in a paper and pencil examination.
12	Identified statements as illegal practice in California.
13	Identified statements beyond minimum competence.
14	Identified duplicated statements.
15	Lacks statement on Federal Law.
16	Includes several managerial (non -public protection) tasks
17	No mention of medication reconciliation.
18	More hospital coverage.
19	Limited tech-check-tech.
20	The number of tasks in the exam plan outnumbers the number of questions on the exam; therefore, not every task will be tested.
21	Pharmacology is beyond the scope of pharmacy technician practice in California.
22	Questioned the relevancy of questions regarding pharmacy billing and reimbursement.
23	Not necessarily geared toward minimum competence.

APPENDIX 5

**SME COMMENTS REGARDING
PHARMACY TECHNICIAN CERTIFICATION EXAM (PTCE)
SAMPLE MATHEMATICS QUESTIONS**

SME COMMENTS REGARDING
PHARMACY TECHNICIAN CERTIFICATION EXAM (PTCE)
SAMPLE MATHEMATICS QUESTIONS

	Content of stems (questions) incomplete, unclear, and not reflective of practice or real life authenticity.
2	Lack of clarity in stems and in the distractors serve to distract test takers.
3	Concepts are good and relevant but are abstract and not constructed in real-life terms.
4	In some cases the key was mathematically correct but physically impossible and appear to identify the need for better vetting.
5	The questions required more complex thinking [than those on the ExCPT].
6	The questions provided a good balance of inpatient and outpatient knowledge required.

APPENDIX 6

**EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS (ExCPT)
MASTER LIST OF TASKS**

Note: The color coding on the following pages is an elaboration of the concerns SMEs expressed regarding the applicability of a number of the statements to pharmacy technician practice in California. (See page 16.)

**EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS (ExCPT)
MASTER LIST OF TASKS**

Lack of relevance to public protection
Beyond entry level of difficulty
Illegal practice for pharmacy technicians
Below threshold of criticality to practice
Beyond the scope of pharmacy technician practice

1. REGULATIONS AND PHARMACY DUTIES	
1A. Overview of technician's duties and general information	
1	Ensure all work performed by the technician is checked by the pharmacist.
2	Identify medication prescribing and/or use patterns requiring pharmacist intervention.
3	Differentiate between tasks that may be performed by a pharmacy technician and those that must be performed by a pharmacist.
4	Comply with rules and regulations when filling prescriptions.
5	Follow policies and regulations when filling prescriptions.
6	Maintain a clean work environment in the pharmacy and patient care areas.
7	Maintain pharmacy security by following proper procedures (e.g., alarms, personnel admitted, restricted areas).
8	Remove recalled, discontinued, and overstocked products from inventory.
9	Assist the pharmacist in managing inventory by placing, receiving, verifying, and stocking orders.
10	Communicate to staff, healthcare professionals, and patients any changes in product availability e.g., new, discontinued, back ordered, and recalled products).
11	Maintain proper supplies of prescription vials, caps, bottles, and other supplies.
12	Identify expired products in a pharmacy's inventory.
13	Dispose of drugs using proper procedures.
1B. Controlled substances	
14	Properly fill all classes of prescriptions.
15	Differentiate among the controlled substances schedules and the products within them.
16	Comply with rules and regulations when refilling prescriptions.
17	Follow the proper rules and regulations regarding the transfer of prescriptions between pharmacies.
18	Follow the proper rules and regulations for non-controlled substances when handling refills and/or partial filling of prescriptions.
19	Follow the correct procedures for handling requests for pseudoephedrine.
20	Comply with laws that pertain to handling sales of Schedule V and regulated non-prescription products.

21	Follow laws and regulations of the Controlled Substance Act with regard to ordering, storage, inventory, and dispensing.
22	Differentiate between legitimate versus illegitimate DEA numbers.
1C. Other laws and regulations	
23	Maintain HIPAA compliance while communicating with patients.
24	Maintain HIPAA compliance while communicating with healthcare professionals.
25	Comply with HIPAA requirements regarding collection, storage, and disclosure of patient information.
26	Comply with laws and regulations regarding generic substitution.
27	Identify the practitioners who are authorized to prescribe specific medications.
28	Interpret prescriber identifier numbers (e.g., DEA, NPI, UPIN).
29	Properly package prescription medications in child-resistant containers or other approved containers as required.
30	Comply with professional, state, and federal laws and regulations.
31	Use information found on medication stock bottles, such as drug name and strength, expiration date, and lot number.
32	Inform patients of the different types of information they can find on an OTC package label.
2. DRUGS AND DRUG THERAPY	
2A. Drug classification	
33	Differentiate among different therapeutic classes of drugs.
34	Differentiate among various dosage forms (e.g., tablets versus capsules, ointments versus creams, controlled-release versus immediate-release, parenteral versus oral).
35	Match commonly used over-the-counter products with their most common indicators.
36	Interpret what is represented by each of the three components of an NDC number.
2B. Most frequently prescribed medications	
37	Interpret basic medical terminology commonly used in the pharmacy in order to effectively assist the pharmacist.
38	Match brand and generic names of commonly used prescription drugs.
39	Contrast generic and brand-name medications with regard to cost and effectiveness.
40	Match commonly used prescription drugs with their most common indications.
41	Recognize common and serious adverse drug reactions, contraindications, and drug interactions.
42	Recognize physical interactions and incompatibilities in the preparation of compounded and parenteral medications.

3. DISPENSING PROCESS	
3A. Prescription information	
43	Analyze a prescription form for completeness and gather any information that is missing.
44	Properly process telephone, facsimile, and electronic prescription orders.
45	Obtain prescription refill authorization requests from prescribers.
46	Obtain information from patients pertaining to demographics, medication history, health conditions, allergies, and third-party payers.
47	Correctly translate a prescriber's directions for use into accurate and complete directions for the patient.
48	Interpret abbreviations used on prescriptions.
49	Avoid common misinterpretations of prescription abbreviations.
3B. Preparing/dispensing prescriptions	
50	Maintain and calibrate sterile compounding equipment.
51	Identify drugs that require special handling procedures.
52	Communicate appropriately and professionally with patients.
53	Communicate appropriately and professionally with healthcare professionals.
54	Follow proper record-keeping procedures pertaining to the pharmacy.
55	Follow the pharmacy's quality assurance policies and procedures.
56	Follow proper procedures to avoid medication errors.
57	Take proper corrective action after detecting potential medication errors.
58	Prevent mix-ups between look-alike, sound-alike products.
59	Follow proper procedures to assure delivery of the correct prescriptions to patients.
60	Properly use automated dispensing devices or other devices used in the dispensing process.
61	Maintain, calibrate, and stock automated dispensing systems.
62	Accurately enter prescription information into the computer.
63	Properly and accurately prepare prescription labels.
64	Prepare printed patient information leaflets.
65	Use the proper DAW code when entering prescription data into the computer.
66	Take proper action when receiving computerized messages, such as compliance alerts or interaction alerts, while entering data for a prescription.
67	Use auxiliary labels properly.
68	Properly label drug products packaged in approved containers or, when appropriate, in original packages.
69	Properly enter, update, and maintain electronic patient profiles.
70	Properly package and ship medications.
71	Answer patients questions about their third-party prescription coverage.

72	Interpret third-party payer identifier numbers e.g., BIN, PCN).
73	Complete claim forms properly.
74	Properly process third-party prescriptions.
75	Contact third-party payers and/or prescribers with regard to rejected claims.
3C. Calculations	
76	Convert within and between each of the systems of measurement.
77	Calculate the quantities of prescription medications to be dispensed.
78	Correctly calculate the days supply for prescriptions.
79	Properly calculate individual and daily dosages.
80	Correctly perform compounding calculations (e.g., ratio strength, w/w%, w/v%, v/v%, dilution/concentration, mEq).
3D. Sterile products, unit does and repackaging	
81	Perform basic pharmacy business calculations (e.g., pricing and inventory control).
82	Follow proper compounding procedures for non-sterile products.
83	Properly label and dispense medications when using multidose vials, punch cards, or unit-dose packaging.
84	Properly repackage and label unit-of-use products.
85	Properly calculate expiration dates for repackaged products.
86	Help patients interpret available manufacturer information regarding the use of various compliance aids and devices.
87	Differentiate among the various routes of administration for parenteral products.
88	Differentiate among the various types of sterile products.
89	Follow correct procedures for maintaining the environment for the sterile product compounding area.
90	Compound and label sterile products accurately.

APPENDIX 7

**EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS ExCPT)
EXAMINATION PLAN**

Note: The color coding on the following pages is an elaboration of the concerns SMEs expressed regarding the applicability of a number of the statements to pharmacy technician practice in California. (See page 16.)

EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS (ExCPT) EXAMINATION PLAN

Lack of relevance to public protection
Beyond entry level of difficulty
Illegal practice for pharmacy technicians
Below threshold of criticality to practice
Beyond the scope of pharmacy technician practice

REGULATIONS AND TECHNICIAN DUTIES	
1.1 Overview of technician duties and general information	
1.1.1	The role of pharmacists and pharmacy technicians
1.1.2	Functions that a technician may and may not perform
1.1.3	Prescription department layout and workflow
1.1.4	Pharmacy security
1.1.5	Inventory control
1.1.6	Stock medications
1.1.7	Identifying expired products
1.2 Controlled substances	
1.2.1	Difference among the controlled substances schedules
1.2.2	Refills, partial refills, filing, and prescription transfers
1.2.3	Correct procedures for handling Schedule V sales
1.2.4	Controlled Substance Act
1.2.5	DEA numbers
1.3 Other laws and regulations	
1.3.1	Federal privacy act
1.3.2	Generic substitution (incl. brand vs. generic products)
1.3.3	Professionals with prescribing authority (and acronyms)
1.3.4	Child-resistant packaging
1.3.5	Role of government agencies (Board of Pharmacy, DEA, FDA, etc.)
1.3.6	Manufacturer drug package labeling
1.3.7	OTC package labeling
DRUGS AND DRUG THERAPY	
2.1 Drug classification	
2.1.1	Major drug classes (e.g., analgesics, anesthetics, antibiotics, etc.)
2.1.2	Dosage forms (types, characteristics and uses)
2.1.3	Over-the-counter products
2.1.4	NDC number
2.2 Most frequently prescribed medications	
2.2.1	Brand and generic names

2.2.2	Basic mechanism action (pharmacology and drug classification)
2.2.3	Primary indications
2.2.4	Common adverse drug reactions, interactions, and contraindications
DISPENSING PROCESS	
3.1 Prescription information	
3.1.1	Information required on a valid prescription form
3.1.2	Telephoned and faxed prescriptions
3.1.3	Refill requirements
3.1.4	Patient information (age, gender, etc.)
3.1.5	Interpreting prescribers directions for prescription labels
3.1.6	Recognizing and using common prescription abbreviations
3.2 Preparing/dispensing prescriptions	
3.2.1	Avoiding errors (such as sound-alike/look-alike names)
3.2.2	Systems for checking prescriptions
3.2.3	Automated dispensing systems (including quality control)
3.2.4	Procedures for preparing prescriptions and data entry
3.2.5	Labeling prescriptions properly
3.2.6	Purpose and use of patient records
3.2.7	Proper packaging and storage
3.2.8	Managed care prescriptions
3.3 Calculations	
3.3.1	Conversions/systems of measurement used in pharmacy
3.3.2	Calculating the amounts of prescription ingredients
3.3.3	Calculating quantity or day's supply to be dispensed
3.3.4	Calculating individual and daily doses
3.3.5	Calculations used in compounding
3.3.6	Calculating dosages and administration rates for IVs
3.3.7	Business calculations (pricing, markup, inventory control)
3.4 Sterile products, unit dose and repackaging	
3.4.1	Drug distribution systems used in hospitals and nursing homes
3.4.2	Procedures for repackaging medications
3.4.3	Prescription compliance aids
3.4.4	Aseptic technique and the use of laminar flow hoods
3.4.5	Special procedures for chemotherapy
3.4.6	Routes of administration for parenteral products
3.4.7	Types of sterile products
3.4.8	Correct procedures for maintaining the sterile product environment
3.4.9	Accurate compounding and labeling of sterile product prescriptions

APPENDIX 8

**SME COMMENTS REGARDING
EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS ExCPT)
EXAMINATION PLAN**

SME COMMENTS REGARDING
EXAM FOR THE CERTIFICATION OF PHARMACY TECHNICIANS (ExCPT)
EXAMINATION PLAN

1	The task statements are written more clearly [than on the PTCE].
2	The knowledge being tested represents a broader middle ground that addresses both retail and hospital settings.
3	Captures communication avenues between pharmacy technicians and patients and pharmacy technicians and healthcare professionals.
4	Represents a more robust coverage of mathematics.
5	Captures a broader range of practical knowledge required of entry-level pharmacy technicians.
6	The emphasis on the prevention of medication errors enhances patient safety.
7	Identified similar and overlapping statements.
8	Identified a statement beyond pharmacy technician scope.
9	Identified unclear wording.
10	Identified a statement of illegal practice in California.
11	Privacy is given priority.
12	IV compounding and sterile procedures should have more emphasis for technicians working in hospital settings.
13	Task statements more heavily weighted to outpatient tasks.
14	Since more pharmacy technicians are employed in outpatient settings it is reasonable that the examination contents should be weighted toward outpatient technicians.
15	Statement concerning “business calculations” outdated.
16	The examination plan is clearer and more reflective of practice in the retail setting [than the PTCE].
17	The examination plan’s content areas are appropriately weighted toward practice in the retail setting.
18	Inadequate coverage of hospital setting pharmacy technician responsibilities.

APPENDIX 9

**SME COMMENTS REGARDING EXAM FOR THE CERTIFICATION OF PHARMACY
TECHNICIANS (ExCPT) SAMPLE MATHEMATICS QUESTIONS**

SME COMMENTS REGARDING EXAM FOR THE CERTIFICATION OF PHARMACY
TECHNICIANS (ExCPT) SAMPLE MATHEMATICS QUESTIONS

	Calculations call for only basic one-step arithmetic.
2	The questions need more complexity.
3	The questions lack current practice application.
4	Some of the terminology used is outmoded.
5	The formatting of the items should be written so they appear in the form of questions using complete sentences.
6	Some of the distractors are notably implausible.

Attachment D

Organizational Charts

Department of Consumer Affairs
Board of Pharmacy
June 2016

FY 2015-16
Authorized positions: 100.8
Blanket Positions (907): 12.0
BL 12-03 (999 Blanket): 3.7

ENFORCEMENT	
Field Staff	Office Staff
Supervising Pharmacy Inspector 6	Chief of Enforcement (CEA) 2
Supervising Pharmacy Inspector (LT) 1	Staff Services Manager II (LT) 1
Pharmacy Inspectors 26	Staff Services Manager I 3
Pharmacy Inspectors (LT) 6	Research Program Specialist I (LT) 1
Pharmacy Inspectors (RA) 1	AGPA 8
	AGPA (LT) 1
	AGPA (RA) 1
	AGPA (PI) 1
	SSA 6
	OT (T) 5
	Seasonal Clerk 1
<i>Drug Diversion & Fraud</i> <i>Drug Diversion for Self-Use</i> <i>Compliance</i> <i>Probation Monitoring</i> <i>Outsourcing</i> <i>Prescription Drug Abuse</i>	

Executive Officer 1
Assistant Executive Officer 1
ENFORCEMENT /LICENSING Sterile Compounding Field Staff

Supervising Pharmacy Inspector 1
Pharmacy Inspector 3
Pharmacy Inspector (LT) 4

LICENSING Office Staff
Staff Services Manager II 1
Staff Services Manager I 2
AGPA 2
AGPA (LT) 1
SSA 3.5
SSA (LT) 1.5
Program Technician III 3
OT (T) 2
OT (T) (PI) 1
OT (T) (LT) .5
Seasonal Clerk 3

ADMINISTRATION Office Staff
Staff Services Manager I 2
Information Officer I 1
Associate Info. Systems Analyst 2
AGPA 4
SSA 1
OT (T) 4
OT (T) (LT) 1
Seasonal Clerk 1

Department of Consumer Affairs
Board of Pharmacy
June 2017

FY 2016-17
Authorized positions: 100.8
Blanket Positions (907): 14.0
BL 12-03 (999 Blanket): 3.7

ENFORCEMENT	
Field Staff	Office Staff
Supervising Pharmacy Inspector 7	Chief of Enforcement (CEA) 2
Supervising Pharmacy Inspector (LT) 1	Staff Services Manager II (LT) 1
Pharmacy Inspectors 28	Staff Services Manager I 3
Pharmacy Inspectors (LT) 6	Research Program Specialist I (LT) 1
Pharmacy Inspectors (RA) 1	AGPA 10
	AGPA (RA) 1
	SSA 6
	OT (T) 5
	Seasonal Clerk 2
<i>Drug Diversion & Fraud</i> <i>Drug Diversion for Self-Use</i> <i>Compliance</i> <i>Probation Monitoring</i> <i>Outsourcing</i> <i>Prescription Drug Abuse</i>	

Executive Officer 1
Assistant Executive Officer 1
ENFORCEMENT /LICENSING Sterile Compounding Field Staff

Supervising Pharmacy Inspector 1
Pharmacy Inspector 3
Pharmacy Inspector (LT) 4

LICENSING Office Staff
Staff Services Manager II 1
Staff Services Manager I 2
AGPA 3
AGPA (LT) 1
SSA 3
SSA (LT) 1.5
Program Technician III 2
Program Technician III (T&D) 1
OT (T) 1
OT (T) (PI) 1
OT (T) (LT) 1
Seasonal Clerk 2

ADMINISTRATION Office Staff
Staff Services Manager I 2
Information Officer I 1
Associate Info. Systems Analyst 2
AGPA 4
SSA 1
OT (T) 5
OT (T) (LT) 1
Seasonal Clerk 3

Department of Consumer Affairs
Board of Pharmacy
June 2018

FY 2017-18
Authorized positions: 99.8
Blanket Positions (907):17.0
BL 12-03 (999 Blanket): 3.7

ENFORCEMENT	
Field Staff	Office Staff
Supervising Pharmacy Inspector 8	Chief of Enforcement (CEA) 2
Pharmacy Inspectors 34	Staff Services Manager II 1
Pharmacy Inspectors (RA) 1	Staff Services Manager I 3
	Research Program Specialist I 1
<i>Drug Diversion & Fraud</i>	AGPA 11
<i>Drug Diversion for Self-Use</i>	AGPA (RA) 1
<i>Compliance</i>	SSA 6
<i>Probation Monitoring</i>	OT (T) 5
<i>Outsourcing</i>	Seasonal Clerk 2
<i>Prescription Drug Abuse</i>	

Executive Officer 1
Assistant Executive Officer 1

**ENFORCEMENT /LICENSING
Sterile Compounding Field Staff**

Supervising Pharmacy Inspector 2
Pharmacy Inspector 8

**LICENSING
Office Staff**

Staff Services Manager II 1
Staff Services Manager I 2
AGPA 3
SSA 4
Program Technician III 2
Program Technician III (T&D) 1
OT (T) 1.5
OT (T) (PI) 1
OA (G) 1

**ADMINISTRATION
Office Staff**

Staff Services Manager II (LT) 1
Staff Services Manager I 2
Information Officer I 1
Info. Technology Specialist I 1
Info. Technology Associate 1
AGPA 4
SSA 2
OT (T) 5
Seasonal Clerk 2

Department of Consumer Affairs
Board of Pharmacy
June 2019

FY 2018-19
Authorized positions: 113.8
Blanket Positions (907): 0.7
BL 12-03 (999 Blanket): 3.7

ENFORCEMENT	
Field Staff	Office Staff
Supervising Pharmacy Inspector 8	Chief of Enforcement (CEA) 2
Pharmacy Inspectors 34	Staff Services Manager II 1
Pharmacy Inspectors (RA) 1	Staff Services Manager I 3
	Research Data Specialist I 1
	AGPA 14
	AGPA (RA) 1
	SSA 6
	OT (T) 4
	Seasonal Clerk 2
<i>Drug Diversion & Fraud</i> <i>Drug Diversion for Self-Use</i> <i>Compliance</i> <i>Probation Monitoring</i> <i>Outsourcing</i> <i>Prescription Drug Abuse</i>	

Executive Officer
1

Assistant Executive Officer
1

ENFORCEMENT /LICENSING
Sterile Compounding Field Staff

Supervising Pharmacy Inspector
2

Pharmacy Inspector
8

LICENSING
Office Staff

Staff Services Manager II
1

Staff Services Manager I
2

Staff Services Manager I (Spec)
1

AGPA
2

SSA
2.5

Program Technician III
3

OT (T)
2

OT (T) (PI)
1

OA (G)
1

ADMINISTRATION
Office Staff

Staff Services Manager I
2

Information Officer I
1

Info. Technology Specialist I
1

Info. Technology Associate
1

AGPA
3

SSA
1

OT (T)
5

Seasonal Clerk
1

Attachment E

Board Publications

- ❖ The Script – Newsletter
- ❖ Strategic Plan for the California State Board of Pharmacy



MARCH 2019

THE SCRIPT

BE AWARE & TAKE CARE: Talk to your pharmacist!

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New year brings changes in pharmacy laws for 2019



Gov. Edmund G. Brown Jr. signed a variety of Assembly and Senate bills that change laws governing the practice of pharmacy in California. Unless specified otherwise, the new laws took effect Jan. 1, 2019.

Many of the key changes are paraphrased or summarized below. Click on the bill number to read the full text of a bill. To read a compilation of specific new statutes authorized by the bills in the Business and Professions Code (BPC) and the Health and Safety Code (HSC), visit the Board of Pharmacy

website at www.pharmacy.ca.gov.

AB 2086 (Gallagher) Controlled Substances: CURES Database

(Chapter 274, Statutes of 2018)

This law allows a prescriber to request a list of patients for whom he or she is listed as a prescriber in the CURES database.

AB 2783 (O'Donnell) Controlled Substances: Hydrocodone Combination Products: Schedules



By Victor Law, RPh
President, Board of Pharmacy

Every January many new pharmacy laws go into effect, and 2019 is no exception. So in this issue of the newsletter,

you will be informed of all the new changes that are taking place – particularly AB 1753, which involves the changes to security prescription forms.

During the Enforcement Committee meeting in December 2018, the board had already discovered certain issues involving the implementation of AB 1753. Since then, the interim executive officer, Anne Sodergren, has worked closely with the Medical Board of California and the California Department of Justice. A joint statement was released January 10, 2019, to address fears and concerns of all the pharmacists and prescribers. The board wants to make sure that a patient's access to controlled substances is not compromised.

By reacting quickly to this new development, the board demonstrates to all licensees our commitment to public input and needs. We encourage all of you to participate in this process. There are also some common FAQs on the board's website that answer your questions. In addition, you can call the board telephone number at (916) 574-7900 on Tuesdays and Thursday from 8 a.m. to 4:30 p.m. to ask questions of a board inspector.

Please read this issue of the newsletter carefully and inform your colleagues and students to do the same. Keep everybody informed. I wish all of you a healthy and prosperous Happy New Year.

AB 1753 requires new security prescription forms

During a six-month transition period or until legislation changing the requirements is enacted, the Board of Pharmacy is advising pharmacists to exercise professional judgment in determining whether to fill prescriptions for controlled substances written on forms that do not yet comply with changes required by [AB 1753](#), which took effect January 1, 2019.

AB 1753 (Low, Chapter 794, Statutes of 2018) reduces the number of authorized security printers approved by the Department of Justice (DOJ). In addition, the new law requires security prescription forms for controlled substances to have a unique serialized number approved by the DOJ that must

be reported to CURES.

Not all prescribers have been able to obtain access to the new security prescription forms required by AB 1763. However, the new law does not include grandfather provisions or provide for a transition period to allow for the use of pre-existing security prescription forms after January 1, 2019. As a result, some pharmacists have been caught in a difficult position having to decide between providing needed medication to patients versus compliance with the law.

In an effort to help licensees, the Board of Pharmacy on December 27, 2018, posted on its website an [announcement advising pharmacists who are presented](#)

[with a noncompliant security prescription form](#):

In this circumstance, the Enforcement Committee has recommended to the board and to the executive officer that prior to July 1, 2019, the board not make an enforcement priority any investigation or action against a pharmacist who, in the exercise of his or her professional judgment, determines that it is in the best interest of patient or public health or safety to nonetheless fill such prescription.

In addition, the following materials have been posted

See **AB 1753**, Page 7

FAQs about complying with new rules for security prescriptions under AB 1753

- 1. Previous communications have indicated that there is no transition period for prescriptions written after January 1, 2019, without a serial number. Who would enforce provisions against dispensers that determine it is in the best interest of the patient to dispense a medication issued on a form that does not include a serialized number?**

The Enforcement Committee has recommended to the board and to the executive officer that prior to July 1, 2019, the board not make an enforcement priority any investigation or action against a pharmacist who, in the exercise of his or her professional judgment, determines that it is in the best interest of patient or public health or safety to nonetheless fill such prescription.

- 2. Many of the security prescription forms printed prior to January 1, 2019, have a serialized number already printed on them. Are the forms compliant if they contain a serialized number, or is it a different number?**

Prior to January 1, 2019, every batch of controlled substance prescription forms was required to have a lot number printed on the form, as well as a sequential number. They also had to have

an identifying number assigned to the approved printer by the Department of Justice. None of these numbers meet the requirement of the new law. The new serial number will be a 15-digit alphanumeric serial number in the following format: AAANNNNNNANNNNN. (A represents an alpha character, and N represents a numeral.)

- 3. I was presented with a controlled substance prescription form that has a uniquely serialized number printed on it that is consistent with the alphanumeric number format above, but I'm still not sure the prescription form is compliant. Should I refuse to fill it?**

Always use your best professional judgment when filling prescriptions. However, contacting the prescriber to determine whether the controlled substance prescription form was printed by an approved security printer might assist you in determining if the form is legitimate. The approved list of security printers can be found on the following website: <https://oag.ca.gov/security-printers/approved-list>.

You might also want to consider if any other red flags are present when making your decision. The board's corresponding responsibility brochure can be

found using the following link: <https://www.pharmacy.ca.gov/publications/corresponding-responsibility.pdf>.

- 4. Is the new uniquely serialized number required on e-scripts?**

No, the requirement does not apply to e-scripts (computer to computer). Prescribers are encouraged to e-prescribe whenever possible.

- 5. As a result of AB 1753, the information that must be reported to CURES by a dispensing pharmacy, clinic or other dispenser was amended. Health and Safety Code 11165(d)(11) states, "The serial number for the corresponding prescription form, if applicable" must be reported. Does "if applicable" mean the serial number must be reported only if it is present on the form?**

No. A uniquely serialized number, in a manner prescribed by the Department of Justice, must be present on all controlled substance prescription forms. "If applicable" refers to those exceptions in which a serial number would not be available: E-scripts, telephone or verbal prescriptions for Schedule III-V

New laws

Continued from page 1

(Chapter 589, Statutes of 2018)

This law reclassifies specific hydrocodone combination products as Schedule II controlled substances, making California law consistent with federal law.

AB 2789 (Wood) Health Care Practitioners: Prescriptions: Electronic Data Transmission

(Chapter 438, Statutes of 2018)

This law requires that all written prescriptions issued by licensed prescribers in California be issued as electronic transmission prescriptions – also known as e-prescriptions – by Jan. 1, 2022. In addition, all pharmacies, pharmacists or other practitioners authorized to dispense or furnish a medication must have the ability to receive e-prescriptions by Jan. 1, 2022. The law includes multiple exemptions.

SB 1447 (Hernandez) Pharmacy: Automated Drug Delivery Systems

(Chapter 666, Statutes of 2018)

AB 2037 (Bonta) Pharmacy: Automated Patient Dispensing Systems

(Chapter 647, Statutes of 2018)

SB 1447 and AB 2037 establish requirements for automated drug delivery system (ADDS) registration requirements with a licensing program that recognizes the different uses for such a device. The measures establish definitions for two different types of ADDS devices:

- An automated unit dose system (AUDS) is an ADDS for storage and retrieval of unit doses of drugs for administration to patients by authorized persons.
- An automated patient dispensing system (APDS) is an ADDS for storage and dispensing of prescribed drugs directly to patients.

Effective July 1, 2019, SB 1447 prohibits an ADDS

from being installed, leased, owned or operated in California unless specific requirements are met. Additionally, drugs can be stored for a period of up to 48 hours in a secured room within the ADDS location. The bill authorizes a pharmacy inspector employed by the board to enter the location or proposed location of an ADDS for inspection pursuant to these provisions. Lastly, this bill requires the board to report to the Legislature regarding the regulations of ADDS machines on or before January 1, 2024, as part of the board's sunset evaluation process.

AB 2138 (Chiu/Low) Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

(Chapter 995, Statutes of 2018)

Effective July 1, 2020, this law places restrictions on convictions, crime and other acts that the Board of Pharmacy may consider in denying, revoking or suspending a license. The law also requires the board to report denial summaries on its website; in addition, the website must include a list of crimes that will be considered for denial and how those crimes substantially relate to the qualifications, functions or duties of the practice of pharmacy.

AB 2859 (Caballero) Pharmacy: Safe Storage Products

(Chapter 240, Statutes of 2018)

This law requires community pharmacies that dispense Schedule II, III or IV controlled substances to display safe storage products on the premises and close to the pharmacy. Pharmacies where a licensed pharmacist is the majority owner and manager of no more than four pharmacies are exempt from this law. This law will remain in effect until Jan. 1, 2023.

SB 212 (Jackson) Solid Waste: Pharmaceutical and Sharps Waste Stewardship

(Chapter 1004, Statutes of 2018)

See **New laws**, Page 5

New laws

Continued from page 4

This law establishes a stewardship program to fund drug take-back programs and sharps disposal programs throughout California. Funding is to be provided by covered entities (typically drug manufacturers or distributors). The law requires CalRecycle to develop regulations governing the stewardship program by no later than Jan. 1, 2021. The law also requires the Board of Pharmacy to develop and maintain a list of all covered drugs sold in California. In addition, the board is required to review each stewardship plan for compliance with federal and state laws governing drug take-back programs.

SB 1109 (Bates) Controlled Substances: Schedule II Drugs: Opioids

(Chapter 693, Statutes of 2018)

This law requires prescribers to complete continuing education on the hazards of opioid use. The law also requires a specified warning notice be prominently displayed on the label or container of an opioid dispense to a patient for outpatient use.

SB 1254 (Stone) Hospital Pharmacies: Medication Profiles or Lists for High-Risk Patients

(Chapter 697, Statutes of 2018)

This law requires a pharmacist at a hospital pharmacy to obtain an accurate medication profile or list for each high-risk patient upon admission or discharge. Each hospital will establish criteria for determining whether a patient is high-risk. The law allows for a pharmacy technician or intern pharmacist to perform the task if he or she has successfully completed training and proctoring by the pharmacy department or another healing arts licensee issued a license pursuant to Division 2. The board has authority to adopt regulations.

SB 1442 (Wiener) Community Pharmacies: Staffing

(Chapter 569, Statutes of 2018)

This law prohibits a community pharmacy from requiring a pharmacist to work alone. It requires

that another employee of either the pharmacy or the establishment be made available to assist the pharmacist at all times. The law provides some exceptions.

Laws related to health care coverage and prescription drugs:

AB 2863 (Nazarian) Health Care Coverage: Prescriptions

(Chapter 770, Statutes of 2018)

This law requires a pharmacy to inform the consumer of the lower price of a covered medication – whether it is the retail price or the cost-sharing amount – unless the pharmacy automatically charges the lower amount. The pharmacy must submit the retail cost to the health care plan in the same manner as if the customer had paid the copay amount.

AB 315 (Wood) Pharmacy Benefit Management

(Chapter 905, Statutes of 2018)

This law requires a pharmacy to inform the customer at the point of sale whether the retail price of a covered prescription drug is lower than the copay amount, unless the pharmacy automatically charges the lower amount. The pharmacy must submit the retail cost to the health care plan in the same manner as if the customer had paid the copay amount.

SB 1021 (Wiener) Prescription Drugs

(Chapter 787, Statutes of 2018)

This law extends provisions regarding drug formulary coverage. It requires a drug benefit plan to provide that if the pharmacy's retail price for a prescription drug is less than the applicable copay amount, the consumer shall not be required to pay more than the retail price.

AB 1753 FAQs

Continued from page 6

controlled substances, faxed prescriptions, or prescriptions dispensed pursuant to HSC sections 11159.2, 11167 or 11167.5.

6. Will the new controlled substance prescription forms have the new uniquely serialized number as well as all the other numbers that were previously required (lot number, sequential number and number assigned to the security printer)?

Yes.

7. Can prescriptions for Schedule III through V controlled substances still be phoned in or faxed to a pharmacy?

Yes. There have been no legal changes to the ability to phone in or fax prescriptions for Schedule III through V controlled substances

8. We print on controlled substances prescription forms from the emergency department at our hospital pursuant to HSC 11162(c). Do we create our own serialized number? How do we get serialized numbers on the secure paper?

Your hospital must order new controlled substances prescription forms for use by prescribers when treating patients in your facility. The

serialized number is not one of the elements of the form that is exempt under this section.

9. Providers have been asking me where they should go to get new controlled substance prescription forms with the new serialized numbers. Where can I direct them?

The approved list of security printers can be found on the following website: <https://oag.ca.gov/security-printers/approved-list>.

10. If a controlled substance prescription was written in 2018 and has all the elements of a compliant prescription form, except the new serialized number, is it considered compliant?

Yes. Only controlled substance prescriptions written on or after January 1, 2019, must have the new serialized number printed on the controlled substance prescription form. Keep in mind that a controlled substances prescription may only be filled within the first six months of issuance.

11. If a Schedule III-V controlled substances prescription with refills was initially filled in 2018, can it be refilled after January 1, 2019, or do we need to get a new prescription that contains the new serialized number?

Only controlled substance prescription forms written on or after January 1, 2019, must have the new serialized number printed on the controlled substance prescription form.

12. How do we report the new serialized number to CURES?

You should contact your computer software vendor. You will need to ensure your system has a way to transmit the 15-digit serialized number to CURES.

13. If, based on my best judgment, I decide to fill a controlled substance prescription that is compliant in ALL ways with the exception of the new serialized number, will I get in trouble with the DEA?

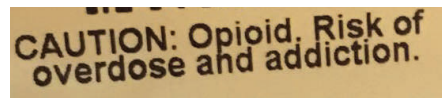
The change is in the California Health and Safety Code, not federal law. It is our understanding that the DEA enforces only federal law.

SB 1109 requires warning on opioid label, container

Effective Jan. 1, 2019, a new law requires that a specified warning notice be prominently displayed on the label or container of an opioid dispensed to a patient for outpatient use.

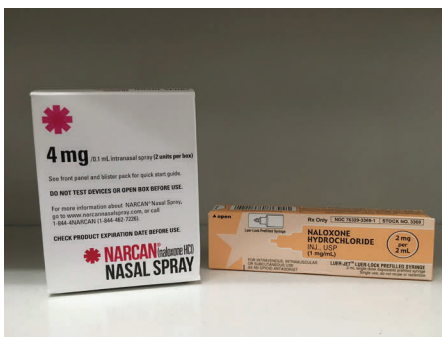
The new law, [SB 1109](#) (Bates, Chapter 693, Statutes of 2018), requires the notice to state: "Caution. Opioid. Risk of overdose and addiction." The law requires the notice be displayed "by means of a flag or other notification mechanism attached to the container."

Below is a sample notice:



In addition, SB 1109 requires prescribers to complete continuing education on the hazards of opioid use.

Prescribers must offer script for naloxone along with opioids



Effective Jan. 1, 2019, [AB 2760](#) (Wood, Chapter 324, Statutes of 2018) requires California prescribers to offer a prescription for naloxone hydrochloride – or another drug approved by the U.S. Food and Drug Administration for complete or partial reversal of opioid depression – to a patient when specific circumstances listed in

the bill are present. In addition, prescribers must provide to the patient and his or her designee education on overdose prevention and the use of naloxone or another similar drug approved by the FDA.

AB 2760 requires prescribers to offer the naloxone prescription to patients. The new law does not require patients to accept the naloxone prescription or to fill the prescription.

Pharmacists are urged to read [frequently asked questions about AB 2760](#) posted on the Medical Board of California website.

AB 1753

Continued from page 2

on the [Board of Pharmacy website](#) to help pharmacists respond when presented with noncompliant security prescription forms:

- [Joint Statement from the California Department of Justice, California State Board of Pharmacy, and the Medical Board of California Regarding Secure Prescription Forms.](#)
- [Letter from Assemblymember Low to Attorney General regarding Implementation of Assembly Bill 1753.](#)
- [Changes to Security Prescription Forms Pursuant to AB 1753 - FAQs.](#)

In the meantime, the Legislature is working on legislation, [AB 149](#), to provide a formal transition period for the new serialized number requirement for security prescription forms. The board will provide updates about additional changes in the law through subscriber alerts and The Script newsletter.

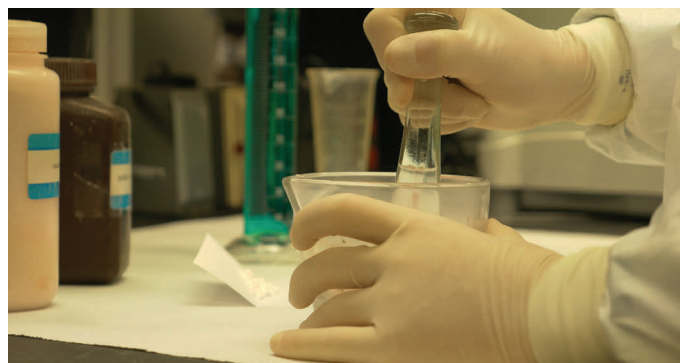
Immediate-use sterile compounding is allowed for limited situations only

The immediate-use provision under [California Code of Regulations \(CCR\), Title 16, section 1751.8\(e\)](#), is intended for **limited situations only**. Subsection (e) states in part:

Such “immediate use” preparations shall be compounded only in those limited situations where there is a need for immediate administration of a sterile preparation compounded outside of an ISO class 5 environment and where failure to administer could result in loss of life or intense suffering.

Preparations compounded for immediate use must also meet the following criteria:

- Only preparations defined by USP 797 as low-risk level shall be prepared as an immediate-use compounded sterile product (CSP).
- The quantity of an immediate-use CSP shall be only in the quantity to meet the immediate need, and the circumstance for the need shall be documented.
- The CSP shall be labeled “for immediate use only,” and administration shall begin no later than one hour following the start of the compounding process.
- If administration has not begun within one hour following the start of preparing the CSP, the CSP shall be promptly, properly and safely discarded.



- Unless immediately and completely administered by the person who prepared it, or immediate and complete administration is witnessed by the preparer, the CSP shall bear a label listing patient identification information, the names and amounts of all ingredients, the name or initials of the person who prepared the CSP, and the exact **one-hour BUD** and time.

The immediate-use provision for CSPs is **NOT** intended to be used as a standard of practice for compounding nonemergent sterile products outside of an ISO class 5 environment. The board encourages all licensees to review their compounding practices to ensure compliance with CCR section 1751.8(e) as it pertains to immediate-use compounding of sterile products.

Pharmacy technicians can renew license online, pay with credit card on board website

The California State Board of Pharmacy is excited to announce that you now have the option to renew your pharmacy technician license online at the board's website via credit card.

To verify when your license expires as well as if the board has your correct name and address of record, please click on “License Search” under Verify a License on the board's home page, [www.](#)

[pharmacy.ca.gov](#). The direct link to [renew your pharmacist technician license online](#) is <https://www.pharmacy.ca.gov/licensees/personal/tch.shtml>.

Pharmacists must sign, receive drugs delivered to pharmacy by wholesaler



A community pharmacy may receive drug stock from a variety of ways, such as from a licensed wholesaler or drug transfer from another pharmacy. However, much confusion has arisen over which pharmacy personnel may or may not be authorized to sign for drug deliveries to the licensed premise.

To be in full compliance with pharmacy law, refer to Business and Professions Code (BPC) section 4059.5(a), which states:

*"Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and **signed for***

and received by a pharmacist." (Emphasis added.)

As referenced in BPC 4059.5(a), a pharmacist must sign for and receive dangerous drugs and dangerous devices delivered to a licensed premise. However, the statute is silent as to what needs to be signed by the pharmacist to confirm delivery.

In common practice, the licensed wholesaler usually maintains a delivery slip or manifest of drugs delivered to the pharmacy. In turn, the pharmacy usually maintains a drug invoice associated with each drug delivery/order.

It is the delivery slip or manifest that is commonly signed by the pharmacist to confirm receipt of delivered drugs to the licensed premise. The delivery slip or manifest may be presented as a paper or electronic document. The drug invoice does not necessarily have to be signed if a delivery slip or manifest was signed by the pharmacist.

Each pharmacy operates differently, and it is important to understand your individual facility's compliance with BPC 4059.5(a). Refer to B&PC 4059.5 for exceptions and further pharmacy practice considerations. When in doubt, consult your legal counsel for further direction.

Grads: Apply for exam ASAP if entering residency

During the peak of graduation season at pharmacy schools, the board receives more than 2,000 applications from graduates seeking pharmacist licensure in California. This can increase the time needed to process applications for pharmacist exams.

The board is aware that graduates entering residency

programs in California are required to get licensed as pharmacists within a few months of starting a residency. Graduates are encouraged to submit their applications for the pharmacist examination for licensure as soon as possible after being accepted into a residency program.

To help identify you as a program resident and to facilitate

processing, attach a copy of your residency acceptance letter to the front of the pharmacist examination application and the intern pharmacist application if you are applying for both licenses. This will help the board issue an intern license timely and process the exam application expeditiously.

All licensed facilities must receive alerts

[California Business and Professions Code \(BPC\) section 4013](#) requires any facility licensed by the California State Board of Pharmacy to register and maintain a current email address with the board's email notification system.

For owners of multiple licensed facilities, the law provides an alternative to registering a separate email address for each facility. BPC section 4013(c) allows an owner of two or more licensed facilities to register a single email address with the board if the owner maintains an electronic notice system that immediately transmits board notifications to all licensed facilities.

Owners who register a single email address are reminded of their obligation to immediately disseminate subscriber alerts from the board to each licensed facility. This is essential to ensure that important board notifications reach each licensed facility in timely manner.

BPC section 4013(c) requires owners of multiple facilities who choose to use an electronic notice system to register an email address with the board within 60 days of initial licensure. In addition, the owner must describe the type of electronic notice system and must list all the facilities to which immediate notices will be sent. The owner also is required to update its email address with the board within 30 days of change of email address.

Owners of both single and multiple licensed facilities can register their email address online at [the board's email registration page](#). In addition, pharmacists, intern pharmacists, pharmacy technicians, designated representatives and designated representatives-3PL also can sign up online to receive email notices from the board, as required by BPC section 4013(d).

Board adopts policy on pharmacists and MAT

At a January 30, 2019, meeting, the Board of Pharmacy adopted the following policy statement supporting changes in the law to permit pharmacists to provide medication-assisted treatment (MAT) as part of a collaborative health care team:

California law declares pharmacist health care providers who have authority and ability to provide health care services. Today pharmacists have six to eight years of collegiate education with focused experience in performing medication management. Increasingly this also includes additional residency experience.

Under California law for a number of years and in conjunction with collaborative practice agreements with prescribers, pharmacists have the ability to:

1. Design treatment plans
2. Initiate adjust and discontinue medications
3. Monitor patient progress
4. Order and review necessary laboratory tests
5. Coordinate care with other medical providers
6. Serve as expert consultants to support prescribers in making medication decisions for patients.

This skill set serves a dual purpose of positioning pharmacists so they may provide direct care to patients with opioid addiction and assist other medical providers in caring for this population, thereby expanding access to treatment. In recognition of these factors, the California State Board of Pharmacy advocates for changes in the law that will permit pharmacists to provide medication assisted treatment as part of a collaborative health care team.

Board policy supports hazard labels on oral chemotherapy medications

The Board of Pharmacy encourages pharmacists to educate their patients about proper handling and disposal of oral chemotherapy medications. At a meeting January 30, 2019, the board adopted the following policy statement encouraging pharmacists to affix a warning symbol to prescription labels for oral chemotherapy medications:

The California State Board of Pharmacy recognizes that oral chemotherapy treatment is increasingly common among cancer patients and health care providers. However, these medications pose serious risks to humans and the environment if improperly handled or disposed of. Many patients, caregivers and even health care providers may not recognize these drugs or be aware of their hazardous nature.

The board supports voluntary efforts by pharmacies and clinics to improve awareness and education about oral chemotherapy medications. In addition, the board encourages pharmacists to

provide specific counseling to patients and their caregivers on proper handling and disposal of oral chemotherapy medications.

To help patients, caregivers and health care providers recognize these medications as hazardous, the board encourages pharmacies to affix a standardized “hazardous drug” symbol to prescription labels when appropriate. The addition of the symbol would serve as an important reminder to patients and caregivers about the proper handling and disposal of the drugs.

The following represents an appropriate warning symbol:



Self-assessment forms answer legal questions

In the late 1990s, the board established requirements for community and hospital pharmacies to complete [self-assessment forms](#). Since then, assessment forms also have been developed for wholesalers and sterile compounding pharmacies.

The forms provide a compilation of pharmacy law that can be used to assess pharmacy operations for compliance with laws and regulations. This self-evaluation can highlight areas needing improvement and enable corrective actions.

Self-assessment forms contains references to specific laws. If you have a pharmacy law question, there is good chance it can be answered by checking the self-assessment form.

Because of delays in rulemaking, the self-assessment form referenced in the regulation may not be current. To remedy this, drafts of updated self-assessment forms are available.

The board recommends using the draft forms to obtain the best possible self-evaluation. However, licensees cannot be required to use the newer version until a formal regulation is adopted. Both current and draft versions can be found on [the board's self-assessment forms webpage](#).

If you have suggestions about laws that should be incorporated into self-assessment forms, please email Ask an Inspector at ask.inspector@dca.ca.gov.

Prenatal vaccinations by pharmacists help protect pregnant women, infants against complications from influenza

Pregnant women and their infants are [vulnerable to complications from influenza](#), including premature delivery, and are more likely to die or be hospitalized than women who are not pregnant.

During the last six flu seasons, [getting a flu shot reduced a pregnant women's risk of hospitalization by an average of 40%](#).

Pharmacists can play a critical role in protecting pregnant women and their babies from flu by:

- **Making a strong recommendation:** “I strongly recommend you get the flu shot today because it is the best way to protect you and your baby against flu, which can be very serious for you both. Flu can lead to pre-term birth, low birth weight, and stillbirth. That is why I recommend that all pregnant patients who visit our pharmacy receive the flu shot.”
- **Encouraging routine immunization of pregnant women at your pharmacy.** Talk to your manager about setting up flags in your pharmacy management system to prompt pharmacists to offer routine prenatal immunizations like influenza and Tdap (tetanus, diphtheria, pertussis) when a woman is picking up prenatal vitamins. Pharmacists can look up in the [California Immunization Registry](#) for the patient's immunization history
- **Promoting these resources at your pharmacy:**
 - A [Prenatal Tdap/Flu Vaccination Aisle Violator \(4"x 5"\)](#) (also available in [Spanish](#)) to place in key locations, such as in front of the prenatal vitamins.
 - A [template letter](#) to send to prenatal care providers in your database to increase referrals to your pharmacy for influenza and Tdap vaccination (if they don't stock immunizations in the clinic).
 - A [flyer](#) for pregnant patients reminding them of the need for Tdap vaccination as early as possible between 27 and 36 weeks gestation of each pregnancy, as well as flu vaccination.



For more resources, visit the following: the California Department of Public Health's [influenza vaccination materials page](#), [pharmacy-based immunization resources page](#), and the general [influenza page](#). For prenatal Tdap information, visit the CDC's [Pregnancy and Whooping Cough](#) page.

www.pharmacy.ca.gov

New Compounding Committee meets, hears about proposed changes to USP



The Compounding Committee holds its first meeting in Sacramento.

The Board of Pharmacy's newly created Compounding Committee held its first meeting Feb. 20, 2019, in Sacramento. Formerly part of the Enforcement and Compounding Committee, the new committee was established to focus on major

meetings are intended for staff to educate the committee members about proposed changes to USP. The committee then will consider what, if any, changes should be made to California pharmacy law.

policy issues for the board related to drug compounding, including the impact of proposed revisions to USP chapters.

The Compounding Committee's first four

Scheduled meetings in 2019 are:

- March 13
- April 16
- June 4
- July 1
- Aug. 28
- Sept. 24
- Oct. 16

[Information about Compounding Committee meetings](#) can be found online under "Board and Committee Meetings" at [the Board of Pharmacy website](#). People interested in attending are encouraged to review relevant USP chapters at the USP website, <http://www.usp.org/>, before the committee meetings.

Board celebrates pharmacists serving for 50 years

The Board of Pharmacy honors pharmacists licensed in California who have been on active status for at least 50 years. Their years of contribution to the pharmacy profession are gratefully acknowledged.

Pharmacists who recently received a certificate commemorating 50 years of service and an invitation to be publicly recognized at a board meeting are:

*Adelman, Harold Maitlan
Amoth, George Milo De
Baughman, Clinton Irl
Cottam, Lonnie Barrett
Dempsey, John Joseph
George, William Albert
Gonzalez, Rosky Ann*

*Laughlin, NV
Afton, MN
Roseville, CA
Bermuda Dunes, CA
Huntington Beach, CA
Pacifica, CA
Lake Isabella, CA*

*Ignarro, Angelo Michael
Jones, Earl Richard
Kruger, Russel Clare
Lederman, Jay Lewis
Martin, William M.
Merjanian, Stephen Haverj
Mertz, Sally Jo
Noonan, Walter Patrick
Palmieri, Rodney August
Peltzman, Robert Steven
Prevost, Walter Jerome
Rudin, Howard Charles
Shields, Lillian Marjori
Tatro, David Sam
Thomas, Gary Edward
Weierstall, Richard Paul
Zodtner, Peter Jon*

*Rancho Mirage, CA
Los Angeles, CA
Mandan, ND
Stevenson Ranch, CA
Heyworth, IL
Tarzana, CA
Upland, CA
Woodland Hills, CA
Ashland, OR
Thousand Oaks, CA
Los Angeles, CA
Mountain Center, CA
Santa Barbara, CA
San Carlos, CA
Sacramento, CA
Rouses Point, NY
Santa Barbara, CA*

California State Board of Pharmacy
Department of Consumer Affairs
1625 N. Market Blvd., Suite N-219
Sacramento, CA 95834-1924
(916) 574-7900
Fax: (916) 574-8618
www.pharmacy.ca.gov

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Layout/Design



California State
Board of Pharmacy

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Attend board, committee meetings to earn CE credit, participate in public policy

Want to learn about the Board of Pharmacy and participate in making policy? Attend a meeting!

Information about all [board and committee meetings](#) – including dates, locations, agendas and materials that include background information for agenda items – is available at the [Board of Pharmacy website](#).

Agendas for regular board meetings are posted at least 10 days before each meeting. Background materials for agenda items typically are available to read and download about five days before each meeting.

For most board meetings, pharmacists and pharmacy technicians who attend a full-day meeting on the designated date may be awarded six CE hours per renewal period. Attendees requesting CE must sign in and out on an attendance sheet at the meeting with their first and last name, license number, and time of arrival and departure. Check the board's agenda to determine the designated date for CE hours.

Pharmacists and pharmacy technicians also may earn two hours of CE for attending a full committee meeting per renewal period. Attendees requesting CE must sign in and out on an attendance sheet at the meeting with their first and last name,

license number, and time of arrival and departure.

Board meetings scheduled in 2019:

- **March 22:** California Northstate University
9700 W. Taron Drive
Elk Grove, CA 95757
- **May 7-8:** location TBD
- **June 21:** location TBD
- **July 24-25:** location TBD
- **Sept. 13 :** location TBD
- **Nov. 5-6:** location TBD
- **Dec. 13:** location TBD

When feasible, board meetings are webcast at the [Department of Consumer Affairs webcast page](#).

Contact The Script

Do you have any questions or comments about *The Script*? Are there topics you would like to see in the newsletter?

Let us know! Send a note to editor Bob Dávila at Bob.Davila@dca.ca.gov.



CALIFORNIA STATE BOARD OF PHARMACY
STRATEGIC PLAN

2017-2021



CALIFORNIA STATE BOARD OF
PHARMACY

For information about the board,
Board meetings, consumer and
licensee education material,
applications for licensing, as well as
information on other public forums
vital to pharmacy services,
visit the board's website,
www.pharmacy.ca.gov.

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CALIFORNIA BOARD OF PHARMACY BOARD MEMBERS

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DEBORAH VEALE, BOARD VICE PRESIDENT

VICTOR LAW, BOARD TREASURER

RYAN BROOKS

LAVANZA "KERCHERYL" BUTLER

GREGORY N. LIPPE

VALERIE MUÑOZ

RICARDO SANCHEZ

ALLEN SCHAAD

STANLEY C. WEISSER

ALBERT C. WONG, PHARM. D



GOVERNOR EDMUND G. BROWN JR.

ALEXIS PODESTA, SECRETARY,
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEAN GRAFILO, DIRECTOR, DEPARTMENT OF CONSUMER AFFAIRS

VIRGINIA HEROLD, EXECUTIVE OFFICER, BOARD OF PHARMACY



AMY GUTIERREZ, PHARM. D, BOARD PRESIDENT

MESSAGE FROM THE BOARD PRESIDENT

The strategic planning process of the California State Board of Pharmacy (board) is an annual activity involving board members, staff, and the public, all in an effort to anticipate and plan for events and issues for the coming years. In building its future strategic plan, the board focuses on pending changes in pharmacy practice, consumer needs and demands, and health care trends that impact the profession. After a lengthy discussion of potential and existing issues, the participants go through a process that categorizes, consolidates, and prioritizes the issues. This leads to the development of specific goals for the coming years. The resulting strategic plan is utilized by the board to ensure focus on established goals while allowing for flexibility in addressing new issues and challenges as they arise.

Board activity is organized through five policy committees: Enforcement and Compounding, Communication and Public Education, Licensing, Legislation and Regulation, and Organizational Development. Much of the board's work is carried out by these committees, which in turn develop objectives and actions that advance mission-related goals in conjunction with public input. Each board committee considers its individual strategic plan goals at meetings, and progress on the goals is periodically reviewed at full board meetings. The careful planning and continuous monitoring of the strategic plan assures that the board achieves its planned objectives and provides consumer protection in a manner that promotes optimal efficiency.

The board publishes advance notice of each strategic planning meeting, and participation and contribution are encouraged. Active involvement of the board, its staff, and the public results in the development of a strategic plan that truly represents the board's mission and promotes public-focused actions for Californians.

ABOUT THE BOARD OF PHARMACY

The Board of Pharmacy (board) is an active consumer protection agency responsible for regulating a dynamic pharmacy health care profession. The board provides regulatory oversight to those who dispense, compound, store and transport prescription drugs and devices, as well as those who provide professional services that are focused on medication management and pharmaceutical care. As a national leader in consumer protection and pharmacy regulation, the board has developed and implemented a number of policies to ensure the quality and safety of medications provided to California's consumers, in addition to monitoring the services provided by its licensees.

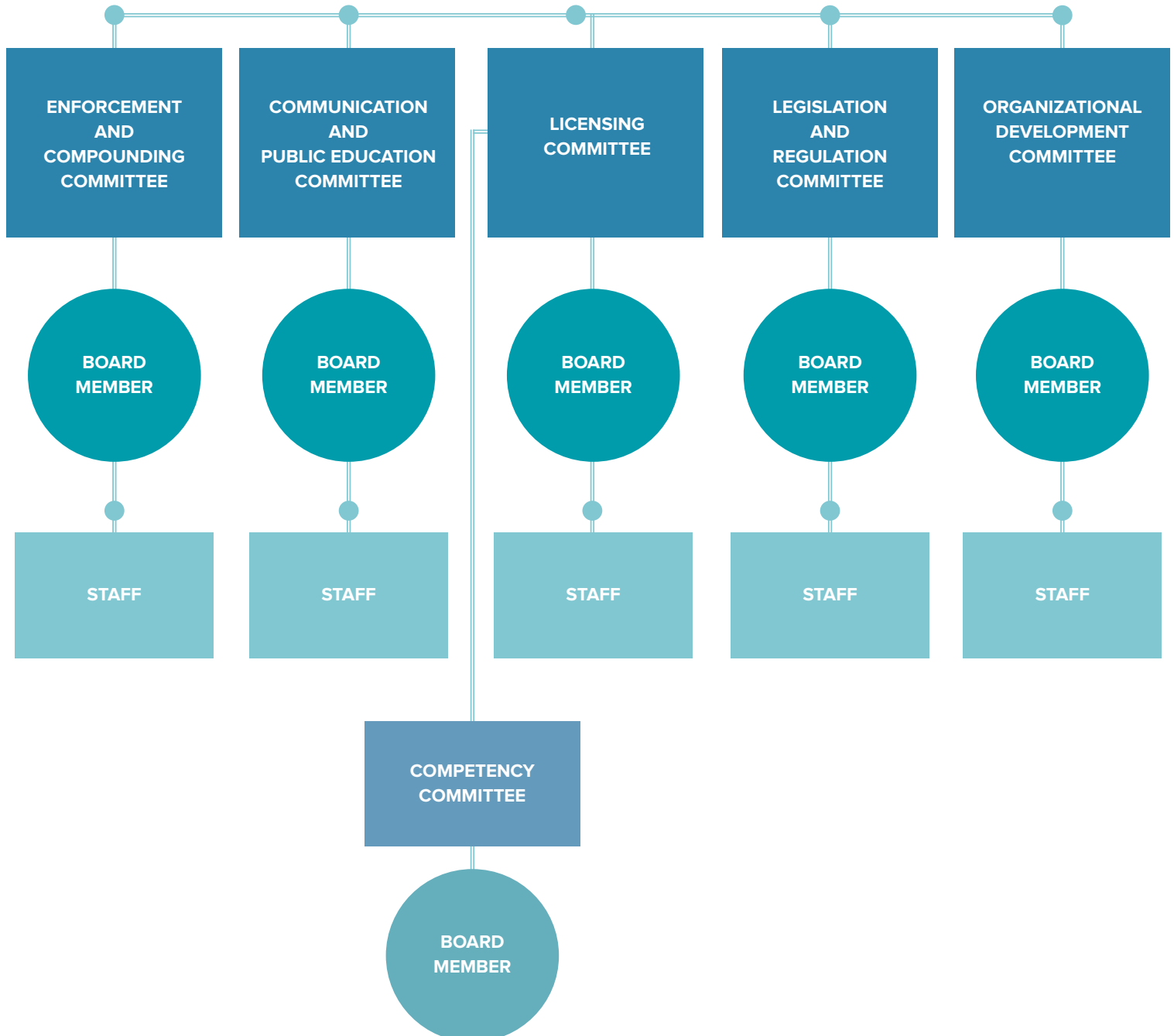
Today, the board oversees all aspects of the practice of pharmacy in California: the practitioner (the pharmacist), the practice site (the pharmacy), and the product (prescription or compounded drugs and devices). Additionally, the board regulates drug wholesalers, other practitioners and specialized facilities that store and furnish prescription drugs or handle and remove outdated medication from the drug supply.

With an annual budget exceeding \$20 million and more than 100 staff, the board licenses over 140,000 individuals and firms and enforces 25 distinct and varied regulatory programs.

Much of the board's work is carried out by committees. These committees develop recommended policies that advance mission-related goals in line with the board's strategic plan. Committee recommendations are then discussed, modified, or acted upon by the board at public board meetings. The board and its committees are organized as follows:

POLICY BOARD

13 Members
(7 Pharmacists, 6 Public Members)





2012 – 2016 ACCOMPLISHMENTS

- The board has strengthened its regulatory framework for pharmacies that compound sterile drug products. These actions were taken in large part in response to a national public health emergency identified in Massachusetts that resulted in an impact to patients across the United States. Actions include an increase in the frequency and quality of inspections performed by the board, including annual inspections of out-of-state pharmacies that ship sterile products into California.
- The board refined patient-centered labeling requirements to improve readability of the standardized prescription label for consumers. Additional actions include development of translated directions for use on labels and a requirement that oral interpreters are available within pharmacies for patients with limited English proficiency. The board's standards have been recognized by three national organizations as standards for prescription label design.
- The board developed a multi-pronged approach to combat the prescription drug abuse epidemic. These actions include education to consumers and licensees, aggressive enforcement of errant licensees, and the designation of a precedential decision involving a pharmacist's corresponding responsibility. The board also created a state protocol for use by pharmacists that allows the dispensing of an antidote (naloxone) without a prescription for use in opioid overdose. The board also has advocated for the much-needed upgrade to California's prescription drug monitoring program (CURES) and widely promoted and facilitated pharmacist access to the CURES system in order to increase review of a patient history prior to the dispensing of controlled substances prescriptions by a pharmacist.

- On August 9, 2013, the board voted to create its first precedential decision. This decision involved the revocation of a pharmacist's and pharmacy's licenses for excessive dispensing of controlled substances to patients. The decision defines "red flags" that pharmacists and pharmacies should recognize when dispensing controlled substances and after a pharmacist evaluates the prescription to make certain it is valid and legitimate on its face. There is also a duty to evaluate the patient, the prescriber, and the medication therapy.
- The board created several statewide protocols that permit pharmacists to provide specific consumer health care services such as smoking cessation, self-administered hormonal contraception, and naloxone. Additionally, the board has developed the framework to license advanced practice pharmacists, an important change in professional scope that will result in improved health care access for consumers across the state.
- The board responded during state wildfire emergencies declared by the Governor to ensure consumer access to pharmaceuticals.
- The board has collaborated with other state, federal, and local agencies in pursuing pharmacy law violations to achieve more complete consumer protection. For example, three county district attorney offices have collected over \$1.5 million in fines from CVS, Rite Aid, and Walgreen pharmacies for violations of California's unfair business practices statute for failure to provide patients with oral pharmacist consultation as required by state law.
- The board has represented California at a 2015 CDC (Centers for Disease Control and Prevention) International Conference on Emerging Infectious Diseases and provided a presentation on medication contamination and counterfeiting. The board participated on a PEW Charitable Trust committee that developed best national practices for sterile compounding pharmacies and outsourcing facilities, recognizing California's national leadership and prominence in this focus area.
- The board has provided presentations at three FDA national meetings on topics such as sterile compounding and regulation of drug wholesalers/third-party logistics providers. It has also participated in forums convened by the DEA and National Association of Boards of Pharmacy in developing national policy. The board's multiple statewide joint educational forums with the DEA on prescription drug abuse and corresponding responsibility are well-attended, and pharmacists who attend can earn continuing education in a subject area advocated by the board.
- Beginning in 2014, the board conducted a study on the practice of pharmacy as a way to validate the California Pharmacist Licensure Examination (CPJE). This study was done consistent with the provisions of Business and Professions Code section 139. The results of this survey were used to update the content outline for the CPJE for future examinations.



CURRENT BOARD AND INDUSTRY ISSUES

- **PRESCRIPTION DRUG ABUSE**

Most people who abuse prescription opioid drugs initially get them for free from a friend or relative. However, those at highest risk of overdose are more likely to get them from a doctor's prescription. This finding underscores the need for continued prevention efforts that focus on physicians' prescribing behaviors and pharmacies' dispensing practices. As the agency responsible for regulating the practice of pharmacy, the board must be a leader in combating the prescription drug abuse problem.

In California, the board has taken a comprehensive approach to addressing this problem. It developed a protocol to allow pharmacists to furnish naloxone, a medication that when administered in a timely manner can save a patient from an opioid overdose. In ongoing efforts, the board has taken both an educational approach as well as an enforcement approach to address this issue. California has the greatest number of opioid overdose related deaths in the US; the board's efforts in this area must expand and continue.

Further, recognizing that many individuals first start abusing medications by gaining access to opioid medications that remain in the home, the board also established regulations for taking back prescription drugs. These regulations serve as a complement to the regulations established by the Drug Enforcement Administration and ensure that consumers have a safe and convenient way to dispose of unwanted and unused medications.

- **PHARMACY WORKFORCE**

The role of a pharmacist continues to evolve. The implementation of the Affordable Care Act and creation of the new licensure category of advanced practice pharmacist focus on collaborative practice with other health care providers. Pharmacists are recognized as underused health care providers given their education and training and are well positioned and accessible to the public to provide patient care. The board will continue to evaluate opportunities for expanded practice areas where pharmacists can provide services to patients that otherwise would have barriers to such care.

As the role of pharmacists changes, the board is initiating an evaluation of the role that pharmacy technicians will play in this emerging practice environment. The board started this evaluation in the fall of 2015, with the goal of identifying optimal practice standards for multiple pharmacy personnel. The board's Licensing Committee is conducting this evaluation, which will continue in 2017 and possibly beyond.

Additionally, as pharmacies look for ways to automate functions, the board needs to be heavily involved in the expanded use of automation technology to ensure patients retain ready access to pharmacists.

- **LICENSING SYSTEM**

For a number of years, the Department of Consumer Affairs (DCA) has worked to replace and/or enhance its legacy licensing and enforcement tracking systems used by most DCA agencies. The system selected was a commercial off-the-shelf product (COTS) that was intended to streamline processes, provide better access for consumers and licensees, and help programs within the department gain better reporting tools. The board needs to continue its efforts to work with the department to identify a replacement system (either the COTS system previously identified or another system) that will better serve applicants, licensees, and consumers with more robust functionality and ease of use.

- **PHARMACY COMPOUNDING**

Pharmacy compounding is developing into a more frequent practice of pharmacies. The board has worked to strengthen California's regulatory framework for pharmacies to improve the quality of compounded medication made by pharmacists. After promulgating regulations, the board must now focus on implementing these requirements, educating pharmacists and pharmacies about compliance, and promoting the construction of compliant modifications to pharmacies. As the practice of compounding continues to evolve, the board must continue to expand its efforts in this area as well as respond to changes in the marketplace and the evolution of new business models such as outsourcing facilities.



STRATEGIC PLANNING PROCESS

To understand the environment in which the board operates and identify factors that could impact the board's success, the California Department of Consumer Affairs' SOLID Unit facilitated the development of the board's strategic plan. SOLID worked with the board to identify strategic goal areas, which act as stems for the board's strategic objectives. The illustration below details how the board's strategic plan is constructed by determining (1) the strategic goal areas, (2) objectives under each goal area, and (3) creation of success indicators in the board's subsequent action plan.

SOLID conducted an environmental scan of the internal and external environments respective to the board's goal areas by collecting information through the following methods:

- An online survey sent to board stakeholders in February 2016. The online survey received 320 responses.
- An online survey sent to all board employees in February 2016. This survey received responses from 50 employees.
- A focus group conducted with board managers in March 2016.
- Interviews with nine board members, the executive officer, and the assistant executive officer in April 2016.

Themes and trends identified from the environmental scan and future board initiatives were discussed by board members and board executive staff during a public strategic planning session facilitated by SOLID on June 7, 2016. This information guided the board in the development of its strategic objectives outlined in this 2017 – 2018 strategic plan.

The board also considered its mission statement, vision statement, and internal values as driving forces behind the development of its strategic objectives.

STRATEGIC GOAL AREAS



MISSION, VISION, AND VALUES



MISSION, VISION, AND VALUES



MISSION

The Board of Pharmacy protects, promotes, and advocates for the health and safety of Californians by pursuing the highest quality of pharmacists' care and the appropriate use of pharmaceuticals through education, communication, licensing, legislation, regulation, and enforcement.



VISION

Healthy Californians through quality pharmacists' care.



VALUES

Integrity
Transparency
Responsiveness
Compassion

STRATEGIC GOAL AREAS



LICENSING

The board promotes licensing standards to protect consumers and allow reasonable access to the profession.



ENFORCEMENT

The board protects consumers by effectively enforcing laws, codes, and standards when violations occur.



LEGISLATION AND REGULATION

The board pursues statutes, regulations, and procedures that strengthen and support the board's mandate and mission.



COMMUNICATION AND PUBLIC EDUCATION

The board educates consumers, licensees, and stakeholders about the practice and regulation of the profession.



ORGANIZATIONAL DEVELOPMENT

The board provides excellent customer service, effective leadership, and responsible management.

**GOAL****1****LICENSING**

The board promotes licensing standards to protect consumers and allow reasonable access to the profession.

- 1.1** Research and identify issues that result from unlicensed vendors in the marketplace to proactively maintain patient safety and health.
- 1.2** Implement online application, license renewal, and fee payment for applicants and licensees to improve licensing conveniences.
- 1.3** Complete a comprehensive review of at least five licensure categories and update requirements to ensure relevancy and keep licensing requirements current with professional practices.
- 1.4** Explore, and possibly implement, opportunities to use contracted organizations to administer the board's California Practice Standards and Jurisprudence Examination to increase access to the examination.
- 1.5** Improve the application process for new licensees, including providing informational resources directed toward applicants to offer more guidance about the application process.
- 1.6** Establish requirements to form a licensing process for alternate work sites and vendors in the pharmacy marketplace to advance patient safety and health.
- 1.7** Identify opportunities to expand electronic interfaces with licensees to allow for online application and renewal.



GOAL

2

ENFORCEMENT

The board protects consumers by effectively enforcing laws, codes, and standards when violations occur.

- 2.1** Implement processes to shorten the cycle times from investigation to resolution of cases, with special focus on prioritized critical cases, to minimize patient harm and enhance consumer protection.
- 2.2** Strengthen patient consultation outcomes for Californians and increase medication safety.
- 2.3** Collect data and report to board members about enforcement trends that are presented at case closures so the board can better educate licensees about board priorities.
- 2.4** Evaluate industry technology trends to develop future regulatory infrastructures that promote patient safety.
- 2.5** Evaluate the disciplinary process and initiate process improvements for enhanced efficiency and effectiveness.
- 2.6** Collaborate with stakeholders to identify and expand resources for technicians who experience substance abuse to provide assistance in recovery.
- 2.7** Investigate options on the interoperability with a National Prescription Drug Monitoring Program.



GOAL

3

LEGISLATION AND REGULATION

The board pursues statutes, regulations, and procedures that strengthen and support the board's mandate and mission.

- 3.1** Educate the board on national pharmacy initiatives impacting consumers and the future of pharmacy (e.g., pharmacists, pharmacy, technicians, distributors, etc.) to strategize the board's efforts in alignment with where the profession is going to be in 2020.
- 3.2** Support legislative and regulation proposals from board approval to enactment to effectuate the goals of the board.
- 3.3** Advocate for or against legislation that impacts the board's mandate for consumer protection.
- 3.4** Establish a systemized, ongoing review process for board regulations to improve and maintain clear and relevant regulations.

**GOAL****4****COMMUNICATION AND PUBLIC EDUCATION**

The board educates consumers, licensees, and stakeholders about the practice and regulation of the profession.

- 4.1** Develop and implement a communication plan for licensees and consumers to improve communication and keep these stakeholders better informed.
- 4.2** Identify and use additional resources for public and licensee outreach services to implement the communication plan.
- 4.3** Establish a process to collect e-mail addresses and mobile numbers for text messaging from all licensees for better ability to improve communication.
- 4.4** Provide implementation guidance on newly enacted changes to Pharmacy Law by publishing summaries and explaining implementation tactics.
- 4.5** Inspect pharmacies at least once every four years to provide a forum for licensee-inspector communication and education in practice settings.
- 4.6** Communicate the availability of new or specified pharmacy services and locations so that the public is aware of pharmacies that can meet their needs.
- 4.7** Revise consumer-facing materials (e.g., posters, point-to-your-language notices, television messages) to achieve better consumer understanding of their rights and optimal use of medications.
- 4.8** Promote board initiatives to improve patient knowledge, medication adherence, and medication safety.

GOAL

5

ORGANIZATIONAL DEVELOPMENT

The board provides excellent customer service, effective leadership, and responsible management.

- 5.1 Conduct a full annual review of the board's strategic plan to monitor progress.
- 5.2 Provide leadership training opportunities to managers to expand skills and improve performance.
- 5.3 Expand annual individual development plans for staff to promote growth and development.
- 5.4 Collaborate with the Department of Consumer Affairs to explore the feasibility of procuring electronic management tools to increase efficiencies and reduce reliance on paper.
- 5.5 Maintain procedure manuals to capture institutional knowledge and enable consistent operations.
- 5.6 Establish customer service metrics to track board efforts to meet customer expectations.
- 5.7 Evaluate options for improvement of licensing renewal processes to allow for online renewal.
- 5.8 In collaboration with the executive officer, ensure appropriate resources for board issues relating to staff activities and development.



CALIFORNIA STATE BOARD OF
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CALIFORNIA STATE BOARD OF
PHARMACY

1625 North Market Blvd., Suite N219
Sacramento, CA 95834
www.pharmacy.ca.gov



Prepared by:



17-211

Department of Consumer Affairs
1747 N. Market Blvd., Suite 270
Sacramento, CA 95834

This strategic plan is based on stakeholder information
and discussions facilitated by SOLID for the
California Board of Pharmacy during 2016.

Attachment F

Other Information

- ❖ Case Summaries
- ❖ Board Action Items
- ❖ News Roundup
- ❖ Use, Don't Abuse Billboard
- ❖ Pharmacy Inspection Brochure
- ❖ Previous Sunset Report's SB 1441 Implementation Efforts
- ❖ Uniform Standard #4 As Amended October 2018
- ❖ SB 1441 Summary Data
- ❖ Responses to 2016 Sunset Review Identified Issues
- ❖ Contract and Performance Audit of DCA Diversion Program

ATTACHMENT F: CASE SUMMARIES

Fiscal Year 2015/2016

License Type	Description
EXC	Applicant was convicted on multiple occasions from 2004 to 2015 for driving under the influence of alcohol. The applicant's blood alcohol concentrations were .14, .20, and .22.
INT	Applicant provided fraudulent information on their Intern Hours Affidavit.
INT	Applicant was convicted of driving under the influence on three occasions. The applicant's blood alcohol concentrations were .16, .14, and .19.
INT	Applicant was convicted of driving under the influence on two occasions. The applicant's blood alcohol concentrations were .19 and .16.
INT	Application was denied based on a pending case against a pharmacy where the applicant was 50% owner and vice president. The board substantiated allegations the pharmacy owners diverted controlled substances and allowed unlicensed people to possess pharmacy keys.
INT	Applicant was convicted twice for marijuana possession.
NRP	Application for a nonresident pharmacy was denied based on an investigation against another pharmacy with common ownership.
NRP	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
NSC	Application for a nonresident sterile compounding license was denied based on the Virginia Board of Pharmacy's formal discipline against the pharmacy for compounding violations.
NSC	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application was denied based on a pending investigation involving corresponding responsibility against another pharmacy with common ownership. No criminal charges.
PHY	Application was denied based on a pending investigation involving corresponding responsibility against another pharmacy with common ownership. No criminal charges.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for pharmacy change of ownership was denied based on false statements.
PHY	An application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
RPH	Applicant was convicted twice for crimes involving possession of a controlled substance and driving under the influence of alcohol.
RPH	Applicant's physician license was placed on probation by the Medical Board of California (MBC) for violations including incompetence and gross negligence. The applicant failed to disclose the MBC discipline on the application
RPH	Applicant submitted fraudulent information on their Intern Hours Affidavit.
RPH	Applicant was convicted of driving under the influence of marijuana, possession of controlled substances, and possession of drug paraphernalia.
RPH	Applicant was convicted twice for driving under the influence. In addition, the applicant's Missouri pharmacist license was placed on probation for five years for being under influence at work. The applicant's pharmacist license was later revoked for testing positive for alcohol in violation of probation.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
RPH	Applicant was convicted of selling counterfeit merchandise.
RPH	Applicant was convicted of battery with serious bodily injury for attacking a man at a bar while under the influence.
RPH	Applicant was convicted twice for driving under the influence. The applicant's blood alcohol concentrations were .25 and .27.
RPH	Applicant was convicted twice for crimes involving driving under the influence and producing fraudulent driver's licenses.
RPH	Applicant was arrested for possession of hallucinogenic mushrooms. The applicant successfully completed a pre-trial drug diversion program and the charges were dismissed.
TCH	Applicant was convicted of being an accessory to a crime for driving a getaway car following a home invasion robbery.
TCH	Applicant was denied based on a board investigation that substantiated allegations of theft of controlled substances by the applicant and the applicant's business partner
TCH	Applicant was convicted on multiple occasions from 2001 to 2009 for crimes involving operating a drug house, possession of stolen goods, and embezzlement.
TCH	Applicant was convicted twice for crimes involving possession of marijuana for sale and theft.
TCH	Applicant was convicted multiple times from 1991 to 2007 for crimes involving lewd behavior, public intoxication, driving under the influence of alcohol, and possession of cocaine.
TCH	Applicant was convicted of burglary and identity theft for using stolen credit cards to purchase over \$6,600 worth of merchandise.
TCH	Applicant's Psychiatric Technician license was revoked for providing prohibited items to a patient at a state hospital.
TCH	Applicant was convicted on multiple occasions for crimes involving domestic violence, public intoxication, and driving under the influence of alcohol. The applicant's blood alcohol concentration was .37.
TCH	Applicant was convicted of driving under the influence on two occasions.
TCH	Applicant was convicted of marijuana possession and theft.
TCH	Applicant was convicted on multiple occasions for theft and burglary. Applicant admitted to the officer that the theft proceeds were used to purchase methamphetamine.
TCH	Applicant was convicted of burglary for attempting to cash a stolen check in excess of \$6,000.
TCH	Applicant was convicted of driving under the influence of alcohol on three occasions.
TCH	Applicant was convicted receiving stolen property for using stolen credit cards to rent hotel rooms.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant admitted to smoking methamphetamine and was arrested for being under the influence of a controlled substance. Following her release, the applicant exhibited paranoid behaviors and was placed on a 72-hour observation hold. No criminal charges were filed.
TCH	Applicant was convicted of driving under the influence of alcohol. The applicant's blood concentration was .31.
TCH	Applicant was convicted on multiple occasions for crimes involving accessory, marijuana possession, battery, and driving under the influence.
TCH	Applicant was previously licensed as a pharmacist. The pharmacist license was previously revoked based on substantiated violations involving corresponding responsibility and patient overdose deaths.
TCH	Applicant was convicted of driving under the influence on two occasions. The applicant's blood alcohol concentration was .21 in the last conviction.
TCH	Applicant was convicted of grand theft for embezzling \$2,000 from an employer.
TCH	Applicant was convicted of burglary for embezzling approximately from \$3,150 from an employer.
TCH	Applicant was convicted of driving under the influence on two occasions. The applicant's blood alcohol concentrations were .30 and .45.
TCH	Applicant was convicted of burglary for attempting to cash a stolen check in the amount of \$1,600.
TCH	Applicant was convicted of driving under the influence (blood alcohol concentration in excess of .20). On another occasion, the applicant was found in possession of methamphetamine.
TCH	Applicant was convicted twice for crimes involving possession of methamphetamine and forgery.
TCH	Applicant was convicted of grand theft for stealing credit card information from Kaiser patients and making over \$3,400 worth of fraudulent transactions.
TCH	Applicant was convicted of possession of a controlled substance without a prescription.
TCH	Applicant was convicted of burglary.
TCH	Applicant was convicted twice for crimes involving child cruelty and forgery.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .22.
TCH	Applicant was convicted of driving under the influence on three occasions.
TCH	Applicant was convicted on multiple occasions for crimes involving theft, vandalism, driving under the influence, public intoxication, and violating restraining orders.
TCH	Applicant was convicted twice for controlled substance violations involving marijuana and methamphetamine.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted of identity theft for cashing \$9,400 worth of fraudulent checks.
TCH	Applicant was previously licensed as a pharmacy technician. After the applicant's technician license expired, the board substantiated allegations the applicant diverted controlled substances with fraudulent prescriptions.
TCH	Applicant was convicted twice for crimes involving driving under the influence and transportation of marijuana and methamphetamine.
TCH	Applicant was convicted of forgery for attempting to cash a stolen check.
TCH	Applicant was convicted of driving under the influence on three occasions. The applicant's blood alcohol concentrations were .20, .32, and .26.
TCH	Applicant was convicted of filing a false insurance claim.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .18
TCH	Applicant worked as a pharmacy technician without a license.
TCH	Applicant was convicted of grand theft for stealing \$61,000 worth of merchandise from an employer.
TCH	Applicant was convicted on multiple occasions for crimes involving lewd acts and driving under the influence.
TCH	Applicant was convicted of federal controlled substances violations for helping to package and distribute more than 2000 pounds of marijuana in several states.
TCH	Applicant was convicted of grand theft for purchasing goods with stolen credit card information.
TCH	Applicant was convicted of child molestation for engaging in a relationship with a 15-year-old former student. The applicant is required to register as a sex offender.
TCH	Applicant drove under the influence of alcohol and caused a traffic collision with injuries. The applicant fled the scene and was found at a nearby gas station.
TCH	Applicant was arrested on two occasions for being under the influence of methamphetamine. In each case, the applicant completed a drug treatment program and the charges were dismissed.
TCH	Applicant was convicted twice for driving under in the influence. The applicant's blood alcohol concentrations were .17 and .10.
TCH	Applicant was convicted of receiving stolen property and exhibiting a deadly weapon for stealing a person's backpack and threatening people with a knife.
TCH	Applicant was convicted of burglary for breaking into vehicles and stealing credit cards and electronics.
TCH	Application was denied based on the previous revocation of the applicant's pharmacist license.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Application for pharmacy technician was denied based on discipline against the applicant's previous license for filling fraudulent Xanax prescriptions for family members.
TCH	Applicant was convicted twice for crimes involving burglary and grand theft.
TCH	Applicant was convicted four times for driving under the influence. The applicant's blood alcohol concentrations were .16, .10, .19, and .11.
TCH	Applicant was convicted three times for crimes involving driving under the influence and public intoxication. The applicant's blood alcohol concentrations were .25 and .22.
TCH	Applicant was convicted of driving under the influence of alcohol and hit and run. The applicant's blood alcohol concentration was .21.
TCH	Applicant was convicted of driving under the influence of alcohol with injuries. The applicant's blood alcohol concentration .22.
TCH	Applicant was convicted three times for theft.
TCH	Applicant voluntarily surrendered an Oregon pharmacy technician license after Oregon placed the applicant on probation for failing a drug test at work.
TCH	Applicant was convicted of shoplifting and using tear gas against a store employee.

Fiscal Year 2016/2017

License Type	Description
INT	Application was denied based on a previous revocation of the applicant's TCH license for diverting Adderall from a pharmacy. While licensed as a TCH, the applicant tested positive for cocaine, marijuana, and amphetamine.
INT	Applicant was convicted of reckless driving. Following an enforcement stop, the applicant tested positive for benzodiazepines, cocaine, and marijuana.
INT	Applicant was convicted of driving under the influence based on evidence he collided with a parked vehicle and a tree. The applicant's blood alcohol concentration was .15.
INT	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .23.
INT	Application for an intern license was denied based on a pharmacy inspection wherein the applicant (a licensed pharmacy technician) was wearing a homemade intern badge and ran out of the back of the pharmacy when a board inspector arrived.
LSC	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
LSC	Applications for new pharmacy and sterile compounding facilities were denied based on an investigation against another pharmacy with common ownership.
NRP	Application for a change of ownership was denied based on a pending investigation against another pharmacy with common ownership.
NRP	Application for a nonresident pharmacy was denied based on an investigation against another pharmacy with common ownership.
NRP	Proposed owner of nonresident pharmacy application was convicted of felony sexual assault and failed to disclose the conviction.
NSC	Application for a change of ownership was denied based on a pending investigation against another pharmacy with common ownership.
NSC	Application for a nonresident sterile compounding was denied based on an investigation against another pharmacy with common ownership.
OSF	Outsourcing facility license application was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a new pharmacy was denied based on a pending investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Applications for new pharmacy and sterile compounding facilities were denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Change of Ownership application for a pharmacy denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
RPH	Application was denied based on the Washington Board of Pharmacy's disciplinary order. Applicant admitted to filling schedule III prescription for herself.
RPH	Applicant was convicted of unlawful possession of marijuana after being found with 30 grams of marijuana, a marijuana pipe, baggies, and brass knuckles. The applicant admitted to selling marijuana.
RPH	Application was denied based on action by the Nevada Board of Pharmacy to revoke the applicant's Nevada pharmacist license. The applicant was found to have diverted controlled substances from a pharmacy.
RPH	Applicant was convicted on two occasions of driving under the influence. The applicant's blood alcohol concentrations were .15 and .22.
RPH	Application was denied, in part, based on the applicant's failure to disclose ownership of a pharmacy.
TCH	Applicant was convicted of trespassing. Applicant kicked in a door to have sex with a woman during a psychotic event and was placed on a 5150 mental health evaluation hold.
TCH	Applicant was convicted of forgery for fraudulently depositing and withdrawing money from closed bank accounts.
TCH	Applicant was convicted of accessory and attempted murder.
TCH	Applicant was convicted on multiple occasions for fare evasion charges.
TCH	Applicant was arrested and/or convicted on four occasions for crimes involving possession of methamphetamine, marijuana, and Adderall.
TCH	Applicant was convicted on multiple occasions for crimes involving burglary, carrying a concealed firearm, and possession of a controlled substance.
TCH	Applicant was convicted twice for crimes involving driving under the influence and theft
TCH	Applicant was convicted on multiple occasions for possession of heroin and being under the influence of heroin.
TCH	Applicant was convicted on multiple occasions for crimes involving driving under the influence, public intoxication, and possession of methamphetamine.
TCH	Applicant's Emission Specialist Technician license was revoked by the Bureau of Automotive Repair for fraudulent business practices.
TCH	Application for pharmacist licensure was denied based on Maryland and Pennsylvania suspensions for mental impairment and numerous medical errors.
TCH	Applicant was convicted on multiple occasions for crimes involving theft and driving under the influence. The applicant's blood alcohol concentrations were .09, .23, and .14.
TCH	Applicant was convicted for burglary and grand theft.
TCH	Applicant was convicted of forging credit card information and burglary.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted three times for driving under the influence. The applicant's known blood alcohol concentrations were .15 and .15.
TCH	Applicant was arrested for being under the influence of methamphetamine. The applicant completed a drug diversion program and the charges were dismissed.
TCH	Applicant was convicted twice for driving under the influence. The applicant's blood alcohol concentrations were .22 and .20.
TCH	Applicant was convicted of embezzlement for stealing from an employer.
TCH	Applicant was arrested possession of methamphetamine for sale and being under the influence of methamphetamine. The applicant completed a drug diversion program and the charges were dismissed.
TCH	Applicant was convicted of embezzlement.
TCH	Applicant was convicted of burglary and vehicle theft. A request for dismissal of the case pursuant to Penal Code section 1203.4 was denied.
TCH	Applicant was convicted of driving under the influence on two occasions and giving a false name to an officer on another occasion. The applicant's blood alcohol concentrations were .14, and .13.
TCH	Applicant was convicted of identity theft for using a relative's social security number to apply for credit cards.
TCH	Applicant was convicted of driving under the influence of three occasions. The applicant's blood alcohol concentrations were .14, .13, and .12.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .21.
TCH	Applicant was convicted of multiple occasions for crimes involving public intoxication and driving under the influence. The applicant's blood alcohol concentrations were .16, .18, and .25.
TCH	Applicant was convicted of methamphetamine for sale. Applicant was found in possession of 17.4 grams of methamphetamine, 20 Soma pills, six Oxycontin pills and marijuana.
TCH	Applicant was convicted of theft for stealing over \$500 worth of clothing from a department store.
TCH	Applicant was convicted of reckless driving. The applicant admitted to inhaling nitrous oxide prior to driving and had a blood alcohol concentration of .07
TCH	Applicant was convicted of soliciting prostitution for propositioning sex to an undercover officer on two occasions.
TCH	Applicant was convicted of grand theft for stealing a vehicle to pick up marijuana.
TCH	Applicant was convicted of reckless driving for fleeing from a DUI checkpoint. The applicant admitted to smoking marijuana and taking Xanax prior to driving.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted of cultivation of marijuana (excess of legal limit) after a search warrant uncovered 57.5 grams of honey oil, a scale, seven pounds of marijuana, and 85 marijuana plants.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .24.
TCH	Applicant was convicted of driving under the influence and hit and run. The applicant's blood alcohol concentration was .22.
TCH	Applicant was convicted of forgery and was also found to be working as a pharmacy technician without a license for almost three years.
TCH	Applicant was convicted of robbery for taking part in a bank robbery
TCH	Applicant was convicted on two occasions for passing fraudulent checks.
TCH	Applicant was convicted of hit and run and driving under the influence. The applicant's blood alcohol concentration was .28.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .19.
TCH	Applicant was convicted on multiple occasions for crimes involving being under the influence of a controlled substance, possession of a controlled substance and driving under the influence of alcohol.
TCH	Applicant was convicted of embezzlement for stealing \$7,500 from an employer.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .21.
TCH	Applicant was convicted for driving under the influence. The applicant tested positive for marijuana and benzodiazepines.
TCH	Applicant was evaluated by a clinical psychologist pursuant to CCR 16 1769(a) and was found to have an impaired ability to safely conduct the practice of pharmacy.
TCH	Application was denied based on the Board of Vocational Nursing's action to revoke the applicant's license for gross negligence and mistreatment of patients.
WLS	Application for a new wholesale license was denied based on a prior investigation.

Fiscal Year 2017/2018

License Type	Description
EXC	Applicant was convicted on three different occasions of crimes involving theft, lewd and lascivious acts with a child, possession of child pornography, and theft. The applicant is required to register as a sex offender.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
INT	Applicant was stopped by police for speeding and driving recklessly, causing pedestrians to jump out of the way. The applicant fought with officers and marijuana was discovered in his vehicle.
INT	Applicant was convicted of DUI twice and admitted to using alcohol to cope with anxiety and depression. The applicant was in the pharmacist recovery program in another state at the time of the denial.
INT	Applicant was convicted of driving under the influence. The applicant refused chemical testing and failed to disclose the conviction on the application.
INT	Applicant was convicted of driving under the influence. The applicant possessed marijuana, pipes and 87 Xanax pills. The applicant also tested positive for marijuana and Xanax.
INT	Applicant was convicted of reckless driving involving alcohol. The applicant displayed symptoms of alcohol intoxication but refused to perform any chemical tests.
LSC	An application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
NRP	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
NRP	Application was denied based on an investigation against another pharmacy with common ownership.
NRP	Application for a change of ownership was denied based on an investigation against another pharmacy with common ownership.
NRP	Application for a nonresident pharmacy was denied because the proposed owner was convicted on multiple occasions for crimes involving burglary and driving under the influence.
NSF	Application for a nonresident outsourcing facility was denied based on a failed inspection.
NSF	Applicant for a nonresident outsourcing facility was denied based a failed inspection.
NSF	Application for a nonresident outsourcing facility was denied based on an investigation against another facility with common ownership.
NSF	Application for a nonresident outsourcing facility was denied based on a cease and desist order.
OSF	Application for a nonresident outsourcing facility was denied based on an investigation against another pharmacy with common ownership.
OSF	Application for an outsourcing facility was denied based on an investigation against another facility with common ownership.
PHY	Application for a change of ownership was denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
PHY	Application for a change of ownership was denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for a change of ownership was denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for new pharmacy was denied based on an investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	Application for a pharmacy was denied based on the proposed owner's admission to stealing prescription drugs from CVS while working as the PIC.
PHY	Application for a new pharmacy was denied based on an investigation against another facility with common ownership.
PHY	Application for a new pharmacy was denied based on an investigation against another facility with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another facility with common ownership.
PHY	Application for a change of ownership was denied based on the submission of a fraudulent bill of sale.
PHY	Application was denied based on an investigation against another facility with common ownership.
PHY	Application for a change of ownership was denied based on an investigation against another facility with common ownership.
PHY	Application for a change of ownership was denied based on grounds the agreement with the current owner was not a good faith, arms-length transaction.
PHY	An application for a new pharmacy was denied based on an investigation against another pharmacy with common ownership.
RPH	Applicant was convicted of theft and admitting to stealing pages from an MD's prescription pad and writing fraudulent prescriptions for personal use.
RPH	Applicant was convicted of DUI twice and admitted to using alcohol to cope with anxiety and depression. The applicant was in the pharmacist recovery program in another state at the time of the denial.
RPH	Applicant was convicted twice of driving under the influence between 2016 and 2017. The applicant's blood alcohol concentration was .12 on both occasions.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
RPH	Applicant was convicted of driving under the influence. The applicant refused chemical testing and failed to disclose the conviction on the application.
RPH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .12. In a separate matter, the Massachusetts Board of Pharmacy accepted the voluntary surrender of the applicant's pharmacist license after an admission to diverting 15 Xanax tablets for personal use.
RPH	Application for a pharmacist license was denied based on a pending case against the applicant's intern license related to furnishing dangerous drugs without a prescription and failure to maintain control of inventory.
RPH	Application was denied based on several disciplinary actions taken by the Louisiana Board of Pharmacy.
RPH	Application was denied based on previous actions by the California and Nevada Boards of Pharmacy. Applicant had previously surrendered pharmacist and pharmacy licenses. Nevada denied the applicant's renewal based on the California action.
TCH	Applicant was convicted of battery for pushing his elderly father to the ground. The applicant explained he became angry because his father threatened to fire him and would no longer be able to support his drug habit.
TCH	Applicant was convicted of forgery for depositing fraudulent checks. At the time of her denial, the applicant had an outstanding warrant.
TCH	Applicant was charged with child endangerment. Officers served a narcotics search warrant on the applicant's home and recovered two pounds of cocaine which was accessible to the children. The criminal charges were eventually dismissed.
TCH	Applicant was convicted on two occasions for crimes involving burglary, theft, and conspiracy.
TCH	Applicant was arrested twice for crimes involving possession of methamphetamine and identity theft. In both cases, the applicant completed diversion and cases were dismissed.
TCH	Applicant was convicted of drug possession for possessing marijuana, methamphetamine, and drug paraphernalia.
TCH	Applicant was convicted on two occasions for crimes involving possession of drug paraphernalia and assault with a deadly weapon. In the assault case, the applicant threw hot coffee in the victim's face and cut the victim with a razor blade.
TCH	Applicant was convicted on multiple occasions for crimes involving disturbing the peace, burglary, making criminal threats, and arson.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted of being under the influence of a controlled substance. The applicant admitted to using methamphetamine and was placed on a 5150 mental health hold based on her erratic behavior.
TCH	Applicant was convicted of burglary for opening multiple bank accounts and credit cards under the victim's name.
TCH	Application was denied based on the applicant's probationary status with another state. The applicant tested positive for cocaine during a random drug test at work.
TCH	Applicant was convicted on two different occasions for crimes involving theft and grand theft. The applicant shoplifted and opened a Costco membership with fraudulent identification. The applicant stole over \$4,000 in goods and was later found to be connected to a criminal enterprise that had stolen over \$20,000 from Costco.
TCH	Applicant served as a pharmacy technician in the military and was found to be stealing Vicodin and giving to friends in exchange for sexual favors. The applicant was terminated from the military in lieu of military court proceedings.
TCH	Applicant was convicted twice of possession of a controlled substance. The applicant was in possession of methamphetamine on both occasions.
TCH	Applicant was convicted of being under the influence of a controlled substance.
TCH	Applicant was convicted on two occasions for crimes involving grand theft and practicing veterinary medicine without a license.
TCH	Applicant was convicted on multiple occasions of crimes involving soliciting prostitution, forgery and identity theft.
TCH	Applicant was convicted twice for driving under the influence. The applicant's blood alcohol concentrations were .17 and .16.
TCH	Applicant was convicted twice of driving under the influence of alcohol. The applicant's blood alcohol concentrations were .15 on both occasions.
TCH	Applicant was convicted of grand theft and embezzlement for stealing \$45,000 worth of pills from CVS.
TCH	Application was denied based on a pending case against the applicant's previous pharmacy technician license for arriving at work under the influence. The applicant admitted to having addiction issues.
TCH	Applicant was convicted of driving under the influence and submitting fraudulent documentation of completion of a pharmacy technician training program.
TCH	Applicant was convicted of driving under the influence and possession of a controlled substance. During the booking process, deputies recovered 3.8 grams of cocaine from the applicant's sock. The applicant's blood alcohol concentration was .13.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted of possession of a controlled substance without a prescription. Officers served a search warrant at the applicant's residence and found the applicant in possession of Xanax pills without a prescription.
TCH	Applicant was convicted of grand theft and burglary. Applicant used money and credit cards from a customer's lost wallet to buy merchandise.
TCH	Applicant was convicted of criminal conspiracy and identity theft. Applicant was part of a conspiracy which used the identities of 33 victims to fraudulently obtain money and purchase merchandise.
TCH	Applicant was convicted on multiple occasions for possession of a controlled substance and driving under the influence.
TCH	Applicant was convicted of weapons violations.
TCH	Applicant was convicted of driving under the influence. Officers observed the applicant asleep in the driver's seat in the middle of a traffic lane. The applicant's blood alcohol concentration was .16.
TCH	Applicant was convicted of lewd behavior for exposing himself to a classmate during a college class.
TCH	Applicant was convicted of filing a false police report. Applicant wanted to get revenge against her boyfriend, so she told police her boyfriend had stolen her car.
TCH	Applicant was convicted of theft for being found in possession of stolen merchandise,
TCH	Application was denied based on disciplinary action taken by the Bureau of Automotive Repair for fraud.
TCH	Application was denied for the submission of a fraudulent high school transcript with the application.
TCH	Applicant was convicted on multiple occasions for crimes involving driving under the influence and child cruelty. The applicant had previously surrendered a previous license based on the same convictions.
TCH	Applicant was convicted on multiple occasions for crimes involving welfare fraud, solicitation of prostitution, and working as an unlicensed contractor.
TCH	Applicant was convicted of robbery.
WLS	Application for a wholesaler application was denied based on the owner being indicted on conspiracy charges.

Fiscal Year 2018/2019

License Type	Description
CLN	Application was denied based on a pending investigation against another pharmacy with common ownership.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
INT	Applicant was convicted of theft twice in 2016 and admitted to shoplifting on multiple occasions; Additionally, the applicant was evaluated by a clinical psychologist pursuant to CCR 16 1769(a) and was found to have an impaired ability to safely conduct the practice of pharmacy.
INT	Application was denied based on a stipulated surrender of another pharmacy with the same ownership.
INT	Applicant was convicted of public intoxication. The applicant's blood alcohol concentration was .15 and a small bag of cocaine was found during a search.
INT	Applicant was convicted receiving stolen property on two occasions and possession of a controlled substance. Applicant was found in possession of marijuana and 72 ecstasy pills.
INT	Applicant was convicted on nine counts of selling counterfeit merchandise.
INT	Applicant was convicted of possession of a controlled substance for sale. U.S. Customs and Border Patrol intercepted 3,000 ecstasy pills addressed to the applicant. The applicant admitted to selling ecstasy after \$39,000 was found in a bedroom.
INT	Application was denied based on an arrest report which identified the applicant as the person who attempted to lure a juvenile into a vehicle and fled when the mother approached.
INT	Applicant was observed slumped over the wheel of his running vehicle. The applicant denied consuming alcohol but refused to perform any field sobriety tests or consent to blood or breath tests.
INT	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .14. In addition, the Oregon Board of Pharmacy disciplined the applicant's Oregon license for evading a drug screening then testing positive for marijuana, cocaine, and benzodiazepines.
INT	Applicant was convicted of video recording a two-year-old girl using the restroom.
INT	Applicant was convicted twice in two years for driving under the influence. The applicant's blood alcohol concentration was .08 and .09. In the most recent incident, the applicant ran a red light and collided with another vehicle, causing injuries to the other driver.
LSC	Application was denied based on a pending investigation against another pharmacy with common ownership.
NSF	Application for a nonresident outsourcing facility was denied based on a failed licensing inspection.
OSD	Applicant was convicted on multiple occasions between 1992 and 2017 for crimes involving public intoxication, driving under the influence, child endangerment, and resisting arrest.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
OSD	Application was denied based on a previous stipulated surrender which prohibited the applicant from applying for three years.
OSF	Application was denied based on a pending investigation for unlicensed activity.
PHY	Application for a change of ownership was denied based on a pending investigation against another pharmacy with common ownership.
PHY	Application for a pharmacy was denied based on a pending investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on a pending investigation against another pharmacy with common ownership.
PHY	Application for a change of ownership was denied based on a pending investigation.
PHY	Application was denied based on a pending investigation against another pharmacy with common ownership.
PHY	Application was denied based on the previous owner violating the terms of probation by maintaining a beneficial interest in the business.
RPH	Application for pharmacist license was denied. The applicant, while employed as an intern, tested positive for methamphetamine.
RPH	Application for a pharmacist license based on discipline imposed by the Arizona Board of Pharmacy for filling and consuming medications under another person's name.
RPH	Applicant was convicted of public intoxication and driving under the influence three times in 2018.
RPH	Applicant was convicted of public intoxication. The applicant's blood alcohol concentration was .15 and a small bag of cocaine was found during a search.
RPH	Application was denied based on the applicant's admission of purchasing NAPLEX questions online and re-selling them.
RPH	Applicant was convicted of theft twice in 2016 and admitted to shoplifting on multiple occasions. Additionally, the applicant was evaluated by a clinical psychologist pursuant to CCR 16 1769(a) and was found to have an impaired ability to safely conduct the practice of pharmacy.
RPH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .14. In addition, the Oregon Board of Pharmacy disciplined the applicant's Oregon license for evading a drug screening then testing positive for marijuana, cocaine, and benzodiazepines.
TCH	Applicant was convicted multiple times from 1991 to 2012 for crimes involving theft, forgery, and identity theft. Additionally, the applicant was evaluated by a clinical psychologist pursuant to CCR 16 1769(a) and was found to have an impaired ability to safely conduct the practice of pharmacy.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted twice in 2017 of driving under the influence. The applicant's blood alcohol concentrations were .14 and .12.
TCH	Applicant was convicted of battery and theft.
TCH	Applicant was convicted of driving under the influence. The applicant's blood alcohol concentration was .37.
TCH	Applicant was convicted of federal drug charges for conspiring to distribute 500 grams of methamphetamine.
TCH	Applicant was convicted of driving under the influence on two occasions. No information regarding the applicant's blood alcohol concentration due to the age of the convictions. The applicant failed to disclose the convictions and failed to successfully complete probation by the time the application was submitted.
TCH	Applicant was convicted on several occasions for crimes involving burglary, appropriation of lost property, public intoxication, and driving under the influence. The applicant's blood alcohol concentration was .25.
TCH	Applicant was convicted of driving under the influence and public intoxication on four occasions. In the most recent incident, the applicant was at a bar with a one-year-old child. The applicant's blood alcohol concentration was .11.
TCH	Applicant was convicted of driving under the influence and public intoxication on five occasions. In the most recent incident, the applicant caused an injury accident. The applicant's blood alcohol concentration was .10.
TCH	Applicant was convicted of embezzlement for stealing over \$1,300 from a cash register.
TCH	Applicant was convicted of driving under the influence and child endangerment for driving with two children in the car. The applicant's blood alcohol concentration was .20.
TCH	Applicant was convicted of grand theft on two occasions for stealing a vehicle and embezzling \$1,800.
TCH	Applicant was convicted of forgery.
TCH	Applicant was convicted of driving under the influence on two occasions. The applicant's blood alcohol concentrations were .25 and .10.
TCH	Applicant was convicted of driving under the influence on two occasions. The applicant's blood alcohol concentration was .22.
TCH	Applicant was convicted of arson. The applicant was caught taking an exam for a friend. The test booklet was confiscated and placed in the principal's office. The applicant set the principal's office on fire.
TCH	Applicant was convicted of embezzlement and passing a fraudulent prescription.

ATTACHMENT F: CASE SUMMARIES

License Type	Description
TCH	Applicant was convicted of fraud and grand theft for embezzling \$262,000 from an employer.
TCH	Application was denied based on discipline by the Washington Board of Pharmacy. While working as a pharmacy technician, the applicant stole \$1,700 worth of prescription drugs.
TCH	Applicant was convicted of forging prescriptions and surrendered his Utah license as a result.
TCH	Applicant was convicted on multiple occasions for crimes involving grand theft, welfare fraud, and insurance fraud.
TCH	Applicant was convicted of driving under the influence on six occasions. The applicant's blood alcohol concentrations ranged from .08 to .29.
TCH	Applicant was convicted three times for crimes involving theft and possession of methamphetamine.
TCH	Applicant was convicted of driving under the influence. The applicant tested positive for cocaine and had a blood alcohol concentration of .29.
TCH	Applicant was convicted on multiple occasions for crimes involving theft, possession of a controlled substance, and driving under the influence.
TCH	Applicant was convicted of possession of child pornography.
TCH	Applicant was convicted of murder and assault with a deadly weapon.
TCH	Application was denied based on information the applicant had worked as a pharmacy technician without a license.
TCH	Applicant was convicted on multiple occasions for crimes involving driving under the influence, being under the influence of cocaine, and battery on a peace officer.
TCH	Applicant was convicted twice of driving under the influence. In the most recent incident, the applicant's blood alcohol concentration was .41
TCH	Applicant was convicted of forging prescriptions for tramadol and Ativan while employed as a pharmacy technician.
TCH	Applicant was stopped for expired registration and was found to be under the influence of methamphetamine.
WLS	Application for wholesaler license was denied based on the revocation of billing privileges by the Department of Health and Human Services.

Board Actions at November 5-6 Meeting

The California State Board of Pharmacy met November 5-6, 2019, in Sacramento. The board took the following actions:

- Elected Greg Lippe as president and Debbie Veale as vice president. The new officers, along with Treasurer Allen Schaad, will serve the remainder of terms expiring in 2020.
- Adopted a policy statement regarding California compounding regulations during the postponement of USP chapters 795, 797, and 825. The statement is posted on the board's website.
- Pending additional information from USP, voted to delay rulemaking related to compounding of nonsterile preparations and agreed not to initiate rulemaking related to compounding of sterile preparations.
- Discussed and recommended changes to the board's draft 2020 Sunset Review report.
- Approved text for proposed amendments to California Code of Regulations (CCR) section 1707.2, related to mail order pharmacy consultation, and referred the amendments to the Legislation and Regulation Committee to consider labeling issues.
- Approved text for proposed amendments to CCR section 1706.2, related to abandonment of applications.
- Voted to withdraw proposed amendments to CCR section 1793.9, related to remote dispensing pharmacy technicians.
- Referred back to the Enforcement Committee possible amendments to CCR section 1715.65, related to inventory reconciliation reports. The board directed the committee to reconsider language related to reconciliation for Schedule III-V medications and signature requirements. The board also emphasized that language in provisions related to pharmacy satellite locations and ADDS machines reflect the board's current policy.
- Directed the Licensing Committee to develop regulations to implement [SB 159](#), related to pharmacists furnishing HIV pre-exposure and post-exposure prophylaxis.
- Approved proposed statutory language to amend Business and Professions Code (BPC) section 4210 related to requirements to qualify for advanced practice pharmacist license.
- Approved proposed language to amend BPC section 4427.3 to expand the locations where ADDS machines can be licensed.
- Approved proposed language to amend BPC sections 4427.7 and 4119.11 to align ADDS self-assessment requirements with pharmacy self-assessment requirements.
- Approved proposed language to amend BPC section 4312 to apply to all types of facility licenses.
- Approved proposed language to amend CCR section 1709 relating to trust ownership of pharmacies.
- Approved proposed language to amend BPC sections 4022.5, 4022.7, 4053, 4053.1, and 4053.2 to standardize the requirements for designated representative licenses.
- Approved a sample collaborative practice agreement that pharmacists may use to work with practitioners who have DATA 2000 waivers for management of opioid use disorders.

7/1/2019

Board of Pharmacy Update

Welcome to a roundup of recent and upcoming activities by the California State Board of Pharmacy.

Recent news:

- The Board of Pharmacy has moved! The new office address is 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.
- The main phone number for the board also has changed: (916) 518-3100. The main fax number remains the same: (916) 574-8618. For additional contact information, go to www.pharmacy.ca.gov and click on “Contact Us” at the bottom of the page.
- Designated representatives can now renew their licenses and pay with a credit card at www.pharmacy.ca.gov. To renew online, click the “Licensees” tab at the top of the homepage and go to “[Personal License Information/Renewal](#).”
- The Compounding Committee met June 4 in Sacramento.
- The board met June 21 at Keck Graduate Institute School of Pharmacy in Claremont. A list of [action items from the meeting](#) is posted on the [board meetings webpage](#).

Coming up:

- The Enforcement Committee is set to meet **July 10** at DCA Building 2, 1747 N. Market Blvd., Room 186, Sacramento, CA 95834. The agenda and meeting materials will be posted on the [Enforcement Committee webpage](#).
- The Compounding Committee is set to meet **July 11** at DCA Building 2, 1747 N. Market Blvd., Room 186, Sacramento, CA 95834. The agenda and meeting materials will be posted on the [Compounding Committee webpage](#).
- The board is set to hold its quarterly meeting **July 24-25** in Anaheim. Check the [board meetings webpage](#) for the agenda and meeting materials.
- The [Communication and Public Education Committee](#) and the [Legislation and Regulation Committee](#) also will meet **July 24** in Anaheim before the board meeting begins.

A final word:

- Has your pharmacy completed a self-assessment form? PICs are required to complete a self-assessment of the pharmacy’s compliance with state and federal laws before July 1 of each odd-numbered year. You can find current and updated self-assessment forms and get more information on the board’s [self-assessment forms webpage](#).

###



AFTER THE INSPECTION

If the inspector orders a correction, you will be instructed how to submit a plan or proof of correction to the board within a specified period. Keep all documentation related to completing the correction order with the inspection report.

If the inspector suspects a violation of pharmacy law has occurred, you may receive a written notice. Depending on the type of violation, the board may:

- Issue a letter of admonishment.
- Issue a citation (with or without a fine).
- Refer the case for disciplinary action against the pharmacy and/or individual licensee(s).

Letters of admonishment and citations are not considered to be discipline or disciplinary actions. You may contest a letter of admonishment or citation by requesting an informal office conference. In the case of a citation, you also may request a formal hearing before an administrative law judge. You will receive a letter from the board about the administrative action process, and you must reply by the specified due date.

LET US KNOW HOW WE PERFORMED

The board welcomes your feedback about the inspection experience. Contact any executive staff member listed on the back of this brochure with questions, comments or complaints.

You also may file an anonymous comment or complaint with the board's parent agency, the Department of Consumer Affairs (DCA). Visit the DCA website at www.dca.ca.gov. go to the Consumer tab, and click on "File a Complaint."

BOARD OF PHARMACY EXECUTIVE STAFF

Anne Sodergren, Interim Executive Officer
(916) 518-3110
Anne.Sodergren@dca.ca.gov

Julia Ansel, Chief of Enforcement
(916) 518-3108
Julia.Ansel@dca.ca.gov

Tom Lenox, Chief of Enforcement
(916) 518-3109
Tom.Lenox@dca.ca.gov



BE AWARE AND TAKE CARE:
Talk to your pharmacist!
CALIFORNIA STATE BOARD OF PHARMACY

P: (916) 518-3100

F: (916) 574-8618

A: 2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

www.pharmacy.ca.gov



PHARMACY INSPECTIONS

BY THE CALIFORNIA STATE
BOARD OF PHARMACY



WHAT YOU CAN EXPECT FROM AN INSPECTION – WHAT THE BOARD EXPECTS FROM YOU

The Board of Pharmacy appreciates your cooperation during this inspection. The goal of an inspection is to safeguard the health and safety of consumers. This is also an important educational opportunity for inspectors to provide guidance and answer your questions about pharmacy laws and regulations. After the inspection is complete, we welcome feedback about your experience and any comments about the inspector and the inspection process.

AN INSPECTOR WILL:

- Identify himself/herself with a board-issued badge and provide a business card.
- Be professional and courteous.
- Provide a receipt for any records taken into possession.
- Review and leave a copy of the inspection report with the pharmacist on duty and/or pharmacist-in-charge.
- Provide information and answer questions about pharmacy laws and regulations.

WHAT YOU CAN EXPECT

PHARMACY STAFF WILL:

- Provide access to the inspector during regular business hours.
- Provide access to review all stocks of dangerous drugs and devices.
- Provide access to review all records of manufacture, sale, acquisition, receipt, shipment and disposition.
- Allow the inspector to secure samples or specimens.



DOCUMENTS FOR INSPECTION

Pharmacies are required to have certain documents readily available for inspectors to review. Hard and electronic copies of records must be available during business hours.

DOCUMENTS TO HAVE AVAILABLE INCLUDE:

- Past inspection reports.
- Pharmacy self-assessments.
- Copies of staff licenses.
- Master list of pharmacist and technician initials.
- DEA 222 forms.
- Power of attorney to execute DEA 222 forms.
- DEA biennial inventory.
- Drug take-back records.
- Wholesaler invoices.
- Records of drug returns.
- Records of destruction.
- Off-site records waiver.
- Pedigrees for drugs purchased.
- Inventory reconciliation reports.
- Controlled substances refill reports.
- Policies:
 - Quality assurance reports.
 - QA for medication errors.
 - Theft and impaired licensees.
 - Pharmacy technician job description.
 - Pharmacist absence for meals.
 - After hours deliveries.
 - Interpretive services.
 - Repackaging previously dispensed drugs.
 - Automated Drug Delivery Systems.
 - Common electronic files to prevent unauthorized release of patient information.
- Protocols:
 - Refusing to dispense on ethical, moral, religious grounds.
 - Immunizations.
 - Emergency contraception.
 - Nicotine replacement.
 - Advanced practice pharmacist.
 - Procedures performed pursuant to BPC section 4052.2.



ADDITIONAL ITEMS

THE INSPECTOR ALSO WILL CHECK:

- DEA registration.
- Drug expiration dates.
- Drug take-back receptacles.
- Hot/cold running water (separate from restroom).
- Confidential waste disposal.
- Interpretive services poster.
- Notice to consumer's poster.
- Restroom location.
- Patient consultation.
- Posted pharmacy license and renewal.
- Out-of-state licenses.
- Prescription labeling.
- Prescription records.
- Quarantine area for expired and recalled drugs.
- Refrigerator/freezer temperature.
- Security features.
- Staffing ratio.
- Transmission of CURES data.
- Wearing identification or name tag printed in at least 18-point type.
- Possession of keys to the pharmacy.

Current Issues

Uniform Standards for Substance Abusing Licensees

Since the SB 1441 standards were finalized, the board has worked in a thoughtful and deliberate manner to implement the standards. This is essential for the regulator of businesses and individuals who have immediate proximity to dangerous drugs and controlled substances.

The standards establish 16 categorical requirements and provide instruction for the board, contractors and licensees to follow. As such, to achieve implementation, the board needed to take action in several areas including:

- Educate members about the requirements,
- Incorporate changes to the existing and future contracts with the administrator of the Pharmacists Recovery Program (PRP),
- Develop expanded statistical reporting,
- Make changes to policies and procedures,
- Update the board's *Disciplinary Guidelines*.

Beginning in 2011, the board heard presentations on the standards as well as initiated a rulemaking to update its *Disciplinary Guidelines* to incorporate the SB 1441 uniform standards. While the board was working to update its *Disciplinary Guidelines*, the board received opinions from various sources on what was required to implement the uniform standards, including an opinion from the Legislative Counsel Bureau, an executive summary issued by the Office of the Attorney General as well as an implementation memo from the Deputy Director of Legal Affairs, Department of Consumer Affairs. Regrettably these opinions did not provide consistent guidance. As a result, the board stopped its rulemaking efforts to update its *Disciplinary Guidelines* and requested a formal legal opinion from the Office of the Attorney General, which was done in January 2013.

While awaiting the legal opinion, the board continued its implementation efforts in other areas. For example, beginning in FY 2011/12 the board began publishing the statistics required pursuant to standard 16. The statistics are provided on a quarterly basis to the board and are posted publicly on the board's website as part of the meeting materials. A review of these statistics confirm the board has implemented several of the standards that were guidance or direction to the board. For example, reviewing the total number of probationers in a given quarter as well as the number of drug tests ordered provides insight into the approximate drug testing frequency for licensees subject to such a requirement.

The integration of the SB 1441 standards also required amendments to contracts. Over the prior few years, the board has worked with DCA to secure the necessary contract changes with the administrator of the PRP.

In April 2015 the board received the Attorney General's Opinion. The board subsequently reestablished its SB 1441 Uniform Standards Implementation Committee to resume efforts to update the board's *Disciplinary Guidelines*. On September 4, 2015, the notice of proposed action along with the proposed text was published by the Office of Administrative Law for the required 45-day comment period, (which ended October 19, 2015). During its October Board Meeting, the board voted to pursue a 15-day comment period and expects, absent any negative comments submitted, to submit the rulemaking to the various control agencies to review by early 2016.

UNIFORM STANDARD #4 – REDLINE OF CURRENT LANGUAGE

As amended 10/30/2018

#4 SENATE BILL 1441 REQUIREMENTS

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

#4 Uniform Standard

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**I. PREVIOUS TESTING/SOBRIETY**

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

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

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.

OTHER DRUG STANDARDS

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

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

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

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

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

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

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

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

PETITIONS FOR REINSTATEMENT

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

contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

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

Historical Data - Two Years Prior to Implementation of Standard

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

Post Implementation Data- Three Years

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

Data Collection

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

Probationer/Diversion Participant Unique Identifier
 License Type
 Probation/Diversion Effective Date
 General Range of Testing Frequency by/for Each Probationer/Diversion Participant
 Dates Testing Requested
 Dates Tested
 Identify the Entity that Performed Each Test
 Dates Tested Positive
 Dates Contractor (if applicable) was informed of Positive Test
 Dates Board was informed of Positive Test
 Dates of Questionable Tests (e.g. dilute, high levels)
 Date Contractor Notified Board of Questionable Test
 Identify Substances Detected or Questionably Detected
 Dates Failed to Appear
 Date Contractor Notified Board of Failed to Appear
 Dates Failed to Call In for Testing
 Date Contractor Notified Board of Failed to Call In for Testing
 Dates Failed to Pay for Testing
 Date(s) Removed/Suspended from Practice (identify which)
 Final Outcome and Effective Date (if applicable)

ATTACHMENT F: SB 1441 SUMMARY DATA

California State Board of Pharmacy SB 1441 Uniform Standards

The data includes licensees participating in the Pharmacist Recovery Program (PRP) and licensees on probation with substance abuse disorders.

Board of Pharmacy	*July Sep	Oct – Dec	Jan-Mar	Apr Jun	Total 18/19
PRP Intakes					
PRP Self-Referrals		1	1		2
PRP Probation Referrals	3	3	5	4	15
PRP Under Investigation	1	2	2	3	8
PRP In Lieu Of (investigation conducted)			1		1
Total Number of PRP Intakes	4	6	9	7	26
New Probationers					
Pharmacists	1	20	15	10	46
Intern Pharmacists					None
Pharmacy Technicians	4	3	3	5	15
Total New Probationers	5	23	18	15	61
PRP Participants and Recovery Agreements					
Total PRP Participants	54	56	63	57	N/A
Recovery Agreements Reviewed	64	51	58	55	228
Probationers and Inspections					
Total Probationers	9	4	12	16	41
Inspections Completed (Information not available)	N/A	N/A	N/A	N/A	N/A
Referrals to Treatment					
Referrals to Treatment (PRP and Probationers)	2	3	6	5	16
Drug Tests					
Drug Test Ordered (PRP and Probationers)	592	856	875	805	3128
Drug Tests Conducted (PRP and Probationers)	581	853	858	777	3069
Relapses					
Relapsed (PRP and Probationers)		1	1	2	4
Major Violation Actions					
Cease Practice/Suspension (PRP and Probationers)	6	9	9	14	38
Termination from PRP	1	2	2	4	9
Probationers Referred for Discipline	1				1
Closure					
Successful Completion (PRP and Probationers)	4	10	12	20	46
Termination (Probation)	1				1
Voluntary Surrender (Probation)	1	3	5	12	21
Surrender as a result of PTR (Probation)					None
Closed Public Risk (PRP)	1	2	3	5	11
Non-compliance (PRP and Probationers)					None
Other (PRP)		1	2	5	8
Patients Harmed					
Number of Patients Harmed (PRP and Probationers)	None	None	None	None	None

ATTACHMENT F: SB 1441 SUMMARY DATA

SB 1441 Uniform Standards

The data includes licensees participating in the Pharmacist Recovery Program (PRP) and licensees on probation with substance abuse disorders.

Board of Pharmacy	*July Sep	Oct – Dec	Jan-Mar	Apr Jun	Total 18/19
Drug of Choice at PRP Intake or Probation					
Pharmacists	July-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Total 18/19
Alcohol	3	5	7	6	21
Ambien					
Opiates	1	1			2
Hydrocodone		1			1
Oxycodone				1	1
Morphine					
Benzodiazepines					
Barbiturates					
Marijuana					
Heroin					
Cocaine					
Methamphetamine					
Pharmaceutical Amphetamine				1	1
Phentermine					
Methadone					
Zolpidem Tartrate					
Hydromorphone					
Clonazepam					
Tramadol		1			1
Carisprodol					
Phendimetrazine					
Promethazine w/Codeine		2			2
Intern Pharmacists	July-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Total 18/19
Alcohol			2		2
Opiates					
Hydrocodone					
Oxycodone					
Benzodiazepines					
Barbiturates					
Marijuana					
Heroin					
Cocaine					
Methamphetamine					
Pharmaceutical Amphetamine					
Phentermine					
Methadone					
Zolpidem Tartrate					
Hydromorphone					
Clonazepam					
Tramadol					
Carisprodol					
Phendimetrazine					
Promethazine w/Codeine					
Pharmacy Technicians	July-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Total 18/19
Alcohol	4	1	1	2	8
Opiates					
Hydrocodone					
Oxycodone					
Benzodiazepines					
Barbiturates					
Marijuana					
Heroin					
Cocaine					
Methamphetamine	1				1
Pharmaceutical Amphetamine					
Phentermine					
Methadone					
Zolpidem Tartrate					
Hydromorphone					
Clonazepam					
Tramadol					
Carisprodol					
Phendimetrazine					
Promethazine w/Codeine					

BACKGROUND PAPER FOR The Board of Pharmacy

**(Joint Oversight Hearing, March 14, 2016, Senate Committee on
Business, Professions and Economic Development and the Assembly
Committee on Business and Professions)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BOARD OF PHARMACY

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board of Pharmacy, or areas of concern for the Committees to consider, along with background information concerning the issue of oversight for private postsecondary institutions. There are also recommendations Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties have been provided with this Background Paper and the Board will respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (BreEZe.) The Board was originally slated to be a part of the DCA's second release of a new information technology (IT) system but is now included in a third release, which has been cancelled from the current project, and the plans for which are unclear. What is the Board doing in the meantime to address IT needs? Does the Board have systems in place to track key data necessary to identify performance measures and to track important information about its licensees?

Background: The DCA has been working since 2009 on replacing multiple antiquated standalone IT systems with one fully integrated system. In September 2011, the DCA awarded Accenture LLC (Accenture) with a contract to develop and implement a commercial off-the-shelf customized IT system, which it calls BreEZe. BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet. The public also will be able to file complaints, access complaint status, and check licensee information if/when the program is fully operational.

The project plan called for BreEZe to be implemented in three releases. The first release was scheduled for July 2012. The Board was originally scheduled for inclusion in Release 2 of the project. As the Board began the steps towards transition to the new system, two board staff were assigned to assist in the development of components that could meet the Board's needs. According to the Board, these staff spent a considerable amount of time working on the preliminary configuration for the Board's conversion into the new system. However, as the configuration progressed, Board staff identified key functionality absent from the system that was critically needed by the Board.

The Board has now been pushed back to Release 3 of BreEZe, but under Special Project Report 3.1 that outlined the changing scope and cost of the BreEZe project, Release 3 was removed from the project entirely. DCA currently has no formal plan to expand BreEZe to the 19 boards in Release 3. Instead, DCA first intends to conduct a cost-benefit analysis for Release 3 boards after Release 2 is completed in 2016 and then make a decision about whether boards previously slated for Release 3 of the project will come onto BreEZe and if so, how that will be implemented. It is not clear whether the system has been evaluated to meet the needs of Release 3 entities like the Board, many of which are facing significant operational challenges due to their lack of dynamic IT capacity. To date the Board has contributed \$1.5 million towards this upgraded system.

It would be helpful for the Committees to understand what the plan is moving forward for the Board and any IT upgrades. It would also be helpful to understand, particularly given the Board's fiscal issues as discussed later, what future costs are anticipated.

Staff Recommendation: *The Board should provide the Committees an update on the status of Release 3 of BreEZe, as they have been advised by the DCA, and should provide the Committees a breakdown of charges the DCA has told the Board they will be paying for BreEZe in FY 2016/17 and ongoing. The Board should report whether it is currently using any workaround systems to meet data tracking needs.*

Board Response: The board has been advised by the DCA that consistent with the findings of the California State Auditor's *California Department of Consumer Affairs' BreEZe System* audit, the department will be conducting a thorough cost/benefit analysis of the BreEZe system before it moves forward with the remaining agencies. The timeframe for completion of this analysis is currently unclear. In the interim the board has asked the department to consider options that will allow the board to accept credit card payments for renewals as a stop gap measure to increase services to our licensees.

Further, as the outcome of the cost/benefit analysis is currently unknown, the board will consider pursuing the Stage-Gate process established by California's Office of Technology which is the process now required by the state to identify and procure new IT solutions.

To date the board has incurred the following BreEZe costs:

Pre 2011/12	\$72,156
2011/12	\$214,509
2012/13	\$134,555
2013/14	\$396,747
2014/15	\$203,760
Sunset Review Years	\$949,571
2015/16	\$536,529
2016/17	\$474,871
Total Forecast Costs	\$1,011,400
Total BreEZe Costs	\$2,033,127

The board has been advised that it could be added to Release 3 of BreEZe. Initial information provided to the board some time ago was that the transition would begin in December 2016.

The board has more than 20 workaround systems currently in place to track workload; hopefully many of these would no longer be needed if the board transitions to BreEZe.

ISSUE #2: (REGULATIONS.) The Board is tasked with implementing a number of pieces of recently enacted legislation through the promulgation of regulations. The Board also may initiate a rulemaking package to address other important issues. How are regulations prioritized? How are staff resources dedicated to the Board's many rulemaking packages?

Background: Since the prior sunset review, the Board has initiated and adopted 11 regulatory proposals, has initiated and withdrawn 4 regulatory proposals, had 1 regulatory proposal denied by the Office of Administrative Law and, as of November 5, 2015, has 14 regulatory proposals in progress. The scopes of these rulemaking packages is broad and include (but are not limited to) a range of topics from updating applications for pharmacy technicians to outlining procedures for the take back of prescription drug medication to establishing a state protocol to allow pharmacists to provide self-administered hormonal contraception. The Board maintains that it must "remain vigilant in evaluating regulations, working to remove outdated provisions while securing changes necessary to amend existing regulations to strengthen its role as a consumer protection agency or provide additional guidance and clarification to licensees on legal requirements".

Some regulatory packages take significantly longer than others and it would be helpful for the Committees to know how rulemaking needs are prioritized. It would be helpful to understand what leads to delays in rulemaking related to implementation of statute (for example, the drafting of a statewide protocol for pharmacists to provide hormonal contraceptives as discussed further in Issue #15).

It would also be helpful to understand what legal support the Board receives to swiftly draft regulations and when the Board proposes rulemaking in response to perceived attention or action by the Legislature. For example, the Board moved in Fall 2015 to initiate rulemaking related to the take back of drugs at pharmacies and by Board licensees, an issue that the Legislature has proposed and enacted legislation on since 2006. A number of local ordinances throughout the state *require* pharmacies to take back medication but the Board's proposed language asserts that pharmacies *may* take back medication according to certain standards and with certain safeguards in mind. The Board itself sought clarification on preemption and whether local ordinances would supersede the Board's rule or vice versa. Particularly as this remains an important national issue, it would be helpful for the Committees to understand the Board's efforts, rationale for regulatory efforts and impacts of Board rules on issues that continue to be debated by the Legislature.

Staff Recommendation: *The Board should advise the Committees its regulation package prioritization and how the Board determines when to proceed with initiating a new rule or amending current rules. The Board should also report to the Committees on regulatory action necessary to implement recently enacted legislation. The Board should report to the Committees on whether it takes preemptive regulatory action when the Legislature is discussing statutory changes.*

Board Response: The board has regulations that are short and very specific as well others that are technical, complex and lengthy. For example, currently pending are regulations that substantially enhance regulation of compounding, establish protocol parameters for drug take-back programs in pharmacies, establish licensure requirements for advanced practice pharmacists, and require monthly or quarterly medication reconciliation by pharmacies to identify drug losses more quickly. These examples demonstrate the robust and complex regulatory scheme under the board's jurisdiction.

Most regulations undertaken by the board are major regulations. The board prioritizes rulemakings based on their impact to public health and safety. Regulations designed to improve efficiencies,

streamline processes, etc., many times are not a top priority given the importance of other pending issues and their direct impact on public health and safety.

The rulemaking process established in the APA is lengthy and requires the review of multiple agencies. The board currently has 15 regulations pending. Of those pending 12 are in response to enacted legislation. To provide greater transparency in the current status of each regulation, the board has expanded the information available on its website about rulemakings to include the current status.

The current status of the 12 regulations is:

Regulations Pending that Were Promulgated to Implement or Clarify Legislation

1. Patient-Centered Labels for Prescription Containers (updating existing regs): Awaiting board review of comments submitted which will occur at the April 27, 2016 Board Meeting
2. Travel Medications: Second 15-day comment period closed April 12, 2016. Awaiting board review of comments submitted which will occur at the April 27, 2016 Board Meeting
3. Drug Warning Labels: Awaiting board review of comments which will occur at the April 27, 2016 Board Meeting
4. Disciplinary Guidelines: Awaiting board review of comments submitted during the second 15-day comment period which will occur during the April 27, 2016 Board Meeting
5. Advanced Pharmacist Qualification Methods (sections 1730, 1730.1 1749): Board's work completed: rulemaking file undergoing review by DCA
6. Advanced Practice Pharmacist Qualification Methods (section 1730.2): Board's work completed: rulemaking file undergoing review by the DCA
7. Vaccinations: Board's work completed: rulemaking file undergoing review by DCA
8. Compounded Drug Preparations: rulemaking file undergoing review by DCA
9. Self-Assessment Form Revisions: rulemaking file undergoing review by the Office of Administrative Law

Other Regulations

1. Drug Take Back: 45-Day public comment period closed March 28, 2016. Public hearings held April 13, 2016. Board to review comments at board meeting on April 27, 2016.
2. Board Accredited Continuing Education: 45-Day public comment period closed December 28, 2015. Hearing held February 2, 2016. Board to review comments at board meeting on April 27, 2016
3. Reconciliation and Inventory Report: 45-Day public comment period closed. Hearing held February 2, 2016. Board to review comments at board meeting on April 27 2016

Generally legislation is enacted first, and regulations are developed to implement the legislation. Because of the uncertain nature of legislation, it is hard to forecast what components will be enacted and what, if any action may be necessary by the board. As such the board initiates rulemaking following enactment of legislation once the provisions are finalized.

BOARD BUDGET ISSUES

ISSUE #3: (FUND CONDITION AND STAFFING LEVELS.) **The Board's staff continues to grow yet delays in certain application processing and workload continue. Is the Board appropriately directing staff resources to meet its needs? Does the Board focus too much on boosting enforcement staff? The Board is also facing a serious deficit and may need to raise fees to continue to do its job. However, fee caps were just raised through legislation in 2009. Is the Board's program growing beyond what fees can cover? Did the Board properly evaluate licensing fees for new categories like sterile compounding facilities located in other states that provide drug products to California?**

Background: Since the prior review, the Board has experienced a 51 percent increase in authorized expenditures. Revenue has not kept pace with this level of spending and the Board is projected to have depleted its fund sometime in FY 2017/18 given the current structure. As the Board's program has grown, it has received authority for an increase in staff positions, specifically the approval of five BCPs since FY 2013/14. However, the Board is facing backlogs in processing applications and appears to focus primarily on enforcement rather than other program functions. The Board has also made significant budget adjustments, to the tune of over \$1.5 million, for costs related to the BreEZe program which the Board now has no future plans to be a part of.

The Board is currently authorized in the Governor's 2016/17 budget for a total of 100.7 positions. The Board has also submitted two budget change proposals (BCPs) requesting to transition eight limited term positions that it was authorized in FY 2014/15 to permanent in order to focus on prescription drug abuse issues, and to transition 5.5 limited term positions that it was authorized in FY 2014/15 to permanent in order to inspect, investigate, license and review enforcement needs for sterile injectable compounding facilities.

The Board attributes its action to raise fees to the statutory maximum in 2014 to three primary efforts: CPEI, the prescription drug abuse epidemic and the need for greater regulation over pharmacies that compound sterile products.

The national attention to prescription drug abuse, as well as documented impacts of this significant problem, is at an all-time high, with Board licensees directly in the middle of many of these conversations. Federal data for 2014 showed that abuse of prescription pain killers now ranks second, just behind marijuana, as the nation's most widespread illegal drug problem. Abuse can stem from the fact that prescription drugs are legal and potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. The Board has a RX Drug Abuse team within its enforcement unit and utilizes the AG's Controlled Substance Utilization Review and Evaluation System (CURES) prescription drug monitoring program more than any other regulatory

boards. Pharmacies are required to report the dispensing of controlled drugs to CURES by drug name, quantity, prescriber, patient, and pharmacy and the Board in turn conducts research and monitoring of this data. The Board's current BCP specifically notes that with additional position authority, dedicated staff will continue efforts to use CURES data in Board enforcement efforts.

The Board has also significantly expanded its oversight role of sterile compounding pharmacies. Compounding pharmacies make drugs, but they are limited to either producing small amounts in response to a specific patient's prescription, or to create a small supply for an identifiable patient population to ensure continuity of treatment. In October 2012, the New England Compounding Center (NECC), based in Massachusetts, shipped contaminated product throughout the country, including California, that resulted in the death of more than 40 people and illness in more than 450 patients from NECC's tainted steroid injections. The Board was concerned that it did not have the opportunity or authority to inspect NECC or prevent NECC from shipping products into California until patients in other states had already been harmed, and subsequently sponsored SB 294 (Emmerson, Chapter 565, Statutes of 2013) which requires an inspection by the Board prior to licensure for all compounding pharmacies that make or distribute compounded drugs in California, including those located within the state and those located in other states that ship products into California for use by California patients. The current fee for nonresident sterile compounding pharmacies is \$780, which the Board now believes is substantially less than the true cost of regulating these entities.

The Board has provided a fee audit to the Committees and responded to a fee background questionnaire from the Committees, in which it proposes new statutory minimum and maximum fees.

Initial Fees

Fee Type	Current Fee	Proposed Statutory Minimum	Proposed Statutory Maximum	Change from Current to Proposed Statutory Minimum
Centralized Hospital Packaging	\$800	\$820	\$1,150	3%
Clinic Permit	\$520	\$520	\$570	0%
Designated Representative Certificate – Third Party Logistics Provider	\$330	\$150	\$210	-55%
Designated Representative Certificate – Veterinary Food-Animal Drug Retailers	\$330	\$150	\$210	-55%
Designated Representative Certificate – Wholesalers	\$330	\$150	\$210	-55%
Hypodermic Needle and Syringe	\$165	\$170	\$240	3%
Intern Pharmacist	\$115	\$165	\$230	43%
Non-Resident Pharmacy	\$520	\$520	\$570	0%
Non-Resident Sterile Compounding	\$780	\$2,380	\$3,335	205%
Non-Resident Third Party Logistics Provider	\$780	\$780	\$820	0%
Non-Resident Wholesaler	\$780	\$780	\$820	0%
Pharmacist Initial License Fee	\$195	\$195	\$215	0%
Pharmacist Licensure Exam	\$260	\$260	\$285	0%
Pharmacy	\$520	\$520	\$570	0%
Pharmacy Technician	\$105	\$140	\$195	33%
Sterile Compounding	\$780	\$1,645	\$2,305	111%
Third Party Logistics Provider	\$780	\$780	\$820	0%
Veterinary Food-Animal Drug Retailer	\$425	\$435	\$610	2%
Wholesale Drug	\$780	\$780	\$820	0%

Renewal
Fees

Fee Type	Current Fee	Proposed Statutory Minimum	Proposed Statutory Maximum	Change from Current to Proposed Statutory Minimum
Centralized Hospital Packaging Renewal	\$800	\$805	\$1,125	1%
Clinic Renewal	\$325	\$325	\$360	0%
Designated Representative Certificate – Third Party Logistics Provider Renewal	\$195	\$215	\$300	10%
Designated Representative Certificate – Veterinary Food-Animal Drug Retailers Renewal	\$195	\$215	\$300	10%
Designated Representative – Wholesalers Renewal	\$195	\$215	\$300	10%
Hypodermic Needle and Syringe Renewal	\$165	\$200	\$280	21%
Non-Resident Pharmacy Renewal	\$325	\$325	\$360	0%
Non-Resident Sterile Compounding Renewal	\$780	\$2,270	\$3,180	191%
Non-Resident Third Party Logistics Provider Renewal	\$780	\$780	\$820	0%
Non-Resident Wholesaler Renewal	\$780	\$780	\$820	0%
Pharmacist Renewal	\$195	\$360	\$505	85%
Pharmacy Renewal	\$325	\$665	\$930	105%
Pharmacy Technician Renewal	\$130	\$140	\$195	8%
Sterile Compounding Renewal	\$780	\$1,325	\$1,855	70%
Third Party Logistics Provider Renewal	\$780	\$780	\$820	0%
Veterinary Food-Animal Drug Retailer Renewal	\$325	\$330	\$460	2%

There is no doubt that the Board is a key player in all of these important issues but it would be helpful for the Committees to better understand the Board's justification for prioritizing certain efforts and how cost estimates are made to ensure that regulatory fees pay for the Board's regulatory activities. It would also be helpful for the Committees to understand whether the Board believes it will require additional fee increases in coming years, what feedback it receives from licensees on fee increase efforts and what the Board can do to partner with agencies and existing resources to continue to do its important work without having to negotiate fee cap raises within a short period of time.

Staff Recommendation: *The Board needs to provide information to the Committees outlining efforts to maintain a healthy fund condition, even as it works on important issues with national attention. The Committees may wish to require the Board to conduct workload analyses related to certain licensing categories to determine where certain processes can be streamlined for less complicated licenses. The Committees may wish to amend the Pharmacy Law to allow the Board to raise the statutory cap on fees.*

Board Response: The board believes it needs to be frugal but prudent in its budget. Since the last sunset review, the board pursued budget augmentations to address emerging public health issues such as prescription drug abuse, sterile compounding and the Consumer Protection Enforcement Initiative. As a result the board staffing and approved expenditure levels have increased.

The board has for several years recognized that it will need to increase fees to maintain its current operational structure and staffing. This subject is discussed at every board meeting via a budget report which details the board's expenditures and revenue.

Recognizing that a fee increase would be needed in the future and to ensure application and renewal fees are commensurate with the costs to deliver the service, the board undertook a fee analysis by the DCA. Based on the findings of the DCA, the board is seeking to modify its current fee structure contained in Business and Professions Code section 4400. The board's legislative solution includes immediate changes to 21 fees, including 18 that will be immediately increased upon implementation of the legislation and three fees will be immediately reduced. For all other fees where a proposed change is being sought, the current statutory maximum is becoming the new statutory minimum and a new maximum would be established.

The board also strives to become more efficient as a part of its normal operations. For example, the board has secured both legislative and regulation changes to streamline application processes. Senate Bill 590 (Stone, Chapter 147, Statutes of 2015) streamlines the application process for recent pharmacy school graduates seeking licensure as a pharmacist.

The board also has completed and submitted the Fee Background Information Questionnaire required by the Sunset Review Committee.

The board welcomes the opportunity to work with the committee on this issue.

LICENSING ISSUES

ISSUE #4: (BACKLOGS.) The Board is facing licensing backlogs. What steps is the Board taking to ensure that applications are processed in a timely fashion, particularly for entities under the same ownership structure, to ensure that patients have access to the medication they need?

Background: The Board's failure to timely issue a license to an individual or entity prevents or at least delays that individual or business from working. For example, if the Board delays a licensing decision because it is investigating an applicant's criminal background, the job intended for that applicant may be given to another individual. As a result, the Board's delay in licensing, while often necessary, has a direct impact on consumers and practitioners.

The Board aims to issue a permit as quickly as possible once the applicant has been determined to be qualified for licensure. The Board notes that it works with applications from new businesses that must be licensed by the Board, and strives to ensure that they can open on the date they desire, even when they turn applications in very close to the desired opening date. According to the Board, this usually can be accomplished but there are a number of components that must be completed before an applicant can receive a new pharmacy or wholesaler license. The Board does have the ability to issue temporary licenses to pharmacies and wholesalers if a certain number of requirements are fulfilled, which in turn permits the new business to operate and the Board can then finalize review of the licensing documents over the course of 180 days.

Below are the Board's timelines for licensing for the past four FYs:

Application Type	FY 2011/12		FY 2012/13		FY 2013/14		Rec'd
	Rec'd	Days	Rec'd	Days	Rec'd	Days	
Pharmacy Technician	9,491	110	8,741	70	8,211	89	7,151
Pharmacist Exam	2,467	35	1,805	32	2,682	38	3,122
Pharmacy	333	89	505	95	421	112	1,541

The Board states that fluctuations in licensing are due to a number of factors including staff vacancies, new licensing programs which lead to staff resources being redirected, sudden surges in workload related to peak cycles times (graduation dates) and large buyouts of chain store pharmacies. The

Board states that it is currently focusing on timely processing of applications and recently reinstituted a quarterly review of all of its pending applications which is intended to serve as another opportunity for the Board to reach out to applicants and request necessary information before an application would otherwise be withdrawn. The Board projects, based on recent efforts in this area, that completing this review quarterly will result in deficiencies being remedied more quickly and licenses being issued faster. As of October 30, 2015, the Board had over 2,500 pending applications for initial licensure.

As a means of decreasing processing times, the Board highlights that it is working to secure additional resources as well as improving application instructions and educating applicants about the requirements for licensure. The Board is working to simplify and clarifying instructions and

applications as a means of reducing the number of deficiencies on initial applications, thereby reducing the overall application processing times. The Board has discussed application requirements during Board and committee meetings that are webcast, highlighting application requirements as well as common deficiencies and is working to develop videos that will also serve to assist applicants through the application process.

The Board may also benefit from a statutory clarification related to processing timelines for applications filed by clinics opening a new location, reporting a change to an existing location or updating certain information like changes to corporate officers. Similarly, a streamlined process for commonly-owned clinics to use just one application may speed up timelines and improvements may be realized if clinic corporations owning more than one Board-licensed clinic are authorized to renew all of their permits at one time.

Staff Recommendation: *The Board should provide the status of its licensing backlog. The Committees may wish to amend the Pharmacy Law to require clinic applications to be processed within 30 days, to create a streamlined process for commonly-owned clinics to report organization-wide changes in corporate officers, consulting pharmacists and medical directors and to create one renewal date for all clinic permits, ensuring that commonly owned clinics could be renewed in a timely manner.*

Board Response: The board recognizes its role in helping individuals and businesses create jobs in California. The board strives to ensure its application processes are consistent, reliable and timely, and strives to remove unnecessary barriers to licensure.

The board does not believe it currently has a backlog of applications. The board did have delays in processing applications during mid-2014 through 2015 due to significant expansion of one licensing program and the creation of two others, coupled with staff vacancies.

The board believes it now has acceptable processing times, with initial processing times for all license types at or below 30 days following receipt. The board has also developed a system to ensure that deficient applications do not languish. The board has one staff member who reviews deficient files and works with applicants to complete the licensing process. Further the board has undertaken a modest education campaign to ensure applicants understand the application process and requirements. If the board is able to reduce the number of applications that are submitted with deficiencies, individuals and businesses will benefit by becoming licensed more readily and staff time currently spent resolving deficiencies can be redirected to initial processing.

By law, the board issues a license to a site, not a corporation. The board uses a headquarters system to manage large chain store ownership information centrally. The board's computer system is programmed to accommodate this structure. For smaller organizations the board creates a "masterfile" that retains centralized information for the various licensed locations.

The board has recently worked with a large California clinic system to establish a centralized file to track ownership and medical directors. The board is committed to continuing its efforts to address concerns of this organization and others, and streamline reporting of changes in personnel where possible. The board will explore options to facilitate use of a single expiration date for clinics under common ownership.

ISSUE #5: (OUTSOURCING FACILITIES). Should the Board license outsourcing facilities to align its regulatory system with the FDA and other states?

Background: The federal Drug Quality and Security Act (DQSA) was signed into law by President Obama on November 27, 2013. Prompted by the fatal fungal meningitis outbreak in 2012 linked to unsanitary conditions at a Massachusetts compounding pharmacy, as well as concerns regarding increases in counterfeit, falsified, substandard and dangerous prescription medications, DQSA contained two parts – the Compounding Quality Act and the Drug Supply Chain Security Act.

The Compounding Quality Act created a voluntary compliance regime in which large-scale compounding pharmacies may voluntarily register as “outsourcing facilities” and be subject to oversight by the Food and Drug Administration (FDA) in much of the same way that traditional pharmaceutical manufacturers are monitored. These facilities must adhere to more stringent current good manufacturing practices and are subject to a risk-based inspection schedule. The FDA has registered 59 outsourcing facilities, three of which are in California.

California law does not currently recognize outsourcing facilities because state law authorizes only limited anticipatory pharmacy compounding, either for prescriber office use or to meet customary demand. For a number of years, the Board and other federal and state regulatory agencies have grappled with establishing a tipping point at which a pharmacy compounds enough medications to become a manufacturer.

The Board currently licenses entities that would be considered outsourcing facilities as sterile compounding pharmacies – “resident” if they are located in California and “non-resident” if located out of state and ships into California. There is no distinction between large scale and small scale facilities.

However, this regulatory system is losing its viability as a solution for two reasons. First, it does not recognize the federal outsourcing requirements that permit large scale compounding. Second, it does not align with other states’ systems; multiple states are moving to establish regulatory frameworks to license outsourcing facilities as separate entities and some prohibit licensure of these facilities as sterile compounding pharmacies, contrary to California’s structure.

In 2015, the Board sponsored legislation (SB 619, Morrell) to license outsourcing facilities. The Board believes that licensing these entities both within and outside California will ensure that the state’s hospitals and practitioners have access to high quality, carefully compounded sterile medication.

Staff Recommendation: *The Committee suggests adding an outsourcing facility license to the Pharmacy Law and recommends that the Board conduct a careful calculation of costs associated with regulating these facilities to ensure that budget imbalances do not result (in the event that the workload and travel necessary for the scope of this work) exceed the revenue from fees.*

Board Response: The board believes that creating a separate license for outsourcing facilities (also known as 503B facilities) is necessary, given that these new entities require separate regulations from pharmacies that prepare patient-specific sterile compounds. The regulation of outsourcing facilities under this new license structure is necessary to ensure the quality of sterile compounded

medication made available to the state's hospitals, practitioners and patients. The board also believes that a separate set of regulations are necessary to ensure that these entities comply with the FDA's requirements. The board will carefully evaluate the necessary fees and costs associated with regulating the facilities based on its experience in regulating compounding pharmacies. It is also contacting other agencies that regulate similar types of entities to validate board workload and resource requirement estimates. The board welcomes the opportunity to work with the committee on this issue.

ISSUE #6: (AUTOMATED DELIVERY DEVICES). The Board has discussed instances where machines dispense and provide medication, focusing on the need for accountability for the inventory when emerging technologies are used for medication delivery. Should operators of Automated Delivery Devices be required to register use of these devices with the Board? What would registration mean for the Board's licensing backlogs and enforcement priorities?

Background: Current law authorizes the use of "automated drug delivery systems," which are a mechanical system controlled remotely by a pharmacist that performs operations or activities, other than compounding or administration, relative to the storage, dispensing, or distribution of prepackaged dangerous drugs or dangerous devices. An automated drug delivery system is required to collect, control, and maintain all transaction information to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability. Under some circumstances the pharmacist must authorize the release of medication.

Pharmacies are able to operate automated delivery devices in various settings away from a licensed pharmacy or within a licensed facility. This includes in skilled nursing homes and other specified health care facilities, certain clinics, and hospitals for drug storage and access outside of the pharmacy.

The demand for additional use of these delivery devices is growing. A pilot study is currently underway that would allow patients to pick up medication from a delivery device that is not specifically located in a pharmacy so long as patient consultation is first provided.

The Board reports that it is not currently able to track how many of these delivery devices are in use, where they are in use, or which pharmacy is responsible for specific delivery devices. A registration would enable the Board to identify which pharmacies operate these delivery devices and where each is located.

Staff Recommendation: *The Committees may wish to authorize the Board to establish a registration requirement that links automated delivery device systems to the pharmacy that owns and is responsible for the medications stored and released from the device. As part of the registration, the Committees may wish to require that the Board is provided with the policies and procedures that demonstrate appropriate security of the device and how patient consultation is being provided. Registration of these systems may also require a reporting function to ensure that the Board is made aware of drug losses from the machines, similar to the requirement for pharmacies to report drug loss information.*

Board Response: The board supports the staff's recommendation. The board has developed draft statutory provisions which it will refine during its April 27 & 28, 2016 meeting. The board welcomes the opportunity to work with the committee on this issue.

ISSUE #7: (PROFESSIONAL CORPORATIONS). Should pharmacists be included on the list of individuals who may be a shareholder, officer, or director of a medical corporation?

Background: Corporations Code 13401.5 authorizes the formation of various healing arts professional corporations and establishes which healing arts licensees who are not of the same license type as the corporation may be shareholders, officers, and directors of that corporation. Any person licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed by these professional corporations. Thus, the services of professional corporations are not limited to the named profession. For example, a nursing corporation may have a director who is a chiropractor, a shareholder who is an acupuncturist, and employ an accountant, podiatrist, and a marriage and family therapist, none of which would traditionally be seen as providing the professional services of nursing.

Current law authorizes a medical corporation to have the following licensees as officers, directors, and shareholders:

- (1) Licensed doctors of podiatric medicine.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed physician assistants.
- (8) Licensed chiropractors.
- (9) Licensed acupuncturists.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (12) Licensed physical therapists.

Stakeholders have requested that pharmacists be added to this list, given the recent expansion of the pharmacists' scope of practice by SB 493 (Hernandez, Chapter 469, Statutes of 2013).

Pharmacy corporations were authorized in 1996 in the Pharmacy Practice Act, rather than the Corporations Code. Current law allows a pharmacy corporation's officers, directors, and shareholders to be anyone who is a "licensed person" as defined in Section 13401 of the Corporations Code:

"Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is, or intends to become, an officer, director, shareholder, or employee.

Since the “same professional services” rendered by the corporation is an expansive concept, it can be argued that a physician can be an officer, director, or shareholder of a pharmacy corporation. It follows, then, that it would be equitable for a pharmacist to be an officer, director, or shareholder of a medical corporation.

Staff Recommendation: *Pharmacists should be added to the list for medical corporations. In addition, the Board should examine the other professional corporations authorized by the Moscone-Knox Professional Corporation Act and determine whether there are others to which it makes sense for pharmacists to be added as officers, shareholders, or directors.*

Board Response: This policy issue is the subject of 2016 legislation. The board has not yet had an opportunity to discuss or review this policy issue but will do so during its April 27 & 28, 2016 meeting.

ENFORCEMENT ISSUES

ISSUE #8: (ENFORCEMENT PRIORITIZATION.) The Board has taken on a substantially expanded role in response to heightened attention to certain issues, and this attention is impacting its workload. There have been concerns that pharmacy inspectors may be looking for violations or responding to heightened attention on certain issues that are impacting pharmacy inspections. How does the Board prioritize enforcement efforts and outcomes?

Background: The Board’s enforcement roles continue to evolve and grow. While the Board is a regulatory body with the ability to take administrative action against licensees, it participates in joint investigations with the Department of Health Care Services, Department of Public Health, FDA, FBI, Drug Enforcement Administration and other local, state and federal law enforcement agencies.

The Board reports that as part of all complaint investigation assignments, a case priority is established by a supervising inspector. The Board reports that it uses a case prioritization system tailored to meet the diversity of individual licensees and practice settings that the Board regulates, specifically:

Priority 1 and 2 investigations are the most serious and pose the highest risk to the health and safety of the public. Examples of priority 1 and 2 investigations include reports of an impaired licensee on duty, prescription drug theft by a licensee, a pharmacy operating without a pharmacist on duty, large controlled substances losses, sterile compounding violations and unauthorized furnishing of prescription drugs and/or controlled drugs. Priority 1 and 2 complaints are those complaints that generally will be referred to the AG for formal disciplinary action. Accusations are filed in these serious cases and the Board states that it vigorously pursues the appropriate disciplinary penalty, either through the administrative hearing process or through a stipulated settlement.

Priority 3 and 4 complaints are less serious and pose a lower risk to the health and safety of the general public but are still important. Examples of priority 3 and 4 investigations include reports of failure to provide patient consultation, prescription errors that do not result in patient harm, working on an expired license and general noncompliance issues. Priority 3 and 4

complaints typically result in the issuance of a citation, citation and fine or letter of admonishment. Priority 3 and 4 complaints, while lesser in priority, are nevertheless very important to the consumer who files the complaint.

The Board highlights the following violations investigated by the Board:

A pharmacy has numerous medication containers that are overfilled with medication, some of which contain pills other than those of the manufacturer indicated on the label. In this case the pharmacy had obtained medications from unauthorized sources. The Board secured an interim suspension order (ISO) against the licensees involved and ultimately the licenses were revoked.

A pharmacist unlawfully accessed the confidential health information of coworkers hundreds of times. The Board secured an ISO against this pharmacist and ultimately secured a disciplinary license surrender.

A pharmacy was dispensing pain medication to large numbers of patients, and neighbors of the pharmacy reported observing drug deals taking place in the parking lot. The pharmacy and pharmacist licenses were both revoked.

A pharmacy located out of state shipped contaminated eye medication to physicians in California and patients were seriously injured. The Board issued a cease and desist order to prevent the shipping of additional medication into the state and ultimately secured a disciplinary surrender of the license.

In August 2013, the Board of Pharmacy made a 2012 license revocation case a “precedential decision.” In this case, the Board revoked the licenses of both a Huntington Beach pharmacy and its pharmacist because the pharmacist failed to comply with corresponding responsibility requirements in the distribution of opioid drugs. The Decision and Order concluded that a pharmacist must inquire whenever a pharmacist believes that a prescription may not have been written for a legitimate medical purpose and that the pharmacist must not fill the prescription when the results of a reasonable inquiry do not overcome concern about a prescription being written for a legitimate medical purpose. The facts in this case constituted clear violation of law and significant patient harm; however, it would be helpful for the Committees to understand how this precedential decision is being applied and how this case is shaping Board enforcement work.

The Board also has the final authority over the disposition of its cases and is able to take action that may differ from that recommended by an Administrative Law Judge (ALJ). It would be helpful for the Committees to understand how many times the Board has voted to take a different action than that recommended by an ALJ or when the Board continued to take action against a licensee when an ALJ decided in favor of the licensee.

Staff Recommendation: *The Board should advise the Committees on its case and complaint priorities and how inspectors, licensees and the public are made aware of these. The Board should report to the Committees on other cases that may be adopted as a precedential decision and what this means for enforcement efforts. How does the Board maintain consistency in investigations and enforcement outcomes?*

Board Response: The above summary by the committee accurately conveys the board’s priorities when investigating complaints. Staff is made aware of a case priority at the time of assignment.

Further, the board itself publicly discusses its priorities in meetings. Additionally the types of cases referred to any of the board's teams have a certain priority assigned by the type of allegations involved. For example, as stated above, complaints involving a medication error where there is no patient harm does not have the same priority as a pharmacist working under the influence. There are times when as part of an investigation, additional information is obtained that will change the priority of a case. In such a circumstance, the supervisor is consulted.

At time of assignment one of the board's supervising inspectors completes an investigation plan and assessment that ensures consistent factors will be investigated based on the nature of the complaint. Upon completion of the investigation report, the supervisor reviews the case and either approves it or sends it back for additional investigation. A second review is completed by one additional supervising inspector or senior staff member. The case then may be closed no further action, referred for a midlevel sanction (e.g., a citation) or referred for formal discipline. The board is recruiting for two chief of enforcement positions to review cases, adjudicate citation and fine appeals, evaluate trends to increase board consistency and reduce case closure time.

The board notes that while allegations may seem the same, each case is different which warrants separate and independent assessment.

The board is instituting post inspection surveys conducted by a supervising inspector after the board inspects a licensed premises. This information will be used to improve board inspections and provide immediate followup to licensees who may have questions about items discovered or discussed during the inspection. The board's supervising inspectors are also going out on inspections at least once each quarter with each of their assigned inspectors. This will increase the consistency of the board's inspections.

The board has only one precedential case at this time. Should other decisions be adopted where broad public policy is involved that supports the board's mandate, the board will consider adopting the decision as an additional precedential decision. Any such decision must be made in a public meeting, with public comment.

As with the current precedential decision the board will educate its licensees through various avenues, as it has in the past. For example, the board developed educational materials that it disseminates at events, included information in its newsletter about the precedential decision, used its listserve to disseminate information and posted information on its website.

ISSUE #9: (CASE TIMELINES.) The Board is experiencing delays in enforcement. What efforts is the Board taking to ensure the timely processing of complaints and investigations? How are licensees and the public made aware of these timeframes?

Background: The Board is responsible for regulating the practice of pharmacy and also works to ensure the safety of drug products dispensed to patients in California. The Board regulates those who handle, store and ship drug products from the manufacturer, through the supply chain, to the pharmacy and ultimately to the patient. The Board's performance objectives for its investigation activities include completing all desk investigations within 90 days, completing all field investigations within 120 days and closing all investigations within 180 days. At the end of FY 2014/15, the Board

completed 43 percent of desk investigations within 90 days, completed 11 percent of field investigations within 120 days and closed 55 percent of investigations within 180 days.

In the three years prior to the last sunset review, the Board received 7,340 complaints. In the three years prior to this review, the Board received 10,399 complaints, a 42 percent increase. To respond to the growing workload, the Board has restructured its organization to include additional enforcement management to assist in coordinating investigation and enforcement activities, aiming to reduce case closure time and bring about more consistent work product and case resolutions. Between 2011/12 and 2014/15, the Board referred 20 percent more cases for investigation. The Board notes that reviewing allegations for the complaints the Board received does not show any significant increases or decreases, with the exception of unprofessional conduct that continues to increase as an allegation.

The Board cites a few reasons for enforcement delays. The Board is working to train new staff, given its 23 percent growth in the past two years in enforcement staff, primarily in the number of field staff. Coordination and consistency among the Board's inspectors and supervisors is an ongoing issue for the Board but the Board reports that it expects case closure times to improve as field staff become more experienced. The Board notes that it sometimes still does not receive data from licensees within the required timeframe, in part because in large corporate structures where a corporate office first has to review information before it is sent to the Board, but attempts to work with licensees to obtain data necessary for investigations. The Board also cites the complexity of the cases necessary for investigation has increased and notes that errant licensees and individuals seem to be more aggressively violating Pharmacy Law.

Staff Recommendation: *The Board should update the Committees on the steps it is taking to increase efficiencies in enforcement.*

Board Response: Since late-2014, the board's efforts have been to hire and train new inspector staff. Concurrently, the board lost multiple long-term pharmacy inspectors due to retirement (six inspectors and supervising inspectors retired with more than 100 years of aggregate experience). New inspectors have been hired, but much training is needed for these employees to be able to perform all their duties at mastery levels.

On a monthly basis, supervising inspectors review pending cases with each of their assigned inspector team members to address investigative barriers and support the timely completion of work by establishing deadlines.

Additionally board supervising inspectors are specifically being directed to participate in inspections with their subordinate inspectors at least once each quarter to assist staff in the field to oversee inspector training in the field.

As training is completed, investigation times should continue to improve. As of December 31, 2015, 35 percent of field investigations are currently completed within 120 days and 49 percent of all investigations are closed within 180 days. We recognize that investigation times may be improved and we are in the process of improving data tracking to identify mechanisms for improvement.

ISSUE #10: (TIMELY RECEIPT OF INFORMATION.) Healing arts boards are required to take certain steps when they become aware that licensees have been convicted of a crime or entered into a settlement in a civil case. However, delays in receiving documents from other entities can delay investigations. Should other state agencies and courts be required to provide timely information to healing arts boards like the Board?

Background: While the Board is receiving mandatory reports about its licensees (under BPC Section 800) more regularly as outlined above, the Board continues to have challenges obtaining documentation from some law enforcement agencies and state and federal courts that are key to the Board investigating these cases. Historically, documentation like certified court and arrest records, confirmation of criminal probation status, and any outstanding arrest warrants were readily provided to the Board upon request. Now, according to the Board, many arresting agencies and courts now require a fee to release records which requires a state-issued requisition. In addition, the Board is concerned that some agencies take weeks and even months to respond to the Board's requests, regardless of whether they charge a fee. According to the Board, the fees and delays in receiving records hamper the Board's ability to complete investigations in a more timely manner. While the Board uses online court information when available, the information may not provide the necessary details or sufficient evidence.

This issue is not unique to the Board and is a problem faced by other healing arts programs under the DCA.

Staff Recommendation: *To ensure timely receipt of important information to assist the Board in making determinations about violations of law by licensees, the Committees may wish to require state agencies, upon a written request from a healing arts board, to provide records relevant to a current investigation in a timely manner, ensuring that a board maintains the confidentiality of personal identifying information. The Committees may also wish to clarify that records can be produced prior to receiving payment from a healing arts board so that the procedures involved in receiving approval for, and subsequently submitting payment for, important documents are not the source of delay for a board to obtain information.*

Board Response: The board would support any efforts to assist it in securing necessary arrest and conviction documentation to decrease investigation times. We believe this recommendation from the committees would aid the board in securing this information in a more timely manner.

ISSUE #11: (CEASE AND DESIST FOR UNLICENSED ACTIVITY.) The Board continues to work to prevent unlicensed pharmacy practice. Should the Board be granted additional authority to support these efforts?

Background: As outlined above, the Board continues to focus on unlicensed activity and take swift action to prevent harm to California patients. One particular area of unlicensed activity that the Board has identified is the provision of services to Californians from a business or individual located out of state, that may be licensed to do business in that state, but is not licensed under the Board as a nonresident pharmacy or wholesaler. Sometimes the Board may come across pharmacy services being performed outside of a pharmacy but not licensed by the Board. Periodically, the Board identifies brokers who make prescription drug transactions without licensure; for example, a wholesaler broker offers to sell to a pharmacy prescription drugs, however the broker is not licensed in California as required.

The Board does not currently have the authority to issue a cease and desist order to businesses involved in unlicensed activity. Simply citing and fining an unlicensed business is often an insufficient consequence to stop unlicensed activity because the Board reports that frequently the business will continue to do the very action which violates the law.

Staff Recommendation: *The Committees may wish to amend the Pharmacy Law to allow the Board to issue a cease and desist order for unlicensed activity.*

Board Response: The board thanks the committees for their consideration of this proposal to allow the board to issue a cease and desist order for unlicensed activity, and welcomes the opportunity to work with the committees on this issue.

ISSUE #12: (UNIFORM STANDARDS FOR SUBSTANCE ABUSE AND THE BOARD'S PHARMACIST RECOVERY PROGRAM.) The Board delayed implementing uniform standards for substance abusing licensees. What is the status of implementation of SB 1441? How does this impact the Board's diversion program?

Background: During the prior sunset review of the Board, the Committee was concerned about the effectiveness of the Board's Pharmacist Recovery Program (PRP) and what steps the Board was taking to adopt uniform standards for substance abusing licenses set forth in legislation.

In 1985, the Board sponsored legislation that required the Board to develop PRP. This program identifies and rehabilitates chemically dependent or mentally impaired pharmacists or interns. The general process requires evaluating the nature and severity of the chemical dependency and/ or mental illness, developing a treatment plan and contract, monitoring participation, and providing encouragement and support for the successful completion of the program, typically in three to five years. The Board sees the PRP as an important enforcement tool and believes it is critical, especially given the nature of pharmacies as a "candy store to a substance abuser who can readily divert drugs sometimes for considerable periods without detection." The Board requires pharmacies to report any admission of chemical, mental or physical impairment affecting an individual's ability to practice safely, any admission or evidence demonstrating such conditions and any termination of a licensee

based on theft, diversion or self-use, allowing the Board to be made aware about drug diversion as well as substance abuse involving Board licensees.

The PRP serves as a diversion program to which the Board may refer pharmacists and interns either in lieu of discipline or in addition to disciplinary action. The PRP is also a confidential source of treatment for pharmacists and interns who may enter the program on a voluntary basis and without the knowledge of the Board. Regardless of the type of referral into the program, all participants are afforded the same treatment opportunities in the PRP. The Board states that the PRP ensures that licensees afflicted with mental illness or chemical dependency receive the treatment and the rehabilitation and monitoring they need to return to normal and productive work. Board policy is to speed the entry into the PRP rather than wait until the completion of an investigation by informally referring pharmacists during the course of an investigation. However, the pharmacist or intern must voluntarily contact the program and undergo an intake evaluation and assessment. This early intervention assists the licensee in beginning his or her recovery, and results in the pharmacist or intern receiving treatment and being monitored while the case is being investigated.

Specially trained board inspectors also make periodic visits to PRP participants' worksites and meet to discuss pharmacy practice issues as well as sobriety. The Board uses this information to validate information provided by the PRP administrator as well as to evaluate the contractor's performance. Participants who are terminated from the program for failure to derive benefit or noncompliance are immediately referred to the Board's Enforcement Unit for investigation and referral to the AG for expedited formal discipline due to the imminent danger to the public of such individuals continuing to practice.

SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) created the Substance Abuse Coordination Committee within the DCA to formulate uniform standards for all healing arts boards to use in dealing with substance abusing licensees. DCA published the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Uniform Standards) for adoption by all healing arts boards in April 2011.

An October 2011 Legislative Counsel opinion stated that all healing arts boards are required to fully implement the Uniform Standards, whether or not a board has a formal diversion program. The Board disagreed with this analysis and challenged the validity and applicability of the Standards in a 2013 opinion request from the AG. In April 2015, the AG determined that the Uniform Standards were valid, and though the Board is not required to adopt them as regulations in order to be effective, they "must use the uniform standards as written in all cases in which they are found to apply, but the boards retain discretion in applying the uniform standards to particular circumstances and in deciding individual cases." Thus, the Board must use the Uniform Standards generally, but may deviate when necessary.

The Board states that they have been working in a "thoughtful and deliberate manner" to implement the Uniform Standards since they were finalized. Beginning in 2011, the Board heard presentations on the Uniform Standards and initiated a rulemaking to incorporate them into the Disciplinary Guidelines. In FY 2011/12 the Board began publishing the statistics required pursuant to Standard 16 and later worked with DCA to secure the necessary contract changes to align the Board's PRP with the requirements outlined in the Uniform Standards.

Following receipt of the dispositive 2015 AG opinion, the Board reestablished its SB 1441 Uniform Standards Implementation Committee to resume efforts to update the Board's Disciplinary Guidelines. On September 4, 2015, the notice of proposed action along with the proposed text was published by

the Office of Administrative Law for the required 45-day comment period. The proposed regulations were modified following the comment period on October 22, and the new comment period extended to January 6, 2016.

Staff Recommendation: *The Board should update the Committees on the status of the regulations to incorporate the Uniform Standards into the Disciplinary Guidelines. The Board should provide information for the next sunset review indicating how often it deviates from the Uniform Standards. The Board should provide an update on the audit of the PRP, as required by the Uniform Standards, and provide the Committees with a copy of the audit report upon completion.*

Board Response: As discussed in the board's sunset report, the board has implemented many of the uniform standards. Although the legal opinion provided by the Attorney General's Office concludes that the board does not need to adopt these standards to implement them, the board is currently moving to incorporate provisions of the SB 1441 standards into its *Disciplinary Guidelines*. The board's *Disciplinary Guidelines* already contain several provisions that allowed the board to effectuate the provisions of the uniform standards without a regulation change. For example, the board's current guidelines already allow for drug testing as well as the suspension from practice when an individual tests positive. Staff also uses the testing frequency established in SB 1441 standards when determining the frequency of testing.

The SB 1441 standards were amended into the contract with the vendor that administers the Pharmacist Recovery Program in 2013. Further, below is a chart that details the provisions of the 1441 standards and if the provisions are currently included in the Disciplinary Guidelines

Standard	Currently a term in the board's disciplinary guideline
Standard 1	Term 18 – Mental Health Examination Term 21 – Pharmacist Recovery Program
Standard 2	Term 18 – Optional Language Term 22 – Drug Testing Term 21 – Pharmacist Recovery Program
Standard 3	Term 6 – Notice to Employer Term 21 – Pharmacist Recovery Program
Standard 4	Term 22 – Drug Testing Term 21 – Pharmacist Recovery Program
Standard 5	Term 16 – Attend Substance Abuse Recovery Relapse Prevention and Support Groups Term 21 – Pharmacist Recovery Program
Standard 6	Term 18 – Mental Health Examination Term 21 – Pharmacist Recovery Program
Standard 7	Term 18 – Worksite Monitor (Pharmacy Technicians and Designated Representatives) Term 30 – Supervised Practice (Pharmacist and Interns) Term 21 – Pharmacist Recovery Program
Standard 8	Term 22 – Drug Testing Term 24 – Prescription Coordination and Monitoring of Prescription Drug Use Term 21 – Pharmacist Recovery Program
Standard 9	Term 22 – Drug Testing Term 21 – Pharmacist Recovery Program
Standard 10	Term 22 – Drug Testing Term 18 – Mental Health Examination

	Term 21 – Pharmacist Recovery Program
Standard 11	Term 22 – Drug Testing Term 18 – Mental Health Examination Term 21 – Pharmacist Recovery Program
Standard 12	Term 22 – Drug Testing Term 18 – Mental Health Examination Term 21 – Pharmacist Recovery Program
Standard 13	Contract Requirements for vendor. Not appropriate for Disciplinary Guidelines
Standard 14	Notice requirement. Not appropriate for Disciplinary Guidelines
Standard 15	Audit requirement for vendor. Not appropriate for Disciplinary Guidelines
Standard 16	Statistical reporting requirement. Not appropriate for Disciplinary Guidelines

An outside audit was completed in February 2016 of the current vendor that administers the Pharmacists Recovery Program. The board provided committees' staff with a copy of the audit. The overall conclusion of the audit includes the following:

“Overall, this audit found Maximus is effectively and efficiently managing the various Board diversion programs and recommends the program be continued under the vendor. This audit identifies a variety of non-compliant instances and opportunities for improvement, but nothing of a systemic nature that materially affects program effectiveness and efficiency.”

Should the committees wish for the board to provide a report on how often it deviates from the Uniform Standards, we will identify ways to ensure this data is collected so that it can be reported at the board's next sunset review.

PHARMACY RELATED STATUTORY IMPLEMENTATION EFFORTS

ISSUE #13: (PRESCRIPTION LABEL STANDARD). The source of a lengthy rulemaking process and subsequent legislative efforts following the initial enacting legislation, California's standardized prescription label appears to still be a topic of discussion and regulatory updates. What is the status of the standardized label? Does the Board anticipate additional changes to the label?

Background: California was the first state to require redesigned prescription container labels to emphasize information most important to consumers – offering an element of safety and consistency since prescription labels are the key source patients' reference for information when taking medications in their homes. Part of this requirement also ensures that oral interpreter services are available to limited English speaking patients in pharmacies, to ensure such patients have access to information about how to take their medications.

SB 472, The California Patient Medication Safety Act, (Corbett, Chapter 470, Statutes 2007) sought to deal with the lack of uniformity in prescription drug labels throughout the state and the resulting confusion and medication errors that may arise. Much of the conversation during the SB 472 debate

focused on the fact that individual pharmacies design and format their own labels, resulting in a lack of standards across all pharmacies, which adversely affects medication users who are elderly, suffer from poor vision, have difficulty reading and understanding instructions on labels or have limited English proficiency.

The Board completed its work on the first iteration of the patient-centered prescription container labels in June 2010, and the regulation took effect in January 2011. However, there were several contentious issues that the Board agreed to revisit. In January 2015, the Board changed the typeface requirement from 10- to 12-point font for all elements in the patient-centered portion of the label, and the Board has also proposed the following changes, presently pending in rulemaking:

Removing the manufacturer's name from the patient-centered area of the label to area outside this designated space; and

Requiring a label for generic drugs that indicate what the generic is replacing.

As part of the initial regulation, the Board required that all pharmacies be able to provide oral interpretation services in 12 languages. In 2015, the Board sponsored legislation to promote the use of translated standardized directions for use that had been vetted in five non-English speaking communities that were made available on the Board's website (Ting, AB 1073, Chapter 784).

These efforts have been a success; since 2011, the patient-centered requirements developed by the Board have been established as standards for prescription container labels by the US Pharmacopeia Board of Pharmacy, the Institute for Safe Medication Practices, and the National Association of Boards of Pharmacy.

Staff Recommendation: *The Board should update the Committee when the regulations are finalized. Does the Board track decreases in medication errors stemming from the label standard?*

Board Response: The board initiated a rulemaking to update the patient-centered labeling requirements in October 2015. The board will consider comments submitted in response to this regulation during its April 2016 board meeting.

The board has no baseline for tracking medication errors. There is no requirement for a pharmacy to report medication errors to the board unless the error has resulted in a settlement of \$3,000 or more. The intent of the patient-centered label requirement was aimed at improving patient understanding of how to appropriately utilize their medication, and to provide the ability for the consumer to be actively engaged in ensuring that his or her medication is administered in compliance with the provider's directions.

ISSUE #14: (IMPLEMENTATION OF RECENTLY ENACTED LEGISLATION.) The Board is tasked with implementing a number of pieces of recently enacted legislation, some significantly impacting the Board's licensing population and Board's work. SB 493, for example, tasked the Board with creating several protocols authorizing pharmacists to provide certain services and also created a new category of Advanced Practice Pharmacists with additional authorities. While the Board is focused on implementing these laws, some efforts may take longer than others and regulation packages are delayed.

Background: Since the Board's prior review, there have been a number of pieces of legislation (in

addition to those discussed previously) impacting the Board and Board licensees:

SB 1329 (Simitian, Chapter 709, Statutes of 2012) – made a number of changes to the way a surplus prescription drug collection and distribution program could be authorized and the entities eligible to donate medications under such a program. The bill authorized a county public health officer delegated by a county board of supervisors to implement a program, in addition current law which required a program to be implemented via a county ordinance. The bill also added several categories of licensed health care facilities that may donate medications and allowed both primary care clinic pharmacies and primary care clinics that have Board licensees, to administer and dispense medication, provided these Board licensees are in good standing with the Board.

SB 493 (Hernandez, Chapter 469, Statutes of 2013) – authorized pharmacists to perform additional functions according to specified requirements, including: administering physician prescribed injectable medications; furnishing immunizations for people ages three and up, if the pharmacist has completed training and follows specified procedures; furnishing self-administered hormonal contraceptives based on a state protocol developed jointly by the Board and Medical Board of California (MBC), pursuant to guidelines of the Centers for Disease Control (CDC); furnishing nicotine replacement products in accordance with a state treatment protocol developed jointly by the Board and MBC; and furnishing travel medications recommended by the CDC for individuals traveling outside of the United States. *SB 493* also established “advanced practice pharmacist” (APP) recognition, allowing such pharmacists to write or issue a prescription in certain settings; perform patient assessments; order and interpret drug therapy-related tests; refer patients to other providers; initiate, adjust and discontinue drug therapy in specific circumstances, providing notification to the diagnosing prescriber; and participate in the evaluation and management of diseases and health conditions in collaboration with other providers. The Board established a subcommittee focusing on implementing *SB 493* and is in the process of receiving final approval from OAL for regulations related to APP licensure and regulations and establishing the state protocols for: pharmacists dispensing self-administered hormonal contraceptives; pharmacists dispensing nicotine replacement products; pharmacists who administer and initiate vaccinations and; pharmacists who dispense travel medications.

SB 809 (De Saulnier, Chapter 400, Statutes of 2013) – established a funding mechanism to update and maintain CURES while also requiring all prescribing health care practitioners to apply to access CURES information.

SB 600 (Lieu, Chapter 492, Statutes of 2014) – repealed California’s electronic pedigree (e-pedigree) law to conform California to the federal DQSA. The Board was in the process of promulgating regulations to establish requirements for e-pedigree and specifications for the unique serialized number of each saleable unit.

AB 467 (Stone, Chapter 10, Statutes of 2014) – established a new Board licensure category for a surplus medication collection and distribution intermediary for the purpose of facilitating the donation of medications to, or transfer of medications between, participating entities under a county’s unused medication repository and distribution program. The Board now licenses one intermediary.

AB 1535 (Bloom, Chapter 326, Statutes of 2014) – authorizes pharmacists to furnish naloxone

hydrochloride, an opioid antidote that can reverse a drug overdose, in accordance with standardized procedures or protocols developed and approved by the Board and MBC, in consultation with the California Society of Addiction Medicine, the California Pharmacists Association and other appropriate entities. The Board is in the process of establishing the permanent state protocol to allow pharmacists to furnish naloxone hydrochloride without a prescription from a physician, replacing the protocol the Board had previously adopted under emergency rulemaking provisions.

AB 1073 (Ting, Chapter 784, Statutes of 2015) – required a dispenser, upon the request of a patient or patient’s representative, to provide translated directions for use and authorizes a dispenser to use translations made available by the Board. The bill also required a dispenser to be responsible for the accuracy of the English-language directions for use provided to a patient.

The Board also relies on the rulemaking process to further its priorities and work, including regulations that are currently pending related to compounding drug products. The Board has faced challenges in implementing legislation, as discussed during the prior review, such as those required for the development of a standardized label, and the Legislature has weighed in at various times to clarify Legislative intent as the Board is negotiating rules. It would be helpful for the Committees to understand why some regulation packages, like the rules necessary to implement SB 493, have been significantly delayed and what barriers the Board faces to implementing laws.

Staff Recommendation: *The Board should provide an update on the status of the regulations for SB 493. Why has it taken so long?*

Board Response: Implementation of SB 493 required the board to promulgate several regulations in the following areas:

1. Nicotine Replacement Therapy – Regulation took effect January 25, 2016.
2. Hormonal Contraception – Regulation took effect April 8, 2016.
3. Advanced Practice Pharmacist – Two Regulations. Both have been adopted by the board. Both rulemakings have been compiled and are currently undergoing review by the DCA.
4. Immunizations – Adopted by the board and undergoing review by the DCA.
5. Travel Medications – The comment period is closed. The matter was discussed by the board during its March 28, 2016 teleconference meeting, and released for a 15-day comment period to clarify certificate from certification. The board will take action on the comments received during the comment period at its April 27, 2016 Board Meeting.

As the board was developing these regulations for SB 493, a provision in 2014-enacted legislation -- AB 1535 (Bloom) -- required the board to promulgate emergency regulations to develop a state protocol for Naloxone. This protocol first took effect April 10, 2015 with the permanent regulation taking effect January 27, 2016.

The board created a separate committee to develop regulations for SB 493 in 2014 and 2015, and secured funding from the California HealthCare Foundation to obtain an individual with legal expertise for nine months to assist the work of this committee. The board also increased its regular board meetings to accomplish its role in reviewing SB 493 regulations, doubling the number of board

meetings with a specific focus on SB 493 regulations.

It is important to note that some of the provisions of SB 493 are groundbreaking, as California is the first US state to implement such provisions. As a result, the board had the responsibility of being a pioneer in an area where no previous regulatory standards existed. Some of these provisions were controversial and necessitated input from a variety of stakeholders, with the rulemaking process requiring multiple opportunities for public engagement prior to adoption by the board.

Upon adoption, there also are multiple opportunities for review by designated control agencies. The board estimates that absent an emergency rulemaking process, it takes approximately 300 days from initiation of a rulemaking (the date the board approves the language to initiate the formal rulemaking process) through final filing by the Office of Administrative Law to the Secretary of State's Office.

TECHNICAL CHANGES

ISSUE #15: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE PHARMACY LAW AND BOARD OPERATIONS.) There are amendments to the Act that are technical in nature but may improve Board operations and the enforcement of the Pharmacy Law.

Background: There are instances in the Pharmacy Law where technical clarifications may improve the Board's operations and application of the statutes governing the Board's work.

Staff Recommendation: *The Committees may wish to amend the Act to include technical clarifications.*

Board Response: The board would welcome to opportunity to discuss technical changes needed in pharmacy law.

1. Mandatory reporting of medication recalls by compounding pharmacies (general compounding) and reporting to MedWatch.
2. Remove from H&S code section 11164.5 subdivisions (a) and (b) related to outdated provisions for e-prescribing of controlled substances.
3. Expand the conditions for a temporary permit to a pharmacy to mirror the temporary provisions for wholesalers.
4. Amendment to Health and Safety Code Section 1261.6 restoring a provision that was sunsetted and thus to allow for the use of a security camera as part of the automated delivery system.
5. Remove in Article 7.5 Sterile Drug Products all references to "injectable" – sections 4127.3, 4127.7, 4127.8, 4127.9
6. Remove "injectable" from sections 4128.6 and 4161
7. Amend section 4110 and section 4127.8 to broaden when a temporary permit may be issued.

8. Remove “injectable” from 4107 and add nonresident sterile compounding pharmacies to locations that can hold two licenses from the board in the same location.
9. Remove “for injection, administration into the eye, or inhalation” from the definition of sterile compounding pharmacy in section 4127.

**CONTINUED REGULATION OF PHARMACIES AND PHARMACISTS BY
THE CALIFORNIA STATE BOARD OF PHARMACY**

ISSUE #16: (CONTINUED REGULATION BY BOARD OF PHARMACY.) Should the licensing and regulation of pharmacies, pharmacists and key players in the drug supply chain be continued and be regulated by the current Board membership?

Background: The Board of Pharmacy has shown over the years a strong commitment to improve its overall efficiency and effectiveness and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. The Board should be continued with a four-year extension of its sunset date so that the Committee may review once again if the issues and recommendations in this Background Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that the pharmacist profession, pharmacies and other licensees necessary in the delivery of medication to patients continue to be regulated by the current Board members in order to protect the interests of the public and be reviewed once again in four years.*

Board Response: The board thanks the committee for its recommendation to extend the sunset date of the board.

FINAL REPORT

Department of Consumer Affairs

Contract and Performance Audit of the DCA Diversion Program provided by Maximus Health Services

February 18, 2016

SUBMITTED BY:

Jeff Mikles, PMP

Michael DeSousa, Sr. Consultant

Professional Health Consulting Services

CPS HR Consulting

241 Lathrop Way Sacramento, CA 95815

P: 916-764-0756

F: 916-263-3614

jmikles@cpsshr.us

Tax ID: 68-0067209

www.cpsshr.us



Your Path to Performance

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Executive Summary

The California Business and Professions Code provides enabling legislation to various health care licensing Boards under the auspices of the Department of Consumer Affairs (DCA) to identify and rehabilitate licensees whose competency may be impaired due to substance abuse and/or mental illness. In part, this legislation establishes a Diversion Program as a voluntary alternative approach to traditional disciplinary actions. The Boards that have implemented Diversion Programs include: Dental, Osteopathic Medicine, Physical Therapy, Physician Assistant, Pharmacy, Registered Nurses and Veterinary Medicine.

Since 2003, DCA has contracted with Maximus Health Services, Inc. (Maximus) to provide Diversion Program services for approximately 700 licensee participants.

Business and Profession Code Section 156.1 (c) authorizes the DCA Director or Chief Deputy Director to request an examination and audit by the Department's internal auditor of all performance under the contract. In January 2010, the DCA Internal Audit Office (IAO) audited the period from July 1, 2003 through December 31, 2009 and found that overall, Maximus is effectively and efficiently providing the program services.

In October 2015, the DCA IAO engaged CPS HR Consulting (CPS) to conduct an audit of the Diversion Services provided by Maximus for the contract period from January 1, 2010 through December 31, 2014. This audit was performed in compliance with Uniform Standard 15 that requires an external independent audit at least once every three years.

Overall Conclusion

Overall, this audit found Maximus is effectively and efficiently managing the various Board diversion programs and recommends the program be continued under the vendor. This audit identifies a variety of non-compliant instances and opportunities for improvement, but nothing of a systemic nature that materially affects program effectiveness and efficiency.

Findings and Recommendations

This report includes a program description section that covers the Diversion Program goals, enabling legislation, uniform standards, and distinguishing program elements; and an audit section that presents findings and 30 recommendations in the following areas:

Historical Program Statistics, Trends and Costs

- Over the audit period, approximately 67% of the program participants were female; 80% were Caucasian, and the average age increased from 30-34 years old to 45-49 years old.
- Approximately 67% of the participants entered the program through a Board referral.
- Slightly over 50% successfully completed the program.
- Most relapses were in the first year of the program and primarily due to abuse of alcohol, narcotics and other opiates, and benzodiazepine. The relapse rate has improved over time.

- Only seven of the 20 DCA healing arts licensing Boards are included in the Diversion Program, and the Board of Registered Nursing (BRN) does not include nurses on probation in the program.
- Some program participants lose their health insurance, but there are insurance benefits available for substance abuse and mental health treatment.

Recommendations

1. If applicable and warranted, other DCA healing arts Boards should consider participating in the Diversion Program, and in particular, the Medical Board of California and Board of Vocational Nursing and Psychiatric Technicians.
2. The BRN should consider making probationers attend the Diversion Program as a condition of probation.
3. Maximus should identify a program staff member whose sole responsibility is to become knowledgeable about health insurance coverage benefits and referral sources, and periodically update the Clinical Case Managers and Compliance Monitors.
4. Program participants should assume personal responsibility to contact and research coverage options and costs with the health insurance companies listed on the Covered California website.

Diversion Program and Shared Services Staffing

No negative findings or recommendations.

Diversion Program Manager Survey Results

- In lieu of observing DEC and Board Participant Review meetings, CPS surveyed the DPMs and attended a monthly DPM meeting resulting in the following observations:
 - All receive information timely from Maximus before a meeting.
 - They all have remote access to the Max-CMS and most reported the information is generally complete and accurate, and the system is easy to use.
 - Decisions and outcomes are well documented based on standardized templates.
 - They receive materials timely (within 7 days) after the meetings.
 - The DPMs rated as high: Program effectiveness for licensees, Maximus knowledge and expertise, and Program efficiency.
 - The DPMs offered a number of improvement recommendations.

Recommendation

5. Maximus should consider and evaluate all of the Diversion Program Manager (DPM) recommendations and, at a minimum, provide the DPMs with recovery training.

Treatment Provider Survey and Credential File Audit Results

- Treatment Providers (Clinical Assessors, Health and Nurse Support Group Facilitators and Worksite Monitors) were surveyed to identify obstacles/challenges that hinder their program role and recommendations to improve the program.
- In addition, the auditors reviewed a sample of credential files for compliance with Uniform Standards and found partial compliance.

Recommendations

6. Maximus should consider and evaluate all of the stated Treatment Provider obstacles/challenges, then prioritize and implement the recommendations accordingly.
7. As evidenced by the success of the auditor's online survey, Maximus should periodically reach out to Treatment Providers and other stakeholders to identify ongoing issues and opportunities for continuous improvement.
8. Maximus and the Boards should ensure each credential review is completed in compliance with the Uniform Standards, including evidence of: a license, experience and insurance; do not accept licensees with whom they have had a personal, financial and business relationship within the last year; and Board approval.
9. Per healthcare standards, perform and document an OIG clearance for each Treatment Provider at <https://exclusion.oig.hhs.gov>
10. Per healthcare standards, require all Treatment Providers with access to records to sign HIPPA confidentiality statements.

Participant File Audit Results

- The auditors reviewed a statistically-valid random sample of participant files for compliance with applicable Uniform Standards and found a variety of non-compliant instances and opportunities for improvement.

Recommendations

11. Maximus should consider hiring a part-time CCM to cover vacations, illness and time away at DEC meetings, etc. This will improve the management of multiple calls.
12. Maximus program staff should continue to document reasons for assessment completion delays.
13. All program staff should take advantage of the improved spelling and grammar check feature in the upgraded Max-CMS.
14. The Project Manager should review and revise closing notes as necessary.
15. Use the participant's first or last name rather than pronouns only to prevent misunderstandings with case log entries.

16. Maximus should develop and implement a written policy for making deletions and retractions to case logs. The American Health Information Management Association website (<http://www.ahima.org>) has examples and sample policies Maximus could use.
17. Maximus program staff should track and trend the reasons for program withdrawal to determine the number of participants who withdrew for financial and other reasons.
- 18-20. Maximus program staff should improve or modify the Program Handbook in a variety of ways to provide participants with more valuable information.
21. Maximus should include medicine disposal information from the USFDA website in the Program Handbook.
22. Maximus should consider advising participants to seek out Mental Health Services from their local county government Adult System of Care, when appropriate.
23. Maximus should contact the California Chapter of the American Organization of Nurse Executives and California Hospital Association to speak at a regional or state-wide meeting regarding the prevention and detection of nurses diverting drugs.
24. The Board's should collectively consider identifying an acceptable, but less frequent, random testing schedule that would accomplish the goal and reduce participant cost and loss, then modify Uniform Standard 4 accordingly.
25. The non-DEC Board's should consider evaluating the effectiveness of the participants' non-attendance at Board review meetings, and consider ways to improve interpersonal interaction by Skype, Face Time or other forms of communication.

Drug Test File Audit Results

- The auditors reviewed a statistically-valid random sample of 114 participant drug testing files on the FirstLab website for compliance with applicable Uniform Standards and found all but four participants in the files. The drug test files include the participant name, license number, organization, test start and end dates, testing frequency, whether observed and current status.

Recommendation

26. The Maximus Quality Analyst should periodically audit the FirstLab website files to ensure all program participants being drug tested are included in the database.

Program Effectiveness Reporting

- Each Board is required to report specific information on a yearly basis to the DCA and the Legislature as it relates to licensees with substance abuse problems who are either in the Diversion Program or on Board probation. The auditors identified some minor issues and made the following recommendations for these specific reporting items.

Recommendations

27. Maximus should revise the intake report accordingly to eliminate the confusion between monthly and year-to-date reporting.
28. Maximus should consider tracking and trending major violations and actions taken, and report this information in the annual report.
29. Maximus should consider tracking and trending successful returns to work on a monthly and annual basis, and report this information in the annual report.
30. Participating Boards should attempt to monitor long range participant outcomes after program completion.

Planned Technical Improvements

No negative findings or recommendations.

The auditee responses to these findings and recommendations are contained in Appendix 6. Any inaccuracies the auditees noted in the draft report have been corrected in this final report.

Introduction

The following provides a brief background about the Maximus Diversion Program since its inception; presents the program staffing as of December 31, 2015, project scope, objective and methodology, constraints and data qualifications; and acknowledges the important role all of the audit participants.

Background

The DCA Diversion Program provided by Maximus is a voluntary, statewide, confidential, comprehensive, substance abuse disorder and mental illness monitoring and referral program for impaired health care professionals. It is not a treatment program. The primary role of Maximus is to provide case management for program participants during their recovery and to serve as a liaison with the Boards to which they are affiliated. As of December 2014, there were approximately 700 licensee participants in the program.

In 2003, DCA selected Maximus to provide Diversion Services on behalf of six health care licensing Boards and one Committee that fall under DCA administrative authority.

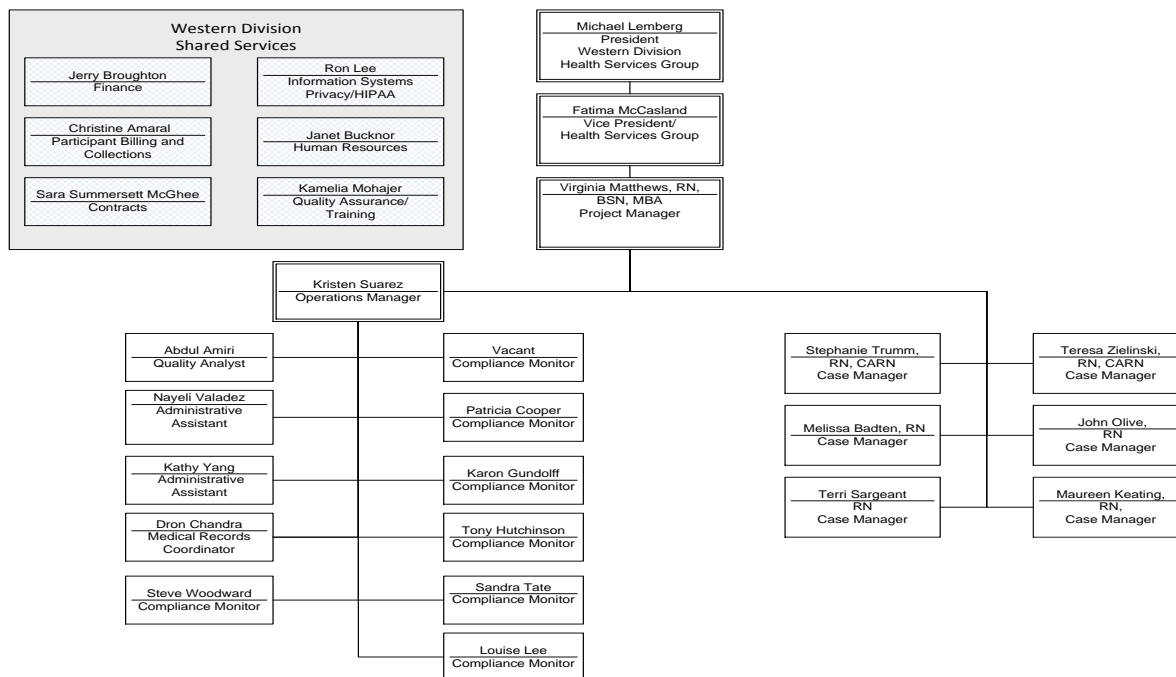
In 2009, the DCA Internal Audit Office (IAO) audited the DCA contract with Maximus to fulfill the audit requirement in Senate Bill 1441, chaptered September 28, 2008. The audit test period covered was July 1, 2007 through June 30, 2009. Overall, the DCA IAO audit concluded Maximus was effectively and efficiently managing the various Board diversion programs and recommended the program be continued with some opportunities for improvement.

In October 2015, the DCA engaged CPS HR to conduct a contract and performance audit of the DCA Diversion Program with an audit test period from July 1, 2010 through December 31, 2014 for up to approximately 700 eligible participants. The Diversion Program contract value for this audit period was \$10,672,884. This audit was performed in compliance with Uniform Standard 15 that requires an external independent audit at least once every three years.

Maximus Program and Shared Services Staffing

Figure 1 displays the 19 authorized Maximus Diversion Program staff positions (including one vacancy) and the six Western Division Shared Services organizations supporting the program as of December 31, 2015. The staff roles and tasks are discussed in detail in the Audit Results section of this report.

Figure 1
Maximus Diversion Program Organization Chart as of 12/31/15



Project Scope, Objective and Methodology

The scope of this engagement focused on auditing the DCA Diversion Program services provided by Maximus from July 1, 2010 through December 31, 2014 to eligible licensee participants of the following seven Boards:

- Dental Board of California (+ Hygiene Committee) (DBC)
- Osteopathic Medical Board of California (OMB)
- Board of Pharmacy (BOP)
- Physical Therapy Board of California (PTB)
- Physician Assistant Board (PAB)
- Board of Registered Nursing (BRN)
- Veterinary Medical Board of California (VMB)

The project objective is to provide DCA management and the California Legislature with an external audit of the Maximus Diversion Program's compliance, effectiveness, efficiency and overall performance as required by Senate Bill 1441.

The CPS HR methodology included the following approach:

- Conducted off-site and onsite document reviews of the DCA-Maximus contract and drug screening administer contract (FirstLab); pertinent California program legislative mandates and regulations; Maximus staffing and organization charts, job descriptions, personnel

files, policies, procedures, performance metrics, flowcharts, forms and operating statistics.

- Converted applicable standards to compliance criteria checklists.
- Conducted staff interviews and group facilitation with Maximus program and shared services staff to better understand duties and workload, the as-is business processes used within the program, and document compliance with their own procedures.
- Surveyed Board/Review Committee Program Managers and reviewed applicable meeting minutes.
- In addition, CPS surveyed online:
 - Clinical Assessors to better understand their roles and responsibilities, and review their credential files and assessments.
 - Health Support Group Facilitators (HSGF) and Nurse Support Group Facilitators (NSGF) to better understand their roles and responsibilities, and review their credential files and reports.
 - Work Site Monitors (WSM) to better understand their roles and responsibilities, and review their credentials and reports.
- Audited the treatment program referrals for licensure and accreditation, and licensee participant records per the applicable standards at a statistically valid sample size (attribute sampling with expected error rate not over 5% at a confidence level of 95% with a precision of plus or minus 4%) using the Maximus MAX-CMS case management system.
- Surveyed FirstLab regarding licensure/accreditation; drug screening and laboratory services provided to program participants; audited a statistically valid sample (attribute sampling with expected error rate not over 5% at a confidence level of 95% with a precision of plus or minus 4%) of applicable records for contract compliance and quality controls; and conducted site visits of local laboratory subcontractors.
- Briefed DCA and Maximus periodically as requested.
- Prepared incremental deliverables, monthly status reports, draft and final reports.

The audit as conducted in accordance with:

- The terms and conditions of contract REQ0003674 approved December 27, 2009, including but not limited to, General Requirements (Section 4), Board Specific Requirements (Sections 5-11), Functional Requirements (Section 12), Administrative Requirements (Section 19), and all provisions listed in the Appendices (Section 19); and Amendment #1 approved December 27, 2012 and Amendment #2 approved December 31, 2013, including, but not limited to, section B. Revisions to the Agreement.
- The DCA Uniform Standards as stipulated in Senate Bill 1441, April 2011, and the California Attorney General Decision on Uniform Standards dated April 8, 2015; and

- The US General Accounting Office Government Auditing Standards for performance reviews of government agencies and programs.
- Finally, the audit was managed according to the best practices of the Project Management Institute.

Constraints and Data Qualifications

CPS relied on information received from Maximus staff, Board staff, and program service providers. With the exception of audited Maximus information, conclusions were drawn from unaudited information provided by these other sources.

Acknowledgment

CPS wishes to thank all participants at Maximus Health Services, especially the Program Manager, Operations Manager and the Quality Assurance function that gave so willingly of their time and expertise. In addition, CPS wishes to thank Professional Health Consulting Services (PHCS) for their invaluable health care expertise and services.

Maximus Diversion Program Services

The following describes the Diversion Program, including a summary of the program goals and enabling legislation; budgeted program participants; program length, entry and confidentiality; program intake and clinical assessment; treatment programs; program requirements, uniform standards and distinguishing program elements; and program billing and reporting.

Program Goals and Enabling Legislation

The primary Diversion Program goal is to protect the public by early identification of affected health care professionals and immediate access to appropriate intervention programs and treatment services. The secondary goal is to assist licensee participants with their recovery without losing their license to practice. The program intent is not to punish but to rehabilitate and return the health care professional to safe practice.

Table 1 summarizes the California statutes within Division 2 of the Business & Professions Code enable the Diversion Program for the health care licensing boards within the scope of this audit.¹

Table 1: Diversion Program Enabling Legislation

Participating Board	Business & Professions Code Section Division 2
Dental Board of California (+ Hygiene Committee)	Chapter 4, Article 4.7, Section 1695
Osteopathic Medical Board of California	Chapter 5, Article 15, Sections 2360-2370
Physical Therapy Board of California	Chapter 5.7, Article 5.5, Sections 2662-2669
Board of Registered Nurses	Chapter 6, Article 3.1, Sections 2770-2770.14
Physician Assistant Board	Chapter 7.7, Article 6.5, Sections 3534-3534.10
Board of Pharmacy	Chapter 9, Article 21, Sections 4360-4373
Veterinary Medical Board	Chapter 11, Article 3.5, Sections 4860-4873

Budgeted Program Participants

Table 2 displays the number of program participants, unit cost and total amount budgeted in the DCA contract and two amendments with Maximus for managing the Diversion Program during the audit period. The table indicates total budgeted participants declined over the audit period from 686 to 658, BRN licensees comprised more than 70% of the program participants, the monthly unit cost increased 3% per fiscal year, and the total budgeted cost was \$10,672,884.

¹ Appendix 1 contains, in part, the applicable Business & Professions Code sections.

Table 2: Diversion Program Participants Budgeted by Board

FY	FY 2010-11				FY 2011-12				FY 2012-13				FY 2013-14				FY 2014-15 (7/1/14-12/31/14)			
Board	# Part.	Mo.	Unit Cost	Amt	# Part.	Mo.	Unit Cost	Amt	# Part.	Mo.	Unit Cost	Amt	# Part.	Mo.	Unit Cost	Amt	# Part.	Mo.	Unit Cost	Amt
BRN	509	\$	280.16	\$1,711,217.28	509	\$	288.56	\$1,762,524.48	480	\$	297.22	\$1,711,987.20	485	\$	306.14	\$1,781,734.80	485	\$	315.32	\$917,581.20
BOP	79	\$	280.16	\$265,591.68	79	\$	288.56	\$273,554.88	75	\$	297.22	\$267,498.00	80	\$	306.14	\$293,894.40	80	\$	315.32	\$151,353.60
DBC	48	\$	280.16	\$161,372.16	48	\$	288.56	\$166,210.56	36	\$	297.22	\$128,399.04	40	\$	306.14	\$146,947.20	40	\$	315.32	\$75,676.80
PAB	22	\$	280.16	\$73,962.24	22	\$	288.56	\$76,179.84	25	\$	297.22	\$89,166.00	20	\$	306.14	\$73,473.60	20	\$	315.32	\$37,838.40
PTB	12	\$	280.16	\$40,343.04	12	\$	288.56	\$41,552.64	15	\$	297.22	\$53,499.60	15	\$	306.14	\$55,105.20	15	\$	315.32	\$28,378.80
OMB	10	\$	280.16	\$33,619.20	10	\$	288.56	\$34,627.20	12	\$	297.22	\$42,799.68	12	\$	306.14	\$44,084.16	12	\$	315.32	\$22,703.04
VMB	6	\$	280.16	\$20,171.52	6	\$	288.56	\$20,776.32	10	\$	297.22	\$35,666.40	6	\$	306.14	\$22,042.08	6	\$	315.32	\$11,351.52
Totals	686			\$2,306,277.12	686			\$2,375,425.92	653			\$2,329,015.92	658			\$2,417,281.44	658			\$1,244,883.36

Source: DCA contracts

Program Length, Entry and Confidentiality

The length of participation in the program depends on the licensee participant's compliance with program requirements and demonstrated recovery progress. There are essentially two program phases: recovery and transition. Most participants remain in the program for three to five years. At a minimum, during the recovery phase participants must demonstrate full compliance with program requirements before they may petition their respective Board to enter the transition phase. However, transition is not guaranteed at the two-year mark. The transition phase lasts at least one year and is designed to ease participants into accepting full responsibility for their recovery. Participants are given more autonomy and responsibility with fewer program requirements and restrictions.

Depending on Board policy, licensee applicants can enter the program in the following ways defined in the contract:

- Board Referral: a licensee referred to the Diversion Program by the Board, based on information or complaint received by the Board, indicating the licensee may be impaired due to a substance abuse disorder or mental illness. (66.6% of referrals)²
- Self-Referral: a licensee who voluntarily seeks admission into the Diversion Program may apply to the program directly by calling a 24 hour/7 day a week toll-free phone number [(800) 522-9198]. (19.7% of referrals)
- Probation Referral: a licensee referred to the Diversion Program by their applicable Board as a condition of a Board-imposed disciplinary action. (9.2% of referrals)
- Informal Referral: a licensee of the Dental Board of California (DBC) and/or Board of Pharmacy (BOP) who may have a Board investigation pending, and upon recommendation of a Board inspector/investigator, may voluntarily apply to the program. (4.0% of referrals)
- In Lieu of Discipline: a licensee the BOP investigated and referred into the program to be assessed in order to determine if the licensee has a substance abuse disorder. In cases of a

² Based on Diversion Program Annual Reports from FY 2010-11 through FY 2014-15.

serious violation, the BOP may refer to the program in addition to discipline. Approximately 0.5% of program participants are this type of referral. (0.5% of referrals)

Participant confidentiality is protected by law. Licensees become participants after they are accepted into the program. Any and all information gathered to assist in developing a recovery plan, and all other information in their record, is confidential. In general, when participants successfully complete the Diversion Program, their program records are destroyed. However, except for BOP participants, if a participant does not successfully complete the program, the original complaint, if any, is investigated by the respective Board's Enforcement Program.

Program Intake and Clinical Assessment

After verifying the eligibility of the applicant, the assigned Compliance Monitor (CM) contacts the licensee and schedules an initial intake interview with the assigned Clinical Case Manager (CCM). Within 10 days of applying for entry into the program, the CCM conducts an in-depth telephone interview with the licensee. Following the interview, the CCM prepares and mails a Pre-Entry Agreement and recovery plan which may include some or all of the following recovery activities:

- Random drug testing
- 12-step meeting attendance
- Support group meeting attendance
- Outpatient or inpatient treatment
- Psychiatric evaluation
- Individual psychotherapy
- Medication management
- Medical evaluation
- Nephrology evaluation
- Submission of monthly self-reports
- Work site monitor reports
- Temporary work suspension
- Periodic reviews with Board Evaluation Committees or Board Diversion Evaluation Committees

Within five days of completing the intake interview, an Administrative Assistant mails the applicant an application packet. The applicant has 10 days from the intake to complete and return the application.

Within 10 days after completing the intake interview, the CM schedules the applicant to meet with a licensed clinician near their home for a Clinical Assessment. There are 34 Clinical Assessors statewide.

Before the clinical assessment, the applicant completes a self-assessment and takes it to the appointment. The clinician conducts a comprehensive assessment and discusses treatment options with the applicant. The clinician has 30 calendar days to prepare and submit the Clinical Assessment with treatment recommendations to the CCM. However, if the clinician determines there is a safety

concern with an applicant, s/he must notify the CCM within one day and the CCM contacts the applicant for entry into care. Otherwise, upon receipt of the assessment, the CCM notifies the applicant and the applicable Board to schedule the applicant for a Board Review or Diversion Evaluation Committee meeting.

Appendix 2 displays a high level flowchart of initial participant contact, program roles and tasks.

Treatment Programs

Participants discuss outpatient or other treatment options with their Clinical Assessor and CCM. There are literally hundreds of nonmedical alcoholism, drug recovery or treatment facilities licensed and/or certified by the California Department of Health Services (CDHS) covering all 58 counties to choose from.

Program/facility types include, but are not limited to:

- RES and RES-DETOX– 24-hour residential nonmedical alcoholism or drug abuse recovery or treatment facility licensed by the Department of Alcohol and Drug Programs (ADP).
- NON – nonresidential program certified by ADP.
- DETOX – free standing, 24-hour nonmedical detoxification facility licensed by ADP.
- DHS – medical alcohol and drug recovery or treatment facilities licensed by CDHS and certified by ADP. Typically, these are Chemical Dependency Recovery Hospitals.
- DSS – residential facilities licensed by the Department of Social Services and certified by ADP. Typically, these are group homes.

However, the CCM must approve the treatment program the participant selects before s/he can attend. Participants must complete and sign a Consent to Exchange Information for the treatment provider and send it to Maximus.

Maximus cannot require participants to go to any one specific program, a stance influenced by Medicare guidelines that prohibit hospitals from referring to a single provider. Participants must ultimately select from the CDHS list of approved facilities.

Program Requirements, Uniform Standards and Distinguishing Elements

Participants must comply with the following rigorous ongoing requirements incorporated into 16 Uniform Standards implemented in 2011 to successfully complete the program:

- After reading the Diversion Program Handbook, sign and return the signature page to Maximus.
- Call the CCM: weekly at first then monthly after formal acceptance into the program by the appropriate Board PRM or DEC.
- Always notify the CCM of any address or telephone number changes and be reachable.
- Complete a self-assessment, give a copy to the Clinical Assessor and mail the original to Maximus.

- Ensure outpatient or other treatment programs are approved by the CCM.
- Prepare and submit a monthly self-report to Maximus by the 10th of the following month.
- Arrange for treatment providers to submit monthly progress reports to Maximus by the 10th of the following month.
- Attend appropriate 12-step meetings, obtain one signature per day, and submit the attendance card to Maximus by the 10th of the following month.
- Attend the appropriate health or nurse support group and ensure the group facilitator submits a monthly attendance report by the 5th of the next month. There are 21 health support groups and 45 nurse support groups statewide.
- Follow individual restrictions on practice, including submitting a Return to Work request, approved by the respective Board.
- Obtain a Maximus-approved worksite monitor before starting work, ensure the monitor files the required consent forms and monthly reports the first three months, then quarterly thereafter with Maximus. There are 436 worksite monitors statewide.
- Participate in the random drug testing program, including registration within five days of the intake interview, check-in daily online or by phone, provide observed specimens at a local collection site, enter post test data online, respond appropriately to test results, and pay for the cost of the test plus collection fee.
- Abide by the unapproved medication list and remains free of mind-altering substances (unless prescribed by a physician for a specific diagnosis and approved by the Board).
- Pay the monthly program fee to Maximus based on applicable Board policy.
- Petition for and be accepted by the applicable Board PRM or DEC into the program's Transition phase, meet the minimum conditions of this phase, complete the Transition Packet and be approved by the CCM, PRM or DEC for successful completion. If approved by the PRM/DEC, the CCM recommends and prepares a successful completion letter within 10 days of the PRM/DEC meeting.

In 2011, Senate Bill 1441 (Ridley-Thomas) established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. This committee was comprised of the 20 Executive Officers of the Department's healing arts licensing boards and a designee of the State Department of Alcohol Drug Programs. The committee no longer exists. The bill required the committee to formulate uniform standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The following briefly summarizes the 16 Uniform Standards the committee formulated and implemented in April 2011. There must be:

1. Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.
2. Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific

criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

3. Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.
4. Standards governing all aspects of required testing, including, but not limited to, frequency of testing, noticing the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
5. Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.
6. Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
7. Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
8. Procedures to be followed when a licensee tests positive for a banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.
11. Criteria a licensee must meet in order to petition for return to practice on a full time basis.
12. Criteria a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
13. If a Board uses a private-sector vendor that provides diversion services, there must be (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (2) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (3) standards for a licensee's termination from the program and referral to enforcement.
14. If a Board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
15. If a Board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee
16. Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

The following discusses other essential and distinguishing program elements concerning random drug testing, health and nurse support groups, and worksite monitors.

Random Drug Testing

According to the American Society of Addiction Medicine (ASAM)³, the nation's largest organization of physicians specializing in the prevention and treatment of addiction, drug testing is a primary prevention, diagnostic, and monitoring tool used to identify the presence or absence of drugs of abuse or therapeutic agents related to addiction management in multiple settings.

The ASAM encourages wider and “smarter” use of drug testing within the practice of medicine and broadly within American society. Smarter drug testing means:

- Increased use of random testing rather than scheduled testing;
- Testing not only urine but also other substances such as blood, oral fluid (saliva), hair, nails, sweat and breath; and
- Testing based upon clinical indication for a broad and rotating panel of drugs rather than only testing for the traditional five-drug panel designed by the federal government for government-mandated testing such as that required of commercial drivers.
- Improved sample collection and detection technologies to decrease sample adulteration and substitution, including designing appropriate steps to respond to the efforts of individuals trying to subvert the testing process.
- Giving careful consideration of the financial costs of testing in relationship to the value and in many cases, medical necessity, of the test results. It means considering the advantages and limitations of the many testing technologies available today.

Maximus has contracted with First Hospital Laboratories, Inc. (FirstLab), a third party laboratory administrator, to provide qualitative urine substance abuse testing for each program participant. In turn, FirstLab has subcontracted the laboratory services to DrugScan, a laboratory certified by the US Department of Health and Human Services (DHHS), and to almost 700 program collection sites in California.

Health and Nurse Support Groups

Depending on the participant’s license, each participant is required to attend either a weekly Health Support Group (HSG) or a Nurse Support Group (NSG). According to the contract, HSGs are facilitated by a California licensed registered nurse, marriage family therapist, licensed clinical social worker, psychologist or psychiatrist who has a minimum of three years of experience providing chemical dependency and mental health treatment for health care professionals. The NSGs are facilitated by a California licensed registered nurse with similar experience. HSG’s typically charge more than NSG’s because they are usually led by a licensed clinician.

³ Drug Testing: A Whitepaper of the American Society of Addiction Medicine, October 26, 2013

The audit scope of work included observing several HSG and NSG meetings. However, due to participant confidentiality concerns, CPS was unable to observe these meetings but understands the process involves, and is not limited to:

- Facilitating or co-facilitating a weekly hourly group meeting with program participants. Keeps the group focused on the day-to-day professional issues and recovery process and applies interpersonal interaction group process while giving priority to recovery.
- Observing and reporting to Maximus staff any behavior, attitude, demeanor or appearance which may suggest a relapse within twenty-four (24) hours of the observation.
- Recording and reporting weekly attendance to Maximus staff by the 5th of every month. If the participant does not show, or if the excused absence is unreasonable, the facilitator must report to Maximus staff within twenty-four (24) hours.
- Reporting relapses to Maximus staff within twenty-four (24) hours.
- Being accessible to participants twenty-four (24) hours a day for crisis intervention or referral.
- Provides input and recommendations at any time to Maximus staff regarding a participant's recovery.

Worksite Monitors

Worksite monitors (WSMs) assist licensed health professionals return to work in a controlled and safe manner. According to the contract, WSMs observe participants at least once a week or up to a maximum of 100%, verify participant attendance, review work performance, monitor/detect substance abuse, submit monthly worksite monitor reports to Maximus, and report any non-compliant work-related issues or changes in behavior and signs of relapse. The worksite monitoring percentage can be reduced to zero in the transition phase.

WSMs must have knowledge of the provisions or requirements of the applicant/participant's recovery contract and be approved by the Diversion Program's CCM, Board's DPM and/or DEC. WSMs maintain continual communication with the assigned CCM. They are required to notify Maximus within one hour of noticing any signs of relapse or suspicious behavior and submit a written report within 48 hours of the occurrence. In addition, WSMs submit a written monthly or quarterly reports to Maximus by the 10th of the following month.

Participant Review Process

Depending on the Board, the initial and recurring participant review process varies. For example, the BRN, DBC, OMB and VMB use a Diversion Evaluation Committee (DEC) meeting to evaluate initial applicants for program entry, approve Recovery Agreements, review participant progress, make Agreement revisions, and approve program discharges for recurring participants. DEC's are unique because they also review participants in person. The DEC composition is mandated by law and is typically composed of three to four Board-appointed members who are licensed by the same Board as the participant, a physician and a public member. The CCM and a Board representative also attend

the meetings. The BRN (has 14 DEC's located throughout the state), DBC and OMB DEC meetings are held quarterly. The VMB DEC meets every four months.

The BOP, PAB and PTBC use Board Participant Review Meetings (PRM) instead of DEC's to review applicants for entry and on a routine recurring basis, but do not meet with participants in person. Typically, a Board representative meets with the CCM to review participant progress, revise the Recovery Agreements and approve program discharges. BOP meetings are held monthly, PTBC meetings are held quarterly, and PTBC meetings are held semi-annually.

In between the various Board meetings and until program completion, six teams of paired CMs and CCMs monitor ongoing participant compliance with the program requirements and specific Board uniform standards to ensure timely, successful completion. The CM/CCM teams will actively monitor for compliance all of the above tasks included in the initial and revised Recovery Agreements in accordance with each Board's uniform standards. Participants must sign and return the Recovery Agreements within 10 days of receipt. The CM monitors each participant daily and submits noncompliance issues to the CCM and the PRM/DEC within five days of discovery. When teams identify non-compliance, they contact participants by phone or email then mail them non-compliance letters within five days. Participants must respond timely to the compliance letters or be subject to program termination.

Appendix 3 displays a high level flowchart of the recurring participant and program responsibilities and tasks.

Program Billing and Reporting

Maximus bills and accounts for the Board and participant administrative co-pay fees on a monthly basis. Boards are billed individually based on their own specific requirements in arrears \$338.15 per participant a month by the 10th day of the following month. This expense increases by three percent (3%) annually on January 1. Maximus provides each Board Diversion Program Manager (DPM) with a monthly report of all administrative fees collected from participants, an aged receivable report, and a monthly audit schedule.

Table 3 shows depending on the respective Board requirements, Maximus bills participants varying administrative co-pay amounts by the 20th of the current month ranging from \$25 to \$338.15 a month or from \$1,000 to \$2,000 for a one-time fee that may be paid in quarterly installments. Participants may pay by check, cashier's check, credit card, money order or ATM debit with no service charges. Participants are charged fees for non-sufficient funds. Maximus credits the collected participant fees against the fee balance paid by each Board the following month.

Table 3: Participant Administrative Co-Pay Fees

Board	Participant Co-Pay	Frequency	Comments
BOP	\$100.00	Monthly	
BRN	\$25.00	Monthly	
DBC (+ Hygiene)	\$100.00	Monthly	
PTBC	\$338.15	Monthly	Increases 3% annually on Jan. 1
PAB (Board referral)	\$338.15	Monthly	Increases 3% annually on Jan. 1
PAB (Self referral)*	\$253.61	Monthly	Increases 3% annually on Jan. 1
OMB**	\$1,600.00	1-Time	Can be paid in qtrly installments
VMB	\$2,000.00	1-Time	Can be paid in qtrly installments
Source: Maximus			
* A regulatory change in 2011 provided a 25% reward for participant self-referral to the program.			
** Plans to make participants pay the full program fee of \$338.15.			

FirstLab bills each participant directly for each drug test performed. Participants are responsible for paying the collection site specimen collection and drug testing fees at the time service is rendered. These fees can range up to \$125.

Audit Results

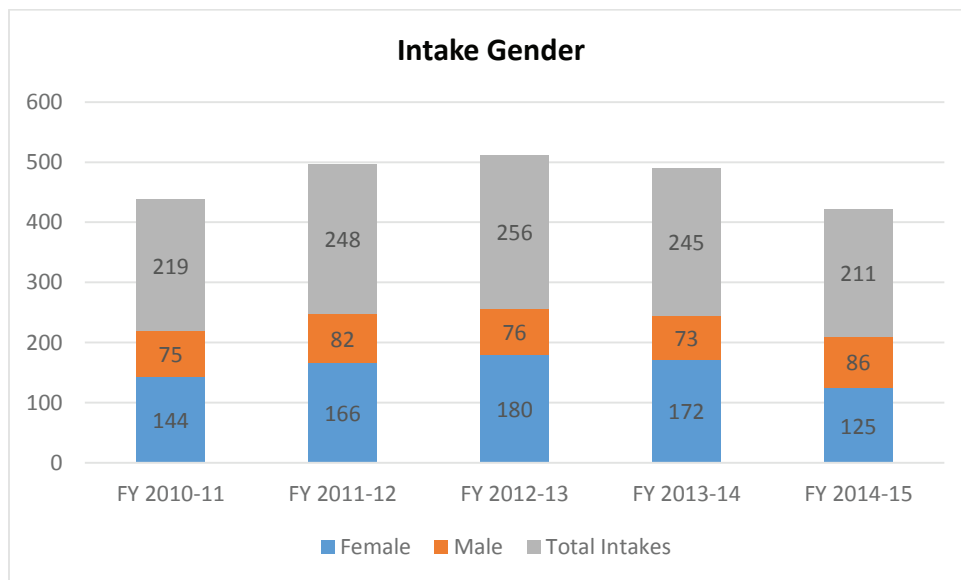
This section of the report presents audit observations, findings and recommendations for improvement based on interviews and information gathered and analyzed from: Maximus Program and Shared Services staff; Board Diversion Program Managers; Treatment Providers (Client Assessors, Health and Nurse Support Group facilitators and Worksite Monitors); drug testing subcontractor FirstLab; and licensee participant and drug test files.

The following presents historical program statistics, trends and costs; Diversion Program staffing, roles and tasks; Shared Services roles and responsibilities; Diversion Program Manager survey results; Treatment Provider survey and credential file audit results; results of participant file and drug test file audits; Program effectiveness reporting and planned technical improvements.

Program Statistics, Trends and Costs

Based on the Maximus California Diversion Program Annual Reports for FY 2010-11 through 2014-15 (six months beyond the scope of this audit), there were 1,179 intakes (top of stack) into the program. Approximately 66.8% (787) were female (bottom of stack) and 33.2% (392) were male (middle of stack). Figure 2 graphically displays the program intakes by gender and reveals intakes began dropping after FY 2012-13. The program experienced its lowest overall intake level in FY 2014-15 with a significant drop in female intakes.

Figure 2

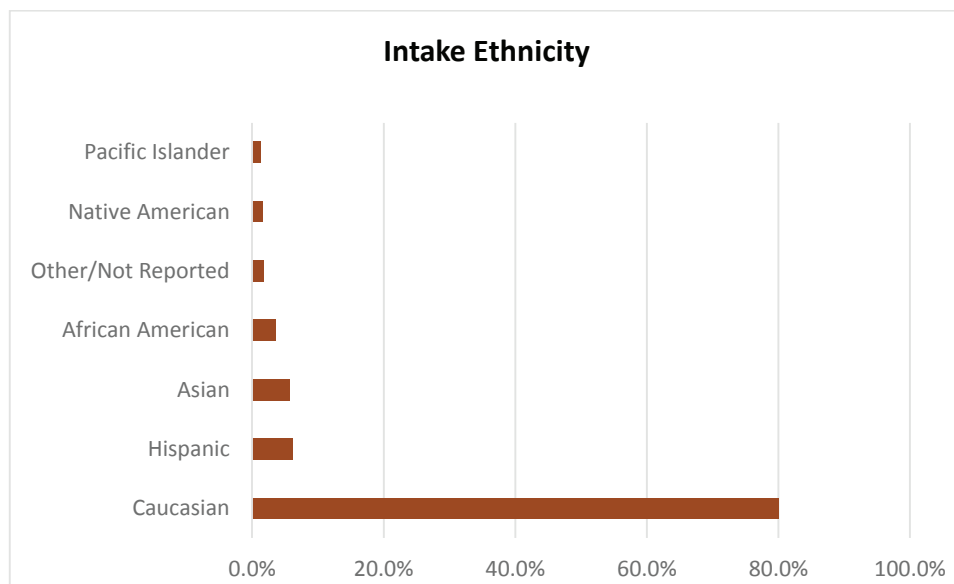


Source: Diversion Program Annual Reports

The average program intake for the five fiscal years by the following ethnicities is shown in Figure 3:

- Pacific Islander (average 1.4%)
- Native American (1.6%)
- Other/Not Reported (1.8%)
- African-American (3.5%)
- Asian (5.6%)
- Hispanic (6.1%)
- Caucasian (80.1%)

Figure 3



Source: Diversion Program Annual Reports

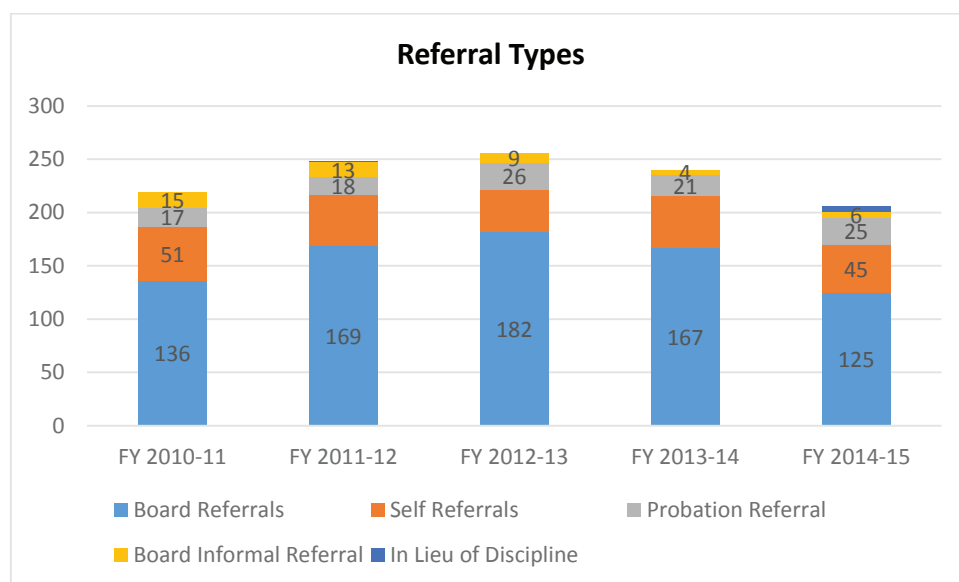
A particularly interesting trend has been the increase in the average age of program participants. In FY 2010-11, the average age range was from 30-34 years old. In FY 2014-15, the average age range increased to 45-49 years old. This is primarily due to the fact most of the program participants are registered nurses who are aging. According to the National Council of State Boards of Nursing, the average age of a nurse is 50 years old and 53% are over the age of 50.

Over the past five fiscal years, program entry has been through the following types of referrals. The leading referral types are Board, self and Probation referrals:

- Board referrals (66.6%)
- Self-referrals (19.7%)
- Probation referrals (9.2%)
- Board informal referrals (4.0%)
- In lieu of discipline referrals (0.5%)

Figure 4 displays the breakdown of referral types over the five fiscal years.

Figure 4



Source: Diversion Program Annual Reports

The Program Annual Reports also present information on 15 program closure types and relapses by eight different substances for the audit period. Table 4 reveals slightly over 50% of participants successfully completed the program, while the rest were terminated for a wide variety of reasons. A closure type that should be considered and is conspicuously absent is financial hardship.

Table 4: Closure Types

	Closure Type	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	Totals	% Total
1	Successful Completion	104	127	144	122	497	50.1%
2	Terminated-Public Risk	32	32	19	23	106	10.7%
3	Applicant Withdrawn-Pre DEC	22	34	21	29	106	10.7%
4	Terminated-Non Compliant	22	14	12	12	60	6.0%
5	Applicant Public Risk	14	20	11	13	58	5.8%
6	Withdrawn-Post DEC	10	20	13	13	56	5.6%
7	Clinically Inappropriate-Pre DEC	6	6	12	14	38	3.8%
8	Terminated-Failure to Derive Benefit	7	9	2	2	20	2.0%
9	Applicant Not Accepted by DEC	4	6	5	3	18	1.8%
10	No Longer Eligible-Post-DEC	3	3	4	3	13	1.3%
11	Clinically Inappropriate-Post DEC	2	2	1	4	9	0.9%
12	No Longer Eligible Pre-DEC	2	1	2	0	5	0.5%
13	Expired	1	1	0	2	4	0.4%
14	Terminated – Moved	0	1	1	0	2	0.2%
15	Sent to Board- Post DEC	0	0	0	0	0	0.0%
	Total Number of Closures	230	276	247	240	993	100.0%

Source: Diversion Program Annual Reports

Table 5 shows over the audit term the number of program participants decreased, but the relapse rate improved over time, with an average relapse rate of 10.6% per fiscal year.

Table 5: Program Participants and Relapse Rates over the Audit Term

Program Indicators	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Avg.
Program participants (high)	682.0	650.0	645.0	652.0	650.0	655.8
Program participants (low)	667.0	632.0	630.0	625.0	571.0	625.0
Program participants (avg)	674.5	640.3	635.8	630.3	611.8	638.5
Total relapses	81.0	76.0	68.0	68.0	47.0	68.0
Relapse rate based on participant avg	12.0%	11.9%	10.7%	10.8%	7.7%	10.6%

Source: Diversion Program Annual Reports

According to a 2012 research guide prepared by the National Institute on Drug Abuse,⁴ the disease of substance abuse disorders is estimated at 10 to 14% of the general population and has a relapse rate similar to other chronic diseases. For example, the relapse rate for drug addiction is 40% to 60% versus 30% to 50% for type I diabetes, and 50% to 70% for hypertension and asthma. As table 5 reveals, the DCA Diversion Program average relapse rate is almost four times better than the expected relapse rate of the general public.

Table 6 indicates most relapses reflect the use of alcohol, narcotics and other opiates, and benzodiazepine (drugs primarily used for treating anxiety).

Table 6: Relapses by Substance

Relapses by Substance	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Avg*
Alcohol	29.8%	26.0%	47.0%	31.0%	38.3%	34.4%
Narcotics and other opiates (hydrocodone)	30.6%	26.0%	22.0%	28.0%	25.5%	26.4%
Benzodiazepine	6.0%	9.0%	15.0%	10.0%	19.1%	11.8%
Other	9.5%	12.0%	7.0%	7.0%	2.1%	7.5%
Tramadol	10.5%	2.0%	7.0%	5.0%	12.7%	7.4%
Amphetamines	1.0%	7.0%	3.0%	7.0%	2.1%	4.0%
Marijuana	1.5%	2.0%	4.0%	6.0%	2.1%	3.1%
Cocaine	0.8%	4.0%	4.0%	1.0%	0.0%	2.0%

* Total do not equal 100% but provides a reasonable indication of the most abused substances

Source: Diversion Program Annual Reports

In summary, most program participants are Caucasian females that enter the program through Board referrals. Approximately half successfully complete the program and most of the relapses involve the use of alcohol, narcotics and other opiates, and benzodiazepine.

⁴ Principles of Drug Addiction Treatment: A Research-Based Guide, National Institute on Drug Abuse, December 2012

Board Participation

It is interesting to note that only eight of the 20 DCA healing arts licensing Boards are included in the program. Notable exceptions with large licensee populations include the Medical Board of California (medical doctors) and Board of Vocational Nursing and Psychiatric Technicians (LVNs and PTs).

In addition, BRN probationers are not included in the Diversion Program as a condition of probation like some other Boards. As of December 2015, BRN had 425 program participants and approximately 1,420 probationers, including 1,125 active and 305 in tolled status which are out of state and require minimum monitoring. It can be reasonably assumed a percentage of the probationers probably suffer from substance abuse or mental issues and do not receive the medical attention the program participants receive. Like other Boards, BRN probationers would probably benefit if they were included in the Diversion Program.

Recommendations

1. If applicable and warranted, other DCA healing arts Boards should consider participating in the Diversion Program, and in particular, the Medical Board of California and Board of Vocational Nursing and Psychiatric Technicians.
2. The BRN should consider making probationers attend the Diversion Program as a condition of probation.

Program Costs

Table 7 presents a representative breakdown of the participant monthly cost elements and total program costs by Board for the full five year term. Costs are not exact because every participant is treated based on their individual needs.

Costs vary by Board and, in general, non-nursing Board participants pay substantially more than BRN participants. For example, in Year 1 the range of costs for a BRN participant ranges from \$5,980 to \$27,620, while the low cost for other Board participants start at \$8,800 to \$11,658 and range up to \$31,800 to \$46,400. The total estimated five-year cost for BRN participants ranges from \$18,700 to \$60,900, while the costs for other Board participants range from a low of \$30,400 to a potential high of \$104,289.

Table 7 indicates the primary cost differences between Boards are the participant co-pay fees and the monthly support group fees. The BRN subsidizes most of the participant co-pay fee while the other Boards do not subsidize any portion, or subsidize a smaller portion of the total fee. In addition, the Nurse Support Groups are facilitated by a nurse while the Health Support Groups are facilitated by a licensed therapist, which typically costs significantly more.

Table 7: Participant Cost Differential by Board for 5 Years

Year	BRN		BOP		DBC		PTBC		PAB		OMB		VMB	
Year 1	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
3-day clinical assessment*	\$0	\$0	\$0	\$15,000	\$0	\$15,000	\$0	\$0	\$0	\$15,000	\$0	\$0	\$0	\$0
Participant co-pay fee varies from \$25/mo and up**	\$300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$4,058	\$4,058	\$4,058	\$4,058	\$1,600	\$1,600	\$2,000	\$2,000
Drug testing: 52-104 times @ \$100 per	\$5,200	\$10,400	\$5,200	\$10,400	\$5,200	\$10,400	\$5,200	\$10,400	\$5,200	\$10,400	\$5,200	\$10,400	\$5,200	\$10,400
Nurse Support Group @ from \$40 to \$160/mo	\$480	\$1,920	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Health Support Group 1x-2x/wk@ \$200-\$400/mo	\$0	\$0	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800
Treatment cost: \$0 - \$15,000	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000
Estimated Year 1 Costs	\$5,980	\$27,620	\$8,800	\$46,400	\$8,800	\$46,400	\$11,658	\$34,258	\$11,658	\$49,258	\$9,200	\$31,800	\$9,600	\$32,200
Year 2	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Participant co-pay fee varies from \$25/mo and up**	\$300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$4,058	\$4,058	\$4,058	\$4,058	\$1,600	\$1,600	\$0	\$0
Drug testing: 24-36 times @ \$100 per***	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600
Nurse Support Group @ from \$40 to \$160/mo	\$480	\$1,920	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Health Support Group 1x-2x/wk@ \$200-\$400/mo	\$0	\$0	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800
Treatment cost: \$0 - \$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000
Estimated Year 2 Costs	\$3,180	\$10,820	\$6,000	\$14,600	\$6,000	\$14,600	\$8,858	\$17,458	\$8,858	\$17,458	\$6,400	\$15,000	\$4,800	\$13,400
Year 3	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Participant co-pay fee varies from \$25/mo and up**	\$300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$4,058	\$4,058	\$4,058	\$4,058	\$1,600	\$1,600	\$0	\$0
Drug testing: 24-36 times @ \$100 per***	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600
Nurse Support Group @ from \$40 to \$160/mo	\$480	\$1,920	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Health Support Group 1x-2x/wk@ \$200-\$400/mo	\$0	\$0	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800
Treatment cost: \$0 - \$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000
Estimated Year 3 Costs	\$3,180	\$7,820	\$6,000	\$11,600	\$6,000	\$11,600	\$8,858	\$14,458	\$8,858	\$14,458	\$6,400	\$12,000	\$4,800	\$10,400
Year 4	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Participant co-pay fee varies from \$25/mo and up**	\$300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$4,058	\$4,058	\$4,058	\$4,058	\$1,600	\$1,600	\$0	\$0
Drug testing: 24-36 times @ \$100 per***	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600
Nurse Support Group @ from \$40 to \$160/mo	\$480	\$1,920	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Health Support Group 1x-2x/wk@ \$200-\$400/mo	\$0	\$0	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800	\$2,400	\$4,800
Treatment cost: \$0 - \$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000	\$0	\$2,000
Estimated Year 4 Costs	\$3,180	\$7,820	\$6,000	\$11,600	\$6,000	\$11,600	\$8,858	\$14,458	\$8,858	\$14,458	\$6,400	\$12,000	\$4,800	\$10,400
Year 5	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Participant co-pay fee varies from \$25/mo and up**	\$300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$4,058	\$4,058	\$4,058	\$4,058	\$1,600	\$1,600	\$0	\$0
Drug testing: 24-36 times @ \$100 per***	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600	\$2,400	\$3,600
Nurse Support Group @ from \$40 to \$160/mo	\$480	\$1,920	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Health Support Group (Transition not required)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Treatment cost: \$0 - \$1,000	\$0	\$1,000	\$0	\$1,000	\$0	\$1,000	\$0	\$1,000	\$0	\$1,000	\$0	\$1,000	\$0	\$1,000
Estimated Year 5 Costs	\$3,180	\$6,820	\$3,600	\$5,800	\$3,600	\$5,800	\$6,458	\$8,658	\$6,458	\$8,658	\$4,000	\$6,200	\$2,400	\$4,600
5 Year Total Estimated Costs	\$18,700	\$60,900	\$30,400	\$90,000	\$30,400	\$90,000	\$44,689	\$89,289	\$44,689	\$104,289	\$32,400	\$77,000	\$26,400	\$71,000

*3-day clinical assessments are only required when a more comprehensive evaluation is needed.

**See Board Participant administrative co-pay fees (Table 3).

***12 times per year for mental health diagnosis otherwise 36-104 times per year; 24 times per year for non-working only.

Treatment cost is only required if a participant requires treatment, and mostly at the initial program enrollment or if a participant relapses while in the program.

Table 7 shows the Diversion Program may be cost prohibitive for some, and especially for non-nursing participants. Without insurance or financing, Board subsidies or waivers, it may be financially impossible for some to participate in the program. With some Boards, such as the BOP and PAB, the fee may be waived, reduced or deferred by the DPM if the participant demonstrates financial hardship. Under certain conditions, it would be in the best interest of participants if other Boards consider granting such waivers.

Insurance Benefits for Substance Abuse and Mental Health Coverage

Effective January 1, 2014, the federal Affordable Care Act (ACA) expanded coverage for treatment of substance abuse addictions. Insurance plans are governed by the federal Mental Health Parity and Addiction Equity Act of 2008. In California, the coverage includes both inpatient (residential) and outpatient (day-treatment, individual and group counseling) services.

Those on Medi-Cal that make less than \$16,000 per year are also eligible under the ACA. Under Medi-Cal there is a separately funded program for substance abuse known as DMC, or Drug Medi-Cal, which offers inpatient detox, residential treatment, methadone maintenance, and outpatient counseling. At the state level, the Department of Health Care Services (DHCS) administers the DMC and certifies treatment providers. There are over 1,400 DMC-certified treatment facilities statewide. At the local level, county alcohol and drug programs (Adult System of Care) determine applicant eligibility and are reimbursed by DHCS for the cost of those activities.

The website for the US Centers for Medicare and Medicaid Services (CMMS) (<https://www.healthcare.gov/coverage/mental-health-substance-abuse-coverage/>) indicates all health plans in the health insurance marketplace must cover substance abuse disorder and mental health services, including behavioral health treatment such as counseling and psychotherapy, prescription drugs and laboratory services. Furthermore, marketplace plans cannot deny coverage or charge more for a pre-existing condition. Moreover, marketplace plans cannot put yearly or lifetime dollar limits on coverage of any essential health benefit, including substance abuse disorder and mental health services.

A review of the Covered California website (<http://www.coveredca.com>) shows there are 12 health insurance companies that are required to provide coverage in compliance with the ACA. A telephone survey of the six largest companies reveals that all provide ACA coverage for substance abuse disorder and mental health treatment. However, under Laboratory Services, the following conditions typically apply to having the cost of random drug testing covered:

- The participant must be a patient of a specific health insurance company/provider that provides such coverage, and
- A physician of the health insurance provider must order a claimable service, and
- The physician must be able to monitor the participant's performance.

The auditors found that all sales agents were not equally knowledgeable about these benefits. Therefore, it behooves program participants to be persistent about getting their questions about Laboratory services covered answered correctly.

Recommendations

3. Maximus should identify a program staff member whose sole responsibility is to become knowledgeable about health insurance coverage benefits and referral sources, and periodically update the Clinical Case Managers and Compliance Monitors.
4. Program participants should assume personal responsibility to contact and research coverage options and costs with the health insurance companies listed on the Covered California website.

Diversion Program Staffing, Roles and Tasks

Based on a review of job descriptions, interviews and observations, CPS confirmed the accuracy of the following Diversion program staff roles and tasks and the six Western Division Shared Services organizations supporting the program

The **Project Manager**, a licensed registered nurse and former hospital administrator, holds a MBA with significant related experience. She is responsible for, but not limited to:

- Ensuring MAXIMUS complies with all applicable contractual requirements, state, and federal regulations.
- Coordinates development of project performance goals, objectives, policies and procedures, and monitors achievements.
- Supervises Clinical Case Managers to ensure requirements are met or exceeded.
- Oversees the Diversion quality assurance program.
- Maintains relationships with the Department of Consumer Affairs (DCA) and the seven Health Professional Boards and Committees
- Maintains effective communications with Clinician Assessors, laboratory subcontractors, and health and nurse support group facilitators.
- Attends, presents and/or chairs meetings and educational programs including, but not limited to: the Diversion Evaluation Committee (DEC) and review committee, the Diversion Liaison Committee, the Diversion Discipline Committee, Board meetings, Quality Improvement Committee, orientations, conferences, and presentations.
- Approves time cards, work plans and schedules, deliverables, contracts, correspondence, billings and invoices, and evaluates staff.
- Performs other corporate responsibilities as required.

The **Operations Manager**, a former Compliance Monitor with substantial program experience, is responsible for day-to-day operations, which include, but are not limited to:

- Assists the Project Manager and ensures the availability of all staff, resources, and Diversion services, are effectively and efficiently delivered throughout California.
- Supervises Administrative Assistants, Compliance Monitors, Quality Assurance, Administrative Assistants and the Medical Records Coordinator.
- Maintains relationships with the Department of Consumer Affairs (DCA) and the seven Health Professional Boards and Committee.
- Maintains effective communications with Clinician Assessors, laboratory subcontractors, and health and nurse support group facilitators.
- In the absence of the Project Manager, attends, presents and/or chairs meetings and educational programs, approves deliverables and signs correspondence.
- Conducts Quality Assurance Testing on the Maximus Case Management System (CMS).
- Updates Diversion Program policies and procedures and provides training as needed.
- Prepares Monthly Status Report, Quarterly Report and Annual Diversion Program Report, and conducts research for special studies.
- Performs other program and corporate responsibilities as required.

The **Clinical Case Managers** (CCMs) are licensed registered nurses with at least three years of experience working in the treatment of substance abuse and/or mental illness. Their educational backgrounds include addiction, psychology and chemical dependency. Until December 2015, they were short-handed one position. CCMs are paired with Compliance Monitors who jointly serve a geographic and Board-specific caseload of up to 130 participants and are responsible for, but not limited to:

- Through continuous communication by phone, mail and email, CCMs manage applicants/participants through intake into the program, clinical assessment, overseeing preparation of initial program entry and recurring recovery agreements, continually monitoring recovery activities and treatment recommendations, and liaising with Boards to ensure overall program compliance and completion success.
- Conduct remote, telephonic assessment and reassessments of impaired licensees to evaluate their overall compliance with program requirements and progress in recovery. Using a standardized template, CCM's conduct a thorough applicant intake telephone interview. In their first contact it is important to set the stage right from the beginning. Participants are generally upset and don't always retain the information given to them the first time. It takes a lot of reinforcement, support and encouragement. After the intake interview, it requires ongoing communications and scheduling of appointments.
- Respond to incoming calls on the toll-free line, as needed, and after-hour, weekend, and holiday calls on a rotating basis with other Diversion Program staff. CCMs are on call

for a week at a time about every 5-6 weeks from Monday to Monday. Most calls are related to lab issues, ER visits or medications.

- Meet with applicant/participant telephonically weekly until seen by the Diversion Evaluation Committee (DEC), and monthly thereafter, to review compliance and progress in recovery. CCMs verbalize the importance of keeping up with all the non-compliant issues daily and the necessity of reviewing all reports daily. In addition, it is necessary to communicate daily with their Compliance Monitor and with the DEC/Diversion Program Manager (DPM) when indicated. All CCMs agree that aside from leaving voice messages and playing phone tag, their biggest obstacle is not having personal interaction face-to-face with a new participant.
- Evaluate incoming information submitted by treatment providers, facilities, participants, and labs to monitor participant's progress and compliance with recovery agreements.
- Ongoing communications with the participant, the appropriate Board/Committee (or their designee) or treatment providers, facilities and labs in response to participant non-compliance with their recovery agreement.
- Enter information into the Maximus CMS (Max-CMS). Compiles, produces, reviews and ensures timely distribution of the History and Profile (H&P) reports before submitting to the DPMs. There is an abundance of paper work compiled several weeks ahead of time. All of the CCM's and CM's are looking forward to the Boards having access to all information on-line so there won't be a need to compile massive paper packets.
- Review Monthly Compliance/Non-Compliance reports and letters, as well as other reports and correspondence, as required. The CCMs' agree it is an ongoing daily process and that the upgraded Max-CMS will be a time saver since all the information will be within one tracking system.
- Produce other reports and letters as requested, including the "Letter of Successful Completion."
- Serve as liaison for assigned Board/Committee and their designee (DPM), DEC Case Consultant, DEC Chair and provide clinical case input.
- Perform other program and corporate responsibilities as required.

The **Compliance Monitors** (CMs) are college-educated with three-to-five years of experience in a behavioral health care setting related to chemical dependency, recovery, and/or mental illness. Their educational backgrounds include biology, chemistry, psychology and pharmacy. They constantly communicate with their paired CCM and are responsible for, but not limited to:

- Respond to incoming calls from participants regarding their program participation, applicants regarding entry into the program, and licensees regarding general program information. Contact participants for additional relevant information.

- The CM's mail the new applicant's package of information within five days of the initial intake and from there the process begins. After the CCM completes the telephone intake and schedules the clinical assessment and first DEC meeting, the CM's begin daily tracking. The CM's all rely on the Maximus daily tracking system that tracks the timelines of due dates of all items to be sent or to be received and lab correspondence. In addition, all mailed and faxed documents are scanned into the record immediately. As a result, the CCMs and CMs are able to access the Case Logs to review up-to-date documentation.
- Prepare initial entry agreements and recurring recovery agreements based on participant case history and forward to the CCM for review and approval.
- Collect and analyze incoming data and reports from participants, treatment providers, labs, and other team members to determine the participant's level of compliance and enter necessary information into the Max-CMS. The CM's check all documents received to ensure they are timely and complete. If items are missing, late, or incomplete, the CM informs the CCM and the issues is entered onto the case log. They also check to see if there are any missed calls into the lab or if there are late fees, etc. They call the participants to inform them of potential violations as related to their agreement. If participants are non-compliant, the CM's reports the non-compliance to the CCM to determine the compliance level. The CM writes a non-compliance letter and the Administrative Assistant mails the documents to the participants and to the Boards. The CMs then enter the findings into the case log and notify the participants. The CM's manage the paper work and CCM's manage the participant's systematic recovery process.
- Make follow-up calls to respond to non-compliance data from providers.
- CMs produce monthly compliance/non-compliance reports and letters based on analysis of information received from participants, treatment providers and the laboratory. The Recovery Contracts are updated at each DEC or Board meeting and more often if needed. The update information is written into the DEC/ Committee minutes by the CCM's. The CM's revise the Recovery Agreement based on the DEC/Committee recommendations. Information is entered into the template and reviewed with CCM's before forwarding the revised contract to administrative assistant for mailing to the participants and the Board.
- Compile, produce, and timely distribute the H&P reports to CCM, Client DPMs, and DEC members.
- Perform other program and corporate responsibilities as required.

The **Administrative Assistants** and **Medical Records Coordinator** possess at least an Associate's degree with at least two years of experience in behavioral health care, call center and/or crisis intervention. They are responsible for, but not limited to:

- Respond to incoming calls from licensees, Boards/Committee and their designee,

applicants/participants and other inquiries. Apply standardized protocol to identify cases requiring immediate crisis or clinical intervention.

- Process incoming faxes and incoming U.S. mail.
- Provide necessary administrative support, including handling correspondence.
- Perform limited direct participant services under supervision.
- Manage and file documents and correspondence received from and sent to participants.
- Maintain participant records in hard copy file format, scan and index documents.
- Prepare H&Ps for mailing.
- Maintain and prepare orders for office supplies for department.
- Perform other program and corporate responsibilities as required.

In summary, the Project Manager reports all assigned work is getting completed but due to a CCM vacancy, CCM/CM workload has increased and will until the position is filled (the position was filled in mid-December 2015). The Project Manager emphasized how critical the CCM/CM teamwork is to program success.

Shared Services Roles and Responsibilities

Based on interviews and documentation reviews, CPS confirmed Diversion Program staff are supported effectively and efficiently by the following Maximus Western Services Division departments displayed in the Figure 1 organization chart. The Project Manager recognizes the cost effective benefits of having full-time departments support this small program which would otherwise be unaffordable. The following briefly discusses the services each department provides, staffing levels, and information CPS reviewed.

Quality Assurance/Training Department

The Quality Assurance/Training Department has a central role in ensuring project operations, quality assurance and training adhere to ISO 9001:2008 standards, resulting in program success. There are 14 Quality Analysts in this department, including one QA Analyst dedicated to the Diversion Program. The QA responsibilities cover eight Maximus programs, including the Diversion Program.

The Maximus Quality Manual, Quality Assurance Plan (QAP) and other written procedures provide the integrated framework and detailed work instructions to ensure contract provisions and quality standards are met, information is reported, corrective and preventive actions are taken, and the process is continually improved. The QA function has its own system (ITG) for identifying, tracking, correcting and reporting on QA problems. The QAP is reviewed and updated annually.

According to the Quality Assurance Plan, ISO 9001:2008 requirements stipulate inspections and testing of critical process inputs and outputs. Inspections take place at four levels: individual, supervisory or quality control, quality assurance, and ISO 9001:2008 audits.

- Quality control is a failure detection system that uses observation techniques and activities to identify and correct errors in products or services to ensure they meet defined requirements.
- Quality assurance is a failure prevention system that uses planned and systematic activities like defined processes and procedures to ensure products or services delivered will be of good quality.

The first level of Quality Control (QC) monitoring activities start with individual staff members. Each employee is required to inspect his or her own work in accordance with the established procedures and standards. Each individual inspects the inputs they receive from another process before sending it forward for further processing.

The second level of QC inspection involves the Program Manager and/or Operations Manager who review and evaluate process outputs based on established requirements and standards. They document their monitoring results and take immediate corrective action for any unacceptable results.

Quality Assurance (QA) Analysts are responsible for the third level of inspection which starts the quality assurance process. They are primarily responsible for sampling processes on a scheduled, monthly basis to ensure Quality Management System controls are operating correctly and that all requirements and standards are met. The analysts retrieve samples from the MAX-CMS using a sampling formula that ensures a 95% confidence level and 5% error rate unless otherwise noted in the Maximus Sampling Procedure.

The monthly QA evaluations use checklists based on criteria extracted from contract requirements, state law and regulations, business rules and internal process standards. The analysts document the evaluation data for trending, research, and quality improvement purposes in the Monthly Quality Management Performance Report per the required procedure.

The following 13 processes or products are subject to monthly QA evaluations.

Process/Product	Evaluation Criteria	QC Sample	QA Sample	Reporting
Initial Intake	Timeliness, accuracy	None	100% of sample	Standard QA Report
Worksite Monitor	Timeliness, accuracy	None	Standard sample	Standard QA Report
Random Drug Test	Timeliness, accuracy	1 positive result per CCM/CM team monthly randomly selected	Standard sample	Standard QA Report & Standard Business Unit Report
Recovery Agreement	Timeliness, accuracy	5/month randomly selected	Standard sample	Standard QA Report
Non-Compliance Letters	Timeliness, accuracy	4/month per CM randomly selected	Standard sample	Standard QA Report

Monthly Reports/Contacts	Timeliness, accuracy	None	Standard sample	Standard QA Report
Document Scanning	Timeliness, accuracy	10 documents/week randomly selected	Standard sample	Standard QA Report
Billing (Premium) Processing	Timeliness, accuracy	None	Standard sample	Standard QA Report
Physical Therapy Board	Accuracy	None	1 intake/quarter	Monthly Business Unit Report
Call Monitoring	Various call aspects	None	Min of 3 staff/week	Standard QA Report
Case Closures	Info ok and verified	100% of files with public risk	None	Standard Business Unit Report
Clinical Assessors	Various appointment aspects	None	3 per month	Monthly Business Unit Report
Lab Test Results	Cut off levels	1 result daily		Monthly Business Unit Report

Source: Maximus Quality Assurance Plan, DPP-12-01

One result of the work of the QA Analyst is a Monthly Quality Management Performance Report that summarizes and provides details on the results of the 13 processes or products evaluated during the month. This includes a breakdown of the number of items reviewed, errors found, a trend analysis against the specific goal, and a root-cause analysis of the top errors. Monthly meetings are held with the Diversion staff to discuss the findings and corrective action required.

In addition, the QA Analyst monitors and reports monthly on the performance of 45 specific contract provisions (see Appendix 5, Contract Performance Standards Measured). The Diversion Program Performance Standards Analysis Report is referred to as the “red-green” report because items meeting standards are shaded in green while those that are not are shaded in red.

The December 15, 2015 red-green report covers from December 2014 through November 2015. Table 8 shows the number of contracts standards measured every month for the past year varied from month to month, but overall compliance with the standards averaged 94% per month.

Table 8: Contract Standards Compliance from December 2014 through November 2015

Month/Year	12/14	1/15	2/15	3/15	4/15	5/15	6/15	7/15	8/15	9/15	10/15	11/15	Avg
Contract Stds Measured	45	45	45	45	45	45	45	45	45	45	45	45	45.0
Contract Stds Not Measured	11	10	9	13	14	9	14	10	7	12	11	9	10.8
Number of Contract Stds Met	31	33	35	32	29	34	30	32	35	32	33	31	32.3
Compliance Rating	91%	94%	97%	100%	94%	94%	97%	91%	92%	97%	97%	86%	94%

Source: Maximus

Both of these monthly reporting activities demonstrate how thorough, yet prescriptive and administrative-intensive the ISO process is. The samples are drawn and analyzed from the Maximus CMS which is efficient and paperless.

In the past before the new scanners were deployed, there was a document scanning backlog. However, the backlog did not impact program participants because staff and used original

hardcopy documents. With the implementation of new scanning equipment and electronic document policy, there is no longer a document scanning backlog.

The fourth level of inspections is an Internal Quality Audit per the required procedure. The purpose of these audits is to verify whether quality activities and related results comply with requirements and to determine the effectiveness of the quality system. The Internal Audit department may conduct 4-5 operational reviews a year of the program based on its policies and procedures. Finally, Bureau Veritas conducts a two-day surveillance audit once a year and an in-depth, end-to-end ISO audit every three years.

The program has been primarily aimed at tracking activities performed and timeliness, and outcomes such as successful completions, terminations and relapses. The QA analyst continually tests for procedural untimeliness that is corrected through the Corrective and Preventive Action (CAPA) Procedure, DPP-12-03 and tracked in the QA ITG database.

All staff receive mandatory corporate training for HIPAA, safety and sexual harassment. The Quality Analysts participate in a formal training program and receive additional in-house on-the-job training based on their education and experience. Maximus also offers a professional development program and staff can request outside training, which is typically granted. Maximus is also taking action to train or hire more certified internal auditors and project managers.

Administrative Services Department

The Administrative Services Department provides the Diversion Program with the following services: budgeting, forecasting, accounting, accounts payable, accounts receivable, and contracts. These services incorporate three of the shared services boxes on the organization chart.

The Senior Director of Administrative Services has one direct report and three other non-direct reports. In addition to the Diversion Program, this unit supports 13 other Maximus programs and projects.

Boards pay Maximus a participant fee and participants pay Maximus a co-pay that is credited back to the Boards. Depending on the Board, Maximus may or may not have a financial risk. Accounts Receivable (AR) bills the Boards (by the 10th calendar day of the month) and participants (by the 20th calendar day) according to the contract requirements. Payments are received and accounted for through a bank lockbox.

AR also performs the collection function which includes establishing payment plans for delinquent participants. If a participant is delinquent, AR notifies the program and CMs prepare and send non-compliance letters. The Quality Assurance (QA) Analyst ensures non-compliance letters were sent to participants that are more than 60 days in arrears with their payments. The Annual Reports for the last Fiscal Years 2010-11 through 2014-15 reveal there have been about three delinquent participants per fiscal year.

CPS reviewed comprehensive policies and procedures concerning Project Financial Management that include the accounting system of record; budgets, forecasting and variance analysis; accounts receivable (billing and collection) and accounts payable; contracting and management reporting. Execution of these policies and procedures, including billing compliance, is continually monitored by the Quality Assurance Analyst. The only financial performance metrics concern timely billing of the Boards and participants. The QA Analyst reported there are no financial process delays or operational issues with the participant billing process.

To verify the program's financial reporting process and its financial condition, CPS reviewed end-of-calendar year monthly Project Status Reports as of January 1, 2010, 2011, 2012, 2013 and 2014. Also reviewed were income statements and accounts receivable aging reports for the same time periods.

In our opinion, the monthly Project Status Reports provide the Project Manager with complete and timely information to manage the project. The reports summarize total funded, billed to date and balance due, and track current period revenue and expenses, year to date and contract to date actuals. The reports also contain detailed line items that capture total revenue, labor and non-labor expenses, overhead allocations, total expenses and profit.

The following table 9 shows a summary income statement covering Calendar Years (CY) ending in 2011 through 2014. Since CY 2011, program revenue has been stable but profitability has varied substantially as the number of program participants, direct labor, direct costs and allocations have fluctuated.

Table 9: Summary Income Statement*
CYs 2011 – 2014

	12/31/10	12/31/11	12/31/12	12/31/13	12/31/14	Totals	% Total Revenue
Revenue	\$2,190,579	\$2,187,733	\$2,186,800	\$2,241,025	\$2,249,313	\$11,055,450	100.0%
Direct Labor	1,176,211	1,358,249	1,218,332	1,352,691	1,389,331	6,494,814	58.8%
Direct Costs	219,435	276,371	302,080	315,322	285,992	1,399,200	12.7%
Overhead, G&A	315,777	337,521	308,777	310,668	323,936	1,596,679	14.4%
Total Costs	\$1,711,423	\$1,972,141	\$1,829,189	\$1,978,681	\$1,999,259	\$9,490,693	85.9%
Profit	\$479,156	\$215,592	\$357,611	\$262,344	\$250,054	\$1,564,758	14.1%
% Profit	21.9%	9.9%	16.4%	11.7%	11.1%	14.1%	

Source: Maximus (numbers are rounded)*

As a publicly traded company, Maximus has multiple layers of internal and external controls. In addition to continual review by the QA Analyst, there is a Maximus internal audit team and an outsourced PriceWaterhouseCoopers internal audit team. The external auditors include Ernst & Young and Bureau Veritas (ISO auditor).

The Contracts Unit consists of three staff that maintain copies of subcontract and Clinical Assessor agreements, provide updates to Diversion ISO procedures and policies that pertain to contracts, and compile monthly Supplier Performance Evaluations from various departments. The Diversion Program consumes minimal time.

The unit has detailed written policies and procedures that are subject to the continual QA review process to ensure contract policies, procedures, legal and compliance provisions are being met. The unit manager and the QA Analyst confirmed there are no persistent financial management process delays or operational issues.

Information Systems Department

The Information Systems Department (ISD) supports the Diversion Program Maximus CMS, a mission-critical program component. The Maximus CMS is planned to be updated to further improve operational effectiveness and efficiency in 2016.

The Director of ISD has five staff including two in application development & testing and three in infrastructure, database management and data warehousing. Staff spend less than half their time supporting the Diversion program as they also support a Michigan healthcare project, a Federal background check project, and a Hawaii call center.

The most important performance metric for this department is 100% percent uptime. During 2015, the application, database and web servers' average uptime was 100%, and the Max-CMS database average uptime was 99.5%.

ISD is not required to comply with ISO standards but must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and security policies. CPS reviewed the HIPAA policy contained within the Corporate Employee Manual. CPS found the policy establishes compliance with the national standards for privacy of individually identifiable health information designed to meet HIPAA and contract requirements.

CPS also reviewed the comprehensive Maximus Information Security Policy which covers confidential information handling, storage, reproduction, transport and destruction; system access and privileges; internet connections; use of Maximus electronic communications systems; application development; business continuity and disaster recovery; encryption; portable computers and remote printing; privacy and personal use; software copying; physical security and violations. CPS found the policy meets contract requirements.

In addition, CPS reviewed the Maximus Server Security Policy, Application Security Statement and Physical Security Policy and found them to be comprehensive and compliant with contract requirements. CPS did not test the effectiveness or efficiency of the various policies.

Furthermore, CPS reviewed the master services agreement with Iron Mountain to provide storage of records and media, document scanning and shredding services, and found it to be compliant with contract requirements.

Human Capital Department

The Human Capital (HC) Director manages three professional and three support positions. The department supports all HC functions for the Diversion Program including:

- **Recruitment/Selection** - maintains recruiting database including job postings, resumes, background checks, offer letters, and electronic on-boarding, etc. Trend data for CY 2014 shows program turnover at less than one percent annualized. New positions are posted internally first. Program administrative positions are commonly filled by internal candidates. Recruitment/selection issues for Program openings include highly specific skillset for RNs which requires specialized sourcing of nurses more suited to the alcohol/chemical dependency aspects of this program.
- **Classifications** - Personnel Requisitions are submitted to the corporate compensation team to confirm selected classification/job titles, etc. Maximus does not “impose” corporate-wide job descriptions/classifications on work sites with differing needs.
- **Employee Relations** - Human Capital Director works directly with Project Manager and/or Operations Manager to address employee matters.
- **Performance Management** – The annual review of employees is done in April and they are eligible for quarterly bonuses.
- **Benefits Administration** – The local HC supports open enrollment and answers questions while Corporate Total Rewards administers the benefit program.

HC training responsibilities include: state-mandated sexual harassment training (AB 1825) for management and mandatory annual supervisor training for: EEO Compliance, Corporate Compliance Refresher, Employee Disclosure, and Workplace Harassment Refresher. HC provided CPS with a compliance training matrix showing that Diversion Program staff received required training.

Diversion Program Manager Survey Results

In lieu of observing DEC and Board Participant Review meetings, CPS surveyed the DPMs and attended a monthly DPM meeting resulting in the following opinions and observations.

The DPMs represented both DEC (4) and PRM Non-DEC (3) Boards. The DPMs averaged almost eight years of experience in the position and ranged from nine months to 30 years on the job. The survey results indicated the following:

- All receive information timely from Maximus before a meeting.
- They all have remote access to the Max-CMS but only 4 of 7 use the system extensively.

- Of those using the Max-CMS, all experienced a high (>98%) percentage of uptime and most reported the information is generally complete and accurate, and the system is easy to use.
- Decisions and outcomes are well documented based on standardized templates (100%).
- They receive materials timely (within 7 days) after the meetings.
- On a scale of 1 to 5 with 5 being the highest, the DPMs rated the following:
 - Program effectiveness for licensees: average 4.6
 - Maximus CCM knowledge and expertise: average 4.6
 - Program efficiency: average 4.8
- Some DPMs felt cost was not a factor, but most indicated the total program cost to the participant is expensive.

As a result of the DPM meeting, CPS learned the following:

- Issues or obstacles that affect program efficiency include phone “tag” between program staff and participants, lost paperwork and participant delays.
- There is a perception that DEC Boards provide a better recovery process, but there are insufficient data to support the hypothesis. DEC advocates feel their process advantage is face-to-face interaction with participants, Board and DEC members. It is an effective way to see changes in participants which is better than just reviewing hard data. Non-DEC advocates contend they can make more timely decisions that benefit participants without requiring Board approval. DEC DPMs claim the same decision-making advantage and can override a health care professional, but are reluctant to do so because they don’t possess the same level of technical healthcare knowledge.
- Most DPMs claimed they lack formal drug training but would benefit from it.

As a result, many DPMs suggested the following Diversion Program improvements:

1. Hire more CCMs and increase the number of participants.
2. Identify ways to better manage or reduce participant costs.
3. Identify ways to better treat participants suffering from mental illness.
4. Provide DPMs with recovery training.

Recommendation

5. Maximus should consider and evaluate all of the DPM recommendations and, at a minimum, provide the DPMs with recovery training.

Treatment Provider Survey and Credential File Audit Results

As part of an outreach to key program stakeholders, CPS HR conducted a brief online survey directed to a sample of the following Diversion Program Treatment Providers:

- Clinical Assessors (30)
- Nurse Support Group leaders/facilitators (41)
- Health Support Group leaders/facilitators (19)
- Worksite Monitors (20)

The purpose of the survey was to both solicit general information on program stakeholder experience as well as identify ways to improve program effectiveness and efficiency. The following summarizes the survey findings and recommendations. The complete results are presented under separate cover.

Response Rates

A total of 60 of 110 invitees responded to the survey. With the exception of Worksite Monitors, the survey response rate exceeded the 50% target for the respondent sub-groups.

Stakeholder Group	# Responding	% Responding of those Invited
Clinical Assessors (CA)	20	66.7%
Nurse Support Group leaders/facilitators (NSG)	22	53.7%
Health Support Group leaders/facilitators (HSG)	12	63.2%
Worksite Monitors (WSM)	6	30.0%

Table 10 summarizes Treatment Provider respondent experience and their participation in the Diversion Program. Based on their collective experience, it appears the Boards and Maximus should pay attention to the results of this survey.

Table 10: Treatment Provider Experience and Program Participation

Experience and Program Participation	CA	NSG	HSG	WSM
Avg. years evaluating health care professionals?	21.6 yrs.	15.4 yrs.	21.0 yrs.	NA
Avg. years working with the Diversion Program?	12.3 yrs.	10.9 yrs.	15.6 yrs.	2.1 yrs.

Clinical Assessor Responses

Clinical Assessors indicated the following about key aspects of their practice:

- They assess up to three participants a month, but average one per month.
- An assessment appointment ranges from one to two hours, but averages one hour.
- All respondents indicated they were able to submit an assessment report within the required 10 days after the assessment is completed.

Clinical Assessors claim the following obstacles/challenges (not inclusive of all responses) hinder their role in the Diversion Program:

1. Participants miss appointments or cancel late.
2. Participants misunderstand the program requirements.
3. Untimely receipt of material for the assessment
4. There is a lack of treatment options in the area they work.
5. They are unable to complete the assessment on a computer.
6. Lost billings delay payment.

Many Clinical Assessors recommend the following improvements (not inclusive of all responses) to the Diversion Program:

1. Simplify and clarify the participant administrative requirements.
2. Provide for online transmission of program forms.
3. Update the clinical assessment tool.
4. Institute DEC's for all professions.
5. Increase DEC training.
6. Pay for assessments cancelled with less than 48 hours' notice and for no show appointments.

Nurse Support Group Facilitator Responses

NSG facilitators indicated the following about key aspects of their practice:

- They facilitate up to three groups per week, but average about two per week.
- Participants range from 6 to 21 per session, but average about 12 per session.
- Session costs range from free to \$40, but average \$19 per session.
- On average, about 66% of group participants are in the Diversion Program; the balance are in the Probation Program.

NSG facilitators claim the following obstacles/challenges (not inclusive of all responses) hinder their role in the Diversion Program:

1. Lack of direct communication with Maximus about participants and changes in program policies and procedures, including untimely call backs and an inability to email case managers.
2. The implementation of SB 1441 has changed the program focus from rehabilitation to punitive discipline. The rules and regulations are often too rigid and inflexible, and there is an unreasonable, high frequency of drug testing.
3. Lack of adequate in-service training.
4. Access to the Maximus website can be frustrating and cumbersome.

5. When probationers exceed program participants, the group tends to become more negative.

NSG facilitators recommend the following improvements (not inclusive of all responses) to the Diversion Program:

1. Improve direct communication with Maximus case managers, including written notification of policy and procedure changes, and email notification of participant non-compliance, transition or completion.
2. Provide participants with more information about the Diversion Program and what to expect at their first Board or DEC meeting.
3. Maximus staff should observe more group sessions.
4. Provide more opportunities for facilitators to receive training, such as an annual, offsite conference.
5. Provide more mental health options.

Health Support Group Facilitator Responses

HSG facilitators indicated the following about key aspects of their practice:

- They facilitate up to eight groups per week, but average about three per week.
- Participants range from 2 to 14 per session, but average about 8 per session.
- Session costs range from \$21 to \$75, but average \$47 per session.
- 92% of respondents indicated they are able to complete and submit the monthly attendance and participation report by the required 10th of the following month.

Many HSG facilitators claim the following obstacles/challenges (not inclusive of all responses) hinder their role in the Diversion Program:

1. The Maximus case manager caseload is too high to be effective, resulting in inadequate and untimely communication between all parties.
2. Maximus does not give enough consideration to HSG facilitator feedback.
3. The punitive manner in which participants are treated by their respective Boards.
4. Lack of program training.
5. Except for BRN, the participant census from the other Boards is low.

HSG facilitators recommend the following improvements (not inclusive of all responses) to the Diversion Program:

1. Reduce Maximus case manager caseloads.
2. Provide HSG facilitators with access to intake summary, evaluations and treatment reports.
3. Coordinate treatment decisions with HSG facilitators before implementation.

4. Maximus case managers should attend more HSG sessions.
5. Maximus should provide more diversion training through area meetings.
6. Maximus staff should observe more group sessions.
7. Improve marketing of services through more outreach.

Worksite Monitor Responses

WSMs indicated the following key aspect about their practice:

- They can monitor up to two participants at any time, but the average is one at a time.

WSMs claim the following obstacles/challenges (not inclusive of all responses) hinder their role in the Diversion Program:

1. They lack the ability to contact the Maximus CCM or CM by email.
2. Due to early diversion-related meetings, participants leave early from work.
3. Difficult to contact Board Diversion Program Managers.
4. They have limited time to observe in a clinical setting.
5. Often have to wait for mailed participant evaluations.

WSMs recommend the following improvements (not inclusive of all responses) to the Diversion Program:

1. Establish email communication with Maximus staff.
2. Provide the ability to either fax or submit online monthly and quarterly reports.
3. Provide improved access to Board Diversion Program Managers.
4. Provide participant evaluations by email.

Recommendation

6. Maximus should consider and evaluate all of the stated Treatment Provider obstacles/challenges, then prioritize and implement the recommendations accordingly.
7. As evidenced by the success of this online survey, Maximus should periodically reach out to Treatment Providers and other stakeholders to identify ongoing issues and opportunities for continuous improvement.

Credential File Audit Results

CPS reviewed a 10% sample of Maximus and Board treatment provider credential files to ensure compliance with Uniform Standards 1, 5, 7 and 13. Except for WSMs with no files, all other credential files were found to partially comply with the Uniform Standards. Most files provided evidence of license/credential verification, experience and insurance. However, most lacked evidence of Board approval and a disclaimer to not accept licensees with whom they have had a personal, financial or business relationship within the last year.

Specifically, a review of four Clinical Assessor credential files revealed evidence of a valid license was independently verified through the state website (www.breeze.ca.gov) 100% of the time. However, evidence of three years' experience in providing evaluations of health professional with substance abuse disorders, and \$1 million of malpractice and general liability insurance was present only half the time.

The review of four Health Support Group Facilitator credential files discovered that a valid license was independently verified through the state website or by hardcopy credential, and the three years' experience was documented 100% of the time. But, there was no evidence documenting whether there was a financial, personal or business relationship with the licensee within the last year.

The review of six Nurse Support Group Facilitator credential files exposed evidence of the three years' experience and a Board-signed document 100% of the time. However, in most cases there was no documentation of independent verification of the license or whether a financial, personal or business relationship existed with the licensee within the last year.

The review of WSMs disclosed almost a total absence of required documentation. CCMs report verifying WSM licenses, when applicable, but there aren't any WSM folders. Consequently, there is no evidence of license verification of licensed healthcare professionals, and a signed affirmation including a statement the WSM agrees to not accept licensees with whom they have had a financial, personal or business relationship within the last year.

Finally, PHCS noted the absence of two documents commonly found in healthcare credentials that are not covered under the Uniform Standards. These include an Office of the Inspector General (OIG) exclusion clearance and a HIPPA confidentiality statement.

Recommendations

8. Maximus and the Boards should ensure each credential review is completed in compliance with the Uniform Standards, including evidence of: a license, experience and insurance; do not accept licensees with whom they have had a personal, financial and business relationship within the last year; and Board approval.
9. Per healthcare standards, perform and document an OIG clearance for each Treatment Provider at <https://exclusion.oig.hhs.gov>
10. Per healthcare standards, require all Treatment Providers with access to records to sign HIPPA confidentiality statements.

Participant File Review Results

The following presents the participant file review methodology PHCS used and the audit findings and recommendations.

Participant File Review Methodology

The Maximus participant file review was based on the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees dated April 2011, specific requirements of each Board, and the 2010 – 2014 Maximus contracts with the Department of Consumer Affairs.

PHCS selected and reviewed a random, statistically-valid sample of 103 Participant files spanning the audit period of 2010-2014. Files were reviewed for every Board, and for all 14 BRN DEC's across the state. The files were reviewed by two PHCS registered nurses with master's degrees who have extensive experience reviewing patient charts.

Table 11 reveals most reviews were done on BRN participants (77.7%), followed by BOP (9.7%), PTB (4.9%), PAB (2.9%), DBC and OMB (1.9% each) and VMB (1%).

The cases reviewed contained 40 BRN participants who diverted drugs and four in the BOP. There were three participants in the BRN program who falsified prescriptions and one in the DBC program who self-prescribed.

Table 11
Summary of Program Closures of Participant Cases Reviewed

Board	SELF WITHDRAWALS			BOARD CLOSURES							Totals	% Total
	Pre/Post DEC	Moved out-of-state	Financial hardship	Not clinically appropriate	Terminated: public risk	No longer eligible	Terminated: non-compliant	Continues in program	Continues in transition	Successful completion		
BRN	7	2	0	1	8	0	4	22	18	18	80	77.7%
BOP	0	0	0	0	3	1	0	3	3	0	10	9.7%
PTB	0	0	1	1	0	0	0	1	2	0	5	4.9%
PAB	0	0	0	1	0	0	0	1	1	0	3	2.9%
DBC	0	0	0	1	0	0	0	0	1	0	2	1.9%
OMB	2	0	0	0	0	0	0	0	0	0	2	1.9%
VMB	0	0	0	0	0	0	0	0	1	0	1	1.0%
Totals	9	2	1	4	11	1	4	27	26	18	103	100.0%
% Total	8.7%	1.9%	1.0%	3.9%	10.7%	1.0%	3.9%	26.2%	25.2%	17.5%	100.0%	

Participant File Review Findings and Recommendations

PHCS found Maximus complied with all of the Uniform Standards and protocols for each participant file reviewed. In some cases, original supporting documents were not available for review, but the case logs summarized the document contents in compliance with the applicable Uniform Standards. Most participants had a history of drug and/or alcohol addiction. One BRN participant was in the psychiatric diversion program and two other participants had histories of mental illness with alcohol and chemical dependency. PHCS also identified opportunities for improvement.

Participant Contact

In compliance with Uniform Standard 14, because the participating Boards use a private-sector vendor to provide diversion services, they must and do publicly disclose their involvement in the Diversion Program and provide restricted licensee information on their websites.

According to the Maximus Annual Report, all test telephone calls made to the toll-free 24/7 telephone line were answered by Maximus within the five-minute standard. The auditor's tests confirmed this practice. However, it was not uncommon for participants to spend a prolonged amount of time trying to reach CCMs for routine calls.

Participant concerns documented in the case log and interviews with CCMs confirmed a problem with returning calls promptly. Until December 7, 2015, one CCM position had been vacant since June 2015. With all positions filled, the problem should improve and routine calls should be answered more promptly, but this should continue to be monitored.

For those employed participants, PHCS found evidence of written participant consent to communicate with employers in compliance with Uniform Standard 3.

Recommendation

11. Maximus should consider hiring a part-time CCM to cover vacations, illness and time away at DEC meetings, etc. This will improve the management of multiple calls.

Participant Orientation Documentation Lacking

In an isolated incident in 2011, one clinical case review did not show evidence of a licensee orientation. Maximus identified the problem and soon thereafter implemented an orientation template to ensure adequate documentation.

Clinical Assessments

PHCS found the summaries of the clinical assessment reports documented in the case logs revealed:

- The report contents meet the requirements of Uniform Standard 1;
- Uniform Standard 2, the temporary removal of the licensee from practice pending the results of the clinical assessment was met; and
- Treatment considered the clinical diagnostic evaluation recommendation required by Uniform Standard 6.

The auditor also found there was a slight delay occasionally in completing the clinical assessment within the standard 20 business days of the initial intake. In general, delays exceeding the standard were due to the participant being occupied in an inpatient treatment center or unable to keep the appointment. There was only one delay that was not explained in the case logs or participant's profile. Maximus staff should continue to work to diminish the obstacles and document reasons for delay.

Recommendation

12. Maximus program staff should continue to document reasons for assessment completion delays.

Participant File Maintenance Issues

PHCS found multiple instances of incorrect or unclear entries in case files, misspellings and incorrect use of pronouns.

A few participant entries were found in the wrong case logs. The errors were usually found several days later, but the wrong entry stayed in the case log. It is common practice for an error in an electronic record to be flagged to indicate it has been corrected.

Maximus currently lacks a written procedure for making deletions or retractions to case logs. The current informal practice is to correct the case log without marking the incorrect entry as an error.

There were also multiple misspelled words in the case logs which can lead to the wrong interpretation or meaning of the notes. The current Max-CMS version allows spell check capability for only a few employees. However, the upgraded version in 2016 will make spell check available to all employees and treatment providers and should correct much of this problem.

Some of the case log notes entered by one CCM were unclear due to fragmented sentence structure or imprecise documentation. This particular staff member is highly regarded for her ability to communicate with participants, but should use the improved spelling and grammar check feature in the upgraded Max-CMS. The Project Manager should also review and revise closing notes as necessary.

Finally, PHCS frequently found the incorrect use of ‘he/she’ pronouns. The wrong pronoun may cause the reader to question whether the entry in the case log is correct. Using the participant’s first or last name rather than pronouns only will prevent misunderstandings concerning entries.

Recommendations

13. All program staff should take advantage of the improved spelling and grammar check feature in the upgraded Max-CMS.
14. The Project Manager should review and revise closing notes as necessary.
15. Use the participant’s first or last name rather than pronouns only to prevent misunderstandings with case log entries.
16. Maximus should develop and implement a written policy for making deletions and retractions to case logs. The American Health Information Management Association website (<http://www.ahima.org>) has examples and sample policies Maximus could use.

Program Understanding and Obstacles to Compliance

Program participants face many obstacles on their road to recovery. Based on file reviews and interviews with Maximus program staff, applicants often have a difficult time comprehending all

the rules and expectations specified in Uniform Standard 10 early in the program due to high anxiety and/or their addiction/disease conditions.

PHCS identified obstacles including, but not limited to: financial hardships; temporary disability with less pay; loss of health insurance, car and/or driver's license, and home. Some participants ended up living in their car or in a sober living facility that was not always safe. Others suffered from guilt and anxiety, fear of failure, low self-esteem and relationship problems that made it difficult to comply with all aspects of the program. It was not clear how many participants withdrew due to these obstacles and others.

Some participants did not understand they needed to discard the drugs they were not allowed to use. Some participants gave their unused drugs to others and did not understand that this is a violation of the Nurse Practice Act.

CCMs and CMs continually reminded participants of their responsibilities and advised them that part of the recovery program is being accountable for their own actions and inactions.

Recommendations

17. Maximus program staff should track and trend the reasons for program withdrawal to determine the number of participants who withdrew for financial and other reasons.
18. Maximus program staff should improve the Program Handbook in the following ways:
 - Explain in the Handbook how to properly dispose of drugs according to the US Food and Drug Administration web site, and emphasize that participants may not give the drugs they are discarding to other persons for their use.
 - Attach a letter to the applicant's packet to encourage reading/re-reading the Handbook until they are familiar with the rules and expectations (participants are required to sign, date and return the Handbook Acknowledgment Signature Sheet), and consider giving applicants a pre-DEC test to validate their understanding.

Major Compliance Violations

The file reviews revealed the most common avoidable **MAJOR** violations were generated because participants failed to call the lab on a daily basis, missed a random drug test, or had a non-negative or positive drug test. It appears many participants have difficulty organizing their required daily and monthly tasks to comply with the program requirements. They reported posting notes all over the house so they would not forget to call the lab on a daily basis. However, they sometimes forgot and suffered the consequences.

Missed daily calls and/or missed tests result in immediate removal from work and at least an additional two urine drug screens. According to program policy, participants must pass two consecutive negative tests results before Maximus will allow them to return to work.

Recommendation

19. Maximus should modify the Program Handbook in the following ways:

- Add an index so applicants/participants can easily find needed information.
- Modify the drug testing information to include stronger language about the consequences of missing a call into the lab and missing a random drug test.
- Use **bold letters** or **highlight** the essential compliance information.
- Insert the Maximus Diversion Program Random Body Fluid letter into the Handbook and include additional information regarding caffeine and protein. For example: “Please be aware that any confirmed positive, dilute or out of range random body fluid testing (RBFT) may result in **immediate suspension of work privileges**.”

Tips to ensure test results fall within acceptable ranges include:

- Do not use any mind-altering substances.
- Test before 10:00 AM.
- Avoid the use of caffeine before testing, including coffee and caffeinated drinks like energy drinks and sodas.
- Limit fluid intake before the test.
- Consume some protein in the morning before the test, such as an egg or protein bar, plain yogurt with fruit and nuts, breakfast burrito with black beans and cheese, whole wheat bread with 2 tablespoons of peanut butter, etc.
- Avoid exercise before testing.”
- Include information about how participants can prove they followed the protocol at the collection site, such as taking a photo of the specimen, and/or post test data.
- Many participants with an upper respiratory infection unknowingly took over-the-counter (OTC) medications without thinking of the consequences of taking a banned substance. CCM’s suggest Mucinex **without** DM for coughs. Participants might also consider using home remedies such as hot tea and honey, saline gargles, humidifiers and ‘Nedi” pots with saline water for nasal cleansing rather than other OTC drugs than contain prohibited ingredients.
- Include information on ways to remember to call the lab, such as setting alarms and/or always calling at the same time every day.
- Suggest possible call reminder tools, including but not limited to: paper calendars, check lists, Google calendar or similar smart phone applications.

Minor Compliance Violations

The most common non-compliance letters with **MINOR** violations were for receipt of late reports including:

- Monthly Self Report (MSR) and specifically the first page;
- 12-Step attendance cards;
- Health/Nurse Support Group Facilitator attendance reports; and
- Work Site Monitor reports.

Participants have control over the submission of MSR and 12-Step cards and should be able to submit them timely if they are organized. MSRs were often returned without the first page causing participants to be non-compliant with the required submission time lines. The first page of the MSR has a bar code but participants do not have to complete any information on this page. Therefore, participants often don't think they need to submit this page.

The Handbook does not currently include information about returning the first page. However, it would be beneficial if there was a note in the Handbook indicating "it is necessary to return the first page with the entire report." The updated Max-CMS system will allow participants to enter their MSR on-line which should improve timely submission of the completed report.

While sometimes submitted late, PHCS found the templates for reporting Health/Nurse Support Group attendance and the WSM monitor report comply with Uniform Standards 5 and 7. Maximus often received the initial WSM information and attestations late due to various reasons. This caused a delay in return to work for participants. PHCS also found some monthly WSM reports were received late because they were not mailed timely, resulting in late receipt and a non-compliance letter for the participant.

The upgraded Max-CMS system will allow WSMs to complete and submit pertinent forms and monthly reports online, which will have the potential to improve document timeliness, reduce non-compliance for participants, and delays to return participants to work.

However, to have any control over the submission of these other reports, participants must proactively request on a regular basis that WSMs, treatment providers and nurse/health support group facilitators submit the reports timely. PHCS noted some participants called their CCM or CM to find out if the forms had been submitted timely.

A review of the Handbook revealed there is little information regarding how to avoid non-compliance letters for these issues.

Recommendations

20. Maximus should modify the Program Handbook in the following ways:

- Remind participants that multiple minor violations hinder progress in the program and that 100% compliance is expected before being allowed to move to the transition phase.
- Revise the MSR information on page 8 to indicate the first page of the MSR must be submitted with the rest of the report and include a notation regarding the same on the first page.
- Revise the WSM information on page 9 to advise participants to check with their WSM by the first of the month to ensure their report is submitted timely.
- Revise the Treatment Provider Progress Report information on page 7 to advise participants to check with their treatment provider by the first of each month to ensure their reports are submitted timely.
- Revise the Support Group Facilitator information on pages 7-8 to advise participants to check with their group leader by the first of each month to ensure their reports are submitted timely.
- Include reminder tools such as, but not limited to: paper calendars, check lists, Google calendar or similar smart phone applications.
- Suggest participants call or email the Maximus CM or CCM monthly to verify that all reports have been received in a timely manner.

21. Maximus should include the following information from the USFDA website in the Handbook:

- Mix medicines (do not crush tablets or capsules) with an unpalatable substance such as dirt, kitty litter, or used coffee grounds;
- Place the mixture in a container such as a sealed plastic bag;
- Throw the container in your household trash; and
- Scratch out all personal information on the prescription label of the empty pill bottle or packaging to make it unreadable, then dispose of the container.

Participants with Mental Health Issues

Participants with mental health issues need groups for support. The usual groups, such as Alcoholics Anonymous (AA), Al-Anon and Narcotics Anonymous (NA) and are helpful but not specific to mental health participants. Emotions Anonymous (EA) groups are not as readily available as AA-type groups. A review of DEC notes indicated participants with a mental illness appear to take longer in recovery.

The options for participants with mental illness seem to be limited. The DPM survey includes a comment from the BRN representative that improved care for participants with mental health issues is needed. California county governments offer Adult System of Care services which

typically include Mental Health Support Services and authorization for Medi-Cal Mental Health Services.

Recommendation

22. Maximus should consider advising participants to seek out Mental Health Services from their local county government Adult System of Care, when appropriate.

Drug Testing

The file review revealed there were 40 BRN participants with a history of drug diversions who entered the program during the audit period. Most of the drug diversion was done by removing drugs from a Pyxis automated medication dispensing system and/or removing discarded medications from the hazardous waste container. The Pyxis MedStation or Omnicell systems were implemented to decrease medication error and improve inventory control. Currently, most hospital pharmacies run a monthly reconciliation report to identify narcotic users by determining if anyone has an unusual narcotic dispensing practice. If someone is identified as a high user, the management team will conduct an internal audit. In previous years, narcotics were counted by one nurse from the off-going shift and one nurse from the oncoming shift so it was more difficult to divert drugs.

PHCS found one positive test for morphine that was later rescinded after Maximus requested an investigation by the FirstLab Medical Review Officer (MRO). Fortunately, the participant was not working at the time. This incident proved to be an example of how the Maximus test results notification process identified the issue early and resolved the concern with the assistance of the MRO without effecting the participant's progress in the program.

Recommendation

23. Maximus should contact the California Chapter of the American Organization of Nurse Executives and California Hospital Association to speak at a regional or state-wide meeting regarding the prevention and detection of nurses diverting drugs.

Uniform Standards

The 2011 Uniform Standards are comprehensive, highly prescriptive, administratively-intense, and provide excellent criteria and procedures for managing the DCA Diversion Program. However, some of the drug testing standards appear to be overly prescriptive which limit the effectiveness and efficiency of random drug testing, resulting in increased participant time and cost which may be viewed as punitive.

Specifically, Uniform Standard 4 stipulates the following testing frequencies:

- Level 1 in year 1: 52 to 104 times for the year
- Level 2 in years 2 through 5: 36 to 104 times per year

According to the Board's DPMs, the implementation of the high testing frequency requirements contained in the Uniform Standard has reduced the benefits and flexibility of random testing and increased the cost. As a result, some DPMs claim self-referrals into the program have almost stopped and participant levels have dropped by 18% from approximately 690 in 2010 to 585 in 2015.

Recommendation

24. The Board's should collectively consider identifying an acceptable, but less frequent, random testing schedule that would accomplish the goal and reduce participant cost and loss, then modify Uniform Standard 4 accordingly.

Board Review and DEC Meetings

As previously mentioned, the BOP, PAB and PTB hold periodic review meetings to discuss participant progress, transition and completion without the individual being present, while participants are present at the BRN, DBC, OMB and VMB DEC meetings. Board and DEC actions concerning participant treatment, testing, and petitions for modification and reinstatement are compliant with Uniform Standards 4, 6, 8, 9, 10, 11 and 12.

The audit work plan included visiting several Board Review and DEC meetings. However, due to participant confidentiality reasons, the auditors were able to attend only one Board Review Meeting without any participants. The auditors did not attend a Board meeting or a DEC meeting. However, through reading the Board meeting minutes, PHCS was left with the following perceptions:

- The participants who did not attend a DEC meeting, or see the Diversion Program Manager during their meeting, appear to lack a connection to the program and are more negative in their comments about the program.
- DEC participants, however, expressed gratitude to the DEC, CCM's and CM's for their guidance throughout the program, their assistance in helping changing their life, teaching organization skills and feeling better about themselves. Following are a sample of participant quotes taken from the meeting minutes:
 - "I am so grateful for this program, it saved my life;"
 - "I am living and enjoying today;"
 - "I am so grateful for this program. I had lost my way spiritually and now I'm back in my life;"
 - "I am so proud and happy...you have given me a new life;"
 - "She reports doing well despite having her house burn down. She is working and doing well."

- The participant “is doing very well. She is back at work and loves it. She has come a long way from the first 6 months of her program. She turned the corner and never looked back. She is very happy and grateful to the DEC and the Diversion Program.”

Additionally, Maximus program staff shared their feelings of satisfaction at hearing the participants tell their stories to the DEC meetings.

Recommendation

25. The non-DEC Board’s should consider evaluating the effectiveness of the participants’ non-attendance at Board review meetings, and consider ways to improve interpersonal interaction by Skype, Face Time or other forms of communication.

Health and Nurse Support Facilitated Groups

The audit work plan included visiting several health and nurse support facilitated groups. However, due to similar concerns about participant confidentiality, the auditors were unable to attend any groups. Instead, PHCS reviewed the CCM notes from their visits to the support groups.

During the file reviews, PHCS noted the support group facilitators helped participants understand the consequences of their failure to follow the program rules and how to deal with their addictions and other concerns. Only one participant asked for a different group leader and only one group leader asked to change a participant to another group.

The following table shows the evaluation ratings for six nurse and one health support group facilitators. The evaluation rating values are:

- Strongly disagree (1)
- Disagree (2)
- Neutral (3)
- Agree (4)
- Strongly agree (5)

As Table 12 indicates, attendees ranged from eight to 19 per session and evaluation ratings ranged from 3.9 to 5.0, with four of the facilitators earning perfect scores. The miscellaneous comments are generally positive, with two recommendations for a smaller group size.

Table 12: Nurse and Health Support Group Attendance and Facilitator Ratings

Group	NSGF #1	HS GF #2	NSGF #3	NSGF #4	NSGF #5	NSGF #6	NSGF #7
Location	Galt	Rancho Cucamonga	Folsom	Ranch Cucamonga	LA	Sacramento	Sacramento
Total Attendees	8	12	9	12	15 - 17	10	19
Diversion	2	NA	2	NA	NA	8	15
Probation	6	NA	8	NA	NA	2	3
	Rating	Rating	Rating	Rating	Rating	Rating	Rating
Location of group matches address on record	5	5	5	5	5	5	5
Location of group is easy to locate and access	5	5	5	5	4	4	4
Parking is available within 2 blocks	5	5	5	5	4	5	5
Location of group meets ADA standards	5	5	5	5	4	5	5
Location of group is clean and free from hazards	5	5	5	5	4	5	5
Group begins on time	5	5	5	5	4	5	5
New members are welcomed into group	5	5	5	5	3	5	5
Diversion Program standards are met	5	5	5	5	4	5	5
Sobriety and recovery are supported	5	5	5	5	4	5	5
Group members appear comfortable in speaking freely	5	5	5	5	4	5	5
Confidentiality is stressed	5	5	5	5	3	4	4
Group ends on time	5	5	5	5	4	5	5
Rating Average	5	5	5	5	3.9	4.8	4.8
Miscellaneous Comments							
HS GF group leader set appropriate boundaries.							
BOP applicant in HS GF was upset about diversion rules, but was re-directed.							
NSGF group leader set a supportive and approachable tone.							
NSGF was approachable warm and professional.							
A smaller group size is recommended for a NSGF. Disruptive activity happening in room with people							
A smaller group size is recommended for a NSGF. Need to consider another room for nurses who are working during the day.							

Source: Maximus

Policies and Procedures

PHCS also reviewed the Diversion Program policies and procedures. They are based on ISO principles and standards and provide detailed, step-by-step procedures. The policies and procedures are maintained in a current manner with frequent updates as changes occur.

As previously mentioned, PHCS discovered Maximus lacks a policy for deleting and retracting incorrect information from case logs and made recommendation 15 to correct this problem.

Maximus Educational and Outreach Presentations

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	Total	Average
Educational & Outreach Presentations	9	9	12	12	42	8.4

Source: Maximus Diversion Program Annual Reports

Maximus is contractually required to conduct community education. Over the term of the audit period, Maximus has been increasing the number of educational programs they present each fiscal year.

Maximus has developed an excellent PowerPoint presentation entitled, “The Health Professional with Substance Abuse Disorders,” and is giving the presentation to hospitals and other organizations.

Recommendation 22 specifies Maximus should contact appropriate California healthcare associations to make presentations concerning the prevention and detection of nurses diverting drugs.

Random Drug Testing Review

The following describes the Maximus contract with First Hospital Laboratories, Inc. (FirstLab), FirstLab subcontractors, FirstLab Quality Plan, customer satisfaction with FirstLab services, and the results of the random testing review.

Maximus Contract with FirstLab

FirstLab reports being in the drug and alcohol testing business for over a quarter century, serving approximately 2,500 clients, and averages over 800,000 medical services/tests per year. They also report having long term relationships with the majority of their clinics and collection sites.

Since 2010, Maximus has contracted with FirstLab as the third-party administrator for random body fluid testing and results reporting for the Diversion Program. Pursuant to the contract's Prime Contract Flow-Down provision, all work and/or deliverables produced and performed by the subcontractor (FirstLab) and its subcontractors (DrugScan and clinics/collection sites) shall be done in accordance with the Maximus prime contract.

Specifically, FirstLab is required to provide qualitative urine substance abuse testing for each participant. Specimen testing is to be performed by sub-contractor laboratories certified by the US Department of Health and Human Services (DHHS) and/or College of American Pathologists - Forensic Urine Drug Testing Program (CAPFUDT). All laboratories used to perform testing shall provide analytical services according to the protocols established by the US Department of Health and Human Services (DHHS) or to Maximus specifications on a per test fee basis.

The per test fees set forth in the 2010 contract escalates over time, covers the following services and allows for testing of additional drugs and panels upon client request for an extra cost:

- On-line Participant registration, Participant Tools and Case Manager Tools
- Create Random Testing Schedule Customized For Each Participant
- Web-Based Participant Login And Random Notification System and/or Toll Free Call-In Random Notification System
- Toll-Free Helpline
- Direct Participant Billing
- All Chain-of-Custody and Specimen Collection Supplies
- Collection Site Quality Assurance
- Overnight Delivery of Specimens to Lab
- Confirmation of All Positive Drug Screening Results
- Negative Results Available Within 24-48 Hours of Receipt of Specimens By Laboratory
- Positive Results Available Within 3-7 Business Days of Receipt of Specimens By Laboratory
- Internet Based Result Retrieval System

- Various Web-Based Program Management Reports
- Unlimited Telephone Consultation
- Administrative Services including Tracking of Test Results
- Dedicated Account Manager
- West Coast Customer Service Office

Required testing parameters include:

- FirstLab will provide for specimen collections within 50 miles of the participant's address or home of record, observed specimen collections performed by collectors of the same gender as the donor, and testing by alternative methods including expanded hair testing panels, oral fluid testing, blood and sweat.
- FirstLab will certify each collection site for use before permitting a participant to use it and will maintain an error correction log for each site.
- FirstLab subcontractors will test for drugs identified in, but not limited to "Description of Non-Regulated Testing Protocol" as directed by the Boards (see Appendix 4: FirstLab Drug Testing Panel). These panels are subject to change.
- The initial screen will be by immunoassay and gas chromatography/mass spectrometry (GC/MS).
- Presumptive positive results obtained on the initial screen will be confirmed by GC/MS or a more sensitive methodology with the exception of alcohol and Ethyl Glucuronide (EtG) positives. EtG testing is performed by liquid chromatography-tandem mass spectrometry/ mass spectrometry (LC-MS/MS).
- FirstLab will ensure all test results are legally defensible and will also have available a Medical Review Officer (MRO) to evaluate drug screen test results and to serve as an expert in this area upon the request of the participant or the DPM/DEC. In addition, FirstLab will provide access to industry experts and laboratory toxicologists to provide testimony at hearings or legal proceedings for an additional fee.

The contract includes the following drug testing critical service levels categories:

- **Drug Test Result Turnaround:** Negative screening results will be reported to Maximus within 2 business days of receipt of specimen by the lab 90% of the time. Non-negative results will be reported to Maximus within 4 business days of receipt of specimen by the lab 90% of the time. Compliance of this Service Level will be measured by reports generated by the FirstLab Account Manager and made available to Maximus after service is rendered.
- **New Participant Enrollment:** New participants in the program can be enrolled in the FirstLab program on-line immediately or receive start up package information by mail from FirstLab. FirstLab will have the participant enrolled (including the approval of their

chosen collection site) within 48 hours of receiving their enrollment and payment information via online communication or by return mail 95% of the time.

- **Collection site Selection and Approval:** When a participant needs a new collection site or requests the use of a collection site that does not already exist in FirstLab's data base, FirstLab will locate and approve a site within the State of California for usage within 24 hours 98% of the time.
- **Testing Accuracy:** Standard for accuracy in specimen testing is 100%.
- **Measurement and Evaluation:** The measurement of these Service Levels will be provided by FirstLab to Maximus based on the timely receipt of appropriate paperwork and documentation. The evaluation of these Service Levels will be done by the Maximus Vendor Manager in coordination with the Maximus Drug Program Manager.

FirstLab is also responsible for arranging, collecting directly from participants, processing, and accounting for all drug testing and all fees associated with drug testing. The BRN nor MAXIMUS will reimburse the FirstLab for any drug testing fees owed by participants.

Based on a review of the contract between Maximus and FirstLab and participants files, the program random drug testing process appears to meet the ASAM criteria and Uniform Standards 4, 8, 9 and 10.

FirstLab Subcontractors

FirstLab reports contracting with DrugScan, Inc. for over 20 years to provide analytical laboratory services for approximately 13,000 clinics and collection sites throughout the United States that are FirstLab subcontractors. There are about 900 sites in California and 689 for the Diversion Program.

Initially, FirstLab vets each collection site is through a phone interview which covers the Program collection policies and procedural requirements. Once the phone interview is completed and the site is willing to follow the requirements, FirstLab sends each clinic/collection site a client specific operating protocol/questionnaire. Once the protocol is satisfactorily completed and the site agrees to the terms, they are added to the client's approved collection site list in the FirstLab system.

FirstLab reports the collection site listing/directory is current, maintained and updated in real time. This is imperative because all FirstLab divisions use this information. Account Managers interface with the many clinics/collection sites and clients each day. During this interaction, data are validated and updated when required. The Provider Contracting Team, a dedicated unit that maintains, develops and negotiates with clinics and collectors, also provides oversight. In addition, as a condition of the Maximus contract, FirstLab conducts an annual audit of all assigned California clinics and collection sites.

FirstLab Quality Plan

The following briefly describes the FirstLab Quality Plan and explains how it monitors ongoing contractual compliance of DrugScan and the hundreds of clinics and collections sites used.

- FirstLab reports using only laboratories that are DHHS, SAMHSA (formerly NIDA) and/or CAP certified. This means the labs are physically inspected several times a year and their policies and procedures are subject to approval by those agencies. In addition, these labs receive blind proficiency specimens that are known negatives or non-negatives and they must perform with 100% accuracy or risk losing their certification. FirstLab reports being partially reliant on the clinic/collector's contractual obligations as well as state and federal certifications required to operate.
- FirstLab ensures specimen collection is observed by the same gender in the following manner: The FirstChoice provider database indicates those locations that do observed collections and for what gender, along with gender availability. When setting a participant up with a collection site, the participant is encouraged to call and verify availability of gender observation for when they anticipate being at the site. If there should be any issue when at the site either the participant or the collector will call FirstLab for instructions. FirstLab then takes appropriate steps to accommodate the Participant.

In addition, the Account Manager receives automated alerts daily of any collections that were not marked as directly observed by the collector. The Account Manager conducts research on every result not marked as observed to determine whether the result was truly not observed or whether the collector simply neglected to check the "observed" box on the CCF. Then, the Account Manager updates the comments in the CaseNotes application to indicate the true observed status of the result, for the benefit of the Maximus Case Manager.

- FirstLab reports verifying the initial screen for all drugs is conducted by immunoassay technique in the following manner: All HealthCare Professional panels from Maximus are built into the LIS (Laboratory Information System) to create an initial screening aliquot (sample of a total amount of liquid). The order code directs the sample to the immunoassay screening instrument. This is an automated process that is followed, reviewed and certified by trained and experienced scientists. Part of the review and certification process is to ensure all testing protocols and quality assurance procedures are followed from initial accessioning through reporting.
- FirstLab reports verifying presumptive positive results are confirmed by gas chromatography/mass spectrometry (GC/MS) in the following manner: Every presumptive positive screen is automatically reflexed by the LIS to the corresponding mass spectrometry confirmation method for the respective presumptive positive analytes. This is an automated process that is followed and reviewed and certified by trained and

experienced scientists. Part of the review and certification process is to ensure all testing protocols and quality assurance procedures are followed from initial accessioning through reporting.

- FirstLab reports verifying EtG testing is based on Maximus requests built into the LIS to create an aliquot that is directed by the order code to an LC-MS/MS method. This is an automated process that is followed and reviewed and certified by trained and experienced scientists. Part of the review and certification process is to ensure all testing protocols and quality assurance procedures are followed from initial accessioning through reporting.
- FirstLab reports lab contractor staff are trained in each NIDA/US DOT standard operating procedure they are required to perform and a training record is maintained. Training in accordance with regulatory requirements including SAMHSA (formerly NIDA) which includes an initial, six-month and yearly recertification.

In addition, the DrugScan Quality Assurance Department performs rotating monthly audits on all test systems which includes the “tracer” technique that follows samples from accessioning through reporting. This process involves observation of individual performance and review of training records to ensure all documentation and procedures within the scope of an individual’s job description are up to date and compliant.

- FirstLab reports using the following the procedure to correct the actions of significant or repeated contractor violation of NIDA/DOT standards:
 - 1) Any critical errors identified at the lab are discussed with the Certifying Scientist and/or reported to the appropriate certifying organization for additional follow up, (SAMHSA etc.).
 - 2) Any ongoing critical errors identified at the collection site are handled in accordance with all applicable regulatory requirements (DOT SAMHSA, CA DOH etc.). The site would also be removed from the FirstLab FirstChoice network and replaced with a compliant organization. Due to the volume of testing conducted, FirstLab reports constantly monitoring the quality of collection services on behalf of all our clients to ensure a high quality product.
 - 3) In addition, FirstLab has quality review standards that couple both the lab and collection site output in the following manner:

When FirstLab receives negative results and before reporting to the client, the Account Manager or Assistant Account Manager performs an administrative review on a sampling of negative results to ensure both the electronic result and the laboratory hard copy results are consistent with the test panels that have been signed off by the lab, the client and FirstLab. The results are also checked to make sure they are consistent with each other.

For positive results, the Account Manager or Assistant Account Manager again performs an administrative review on 100% of all positive results to ensure both the electronic result and the laboratory hard copy results are consistent with the test panels that have been signed off by the lab, the client and FirstLab. The results are also checked to make sure they are consistent with each other. If any discrepancies are found, the Account Manager will immediately notify the lab and begin corrective action.

FirstLab also reports that when it has chosen to discontinue the use of a clinic or collection site for quality or other issues that did not meet the expected level of services, it is important to note they were not in violation of applicable regulatory requirements. FirstLab indicated it has never reported a lab for not meeting standards.

Although the auditor was unable to field test the above FirstLab assertions, it is evident that between FirstLab and Maximus, there are sufficient controls in place to ensure the effectiveness and efficiency of program substance abuse testing.

Customer Satisfaction with FirstLab Services

In terms of this audit, customer satisfaction refers to the contentment of program participants and Maximus with FirstLab services.

For the most part, FirstLab does not interact with participants, so it must rely on collection site customer service to ensure program participants are treated courteously and respectfully by lab contractors. To monitor customer service practices, FirstLab reports that constant communication with customers is their key focus. This communication comes from the following sources:

- Participants who provide both positive and negative feedback.
- Day-to-day interaction with their Account Managers.
- Interaction with the Finance Department to facilitate payment for services.
- Interaction with the Provider Contracting Team.

FirstLab reports any issues are dealt with swiftly and definitively. Notes as to any issues are placed directly into the Provider database and the issue is reported to Provider Contracting. Any significant issue is reported to the Executive Vice President & CAO whose staff contacts the clinic/collection site. If the issue cannot be reasonably explained, the site will be deactivated for all FirstLab clients. If the issue can be reasonably explained, FirstLab notes the instance. If there is a second instance, the site will be deactivated.

From the perspective of Maximus, there is sufficient evidence the terms and conditions specified in the Maximus contract are being met. The monthly Maximus scorecard reports the results of critical services levels, service level requirements, monthly performance tracking and the

attainment of key performance indicators. The following table 13 summarizes the Maximus scorecard through December 2015.

Table 13: Maximus Scorecard Summary through December 2015

Critical Service Levels	Service Level Requirements	Monthly Performance Tracking	9-month Avg.
Drug Test Turnaround	Negative results reported within 2 business days of receipt by lab- 90% of the time	Negative results threshold achieved except for mass test days. For mass test days, FirstLab will work with lab to add staff	99.03%
	Non-negative results reported within 4 business days of receipt by lab – 90% of the time	Non-negative threshold achieved	98.97%
New Participant Enrollment	New participants enrolled within 2 business days of receiving information – 95% of the time	Thresholds achieved	100.00%
	FirstLab will locate and approve a travel site within 24 hours – 98% of the time	In-state travel collection sites within 24 hours	100.00%
		Out-of-state travel collections sites within 24 hours	100.00%
Testing Accuracy	Standard for specimen testing is 100%	DrugScan & FirstLab QA procedure ensures 100% accuracy	99.99%
		Incorrect Date	3.2
		Incorrect Substance	0
		Incorrect Participant	0.25
		Incorrect Value	0
		Other	0.11
FL Daily Result Reports		Low C results not reported	2.00
		Results reported late (10 mins or more)	1.10
		Result status not changed before reporting	0.38
Specimens Lost in Transit			0.38
Collection Site Errors		Cancelled at lab due to site error	0
		Urine	1.78
		Hair	0
		Phosphatidylethano (Peth)	0.38
Key Performance Indicators	Service Level Requirements	Notes	
Process Time	95% of time participants will be seen in less than 1 hour		
Participant/Maximus Satisfaction	Overall average rating of neutral or better		
Quality Adherence	100% adherence to Maximus quality standards	FirstLab policy is zero exceptions. Any exceptions are promptly reported to Maximus.	
Customer Service Inquiries	90% of time inquiries are responded to on same day	Agreed. Same day response subject to after business hours calls.	
Error Resolution	Resolution or plan for same to Maximus within 7 days	Agreed.	

Notification/Consultation Adherence	Respond to Maximus request with MRO within 24 hours	Agreed.	
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Source: Maximus

Random Drug Testing Results

CPS reviewed a statistically-valid random sample of 114 participant drug testing files on the FirstLab website for compliance with applicable Uniform Standards. The drug test files include the participant name, license number, organization, test start and end dates, testing frequency, whether observed and current status. CPS found all but four participants in the files. After further review, it was determined the four omitted participants all withdrew or declined to join the program and did not register with FirstLab.

Recommendation

26. The Maximus Quality Analyst should periodically audit the FirstLab website files to ensure all program participants being drug tested are included in the database.

Program Effectiveness Reporting

Uniform Standard 16 concerns the use of measurable criteria and standards to determine whether each Board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting them in recovering from substance abuse in the long term. Each Board is required to report specific information on a yearly basis to the DCA and the Legislature as it relates to licensees with substance abuse problems who are either in the Diversion Program or on Board probation. If the data indicates licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success that information shall be taken into account when determining program success. The data may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation. The following indicates the PHSC observations, findings and recommendation for these specific reporting items.

Number of Intakes

Maximus tracks program intakes on a monthly basis and prepares an annual report for stakeholders. The information is tracked for all Boards by county and includes applicant interviews and acceptance into the program. The intake report is confusing because the monthly statistics are based on actual intakes but the year-to-date total is based on Maximus' July 1 - June 30 schedule.

Recommendation

27. Maximus should revise the intake report accordingly to eliminate the confusion between monthly and year-to-date reporting.

Number of Probationers

Maximus tracks the number of probation referrals whose conduct was related to a substance abuse problem on a monthly basis and prepares an annual report for stakeholders.

Number of Referrals to Treatment Programs

There was no evidence of Maximus tracking referrals to treatment programs but Maximus indicated the program will start tracking this indicator in 2016.

Number of Relapses (break in sobriety)

Maximus tracks relapse rates and relapse substance on a monthly basis. PHCS contractors found consistent documentation in the case logs when there was an identified relapse. The annual report summary shows the length of time from intake to relapse and indicates most relapses take place during the first year of enrollment.

Number of Cease Practice Orders/License In-activations

According to Maximus, this is a Board function and not the responsibility of Maximus.

Number of Suspensions

According to Maximus, this is a Board function and a formal process that is not the responsibility of Maximus.

Number Terminated for Noncompliance

Maximus tracks this data on a monthly basis and prepares an annual report for stakeholders.

Number of Successful Completions based on Uniform Standards

Maximus tracks this data on a monthly basis and prepares an annual report for stakeholders.

Number of Major Violations, Nature of Violation and Action Taken

For each participant, Maximus documents each violation and actions taken in the case logs but does not summarize them in the annual report.

Recommendation

28. Maximus should consider tracking and trending major violations and actions taken, and report this information in the annual report.

Number of Licensees Successfully Returned to Practice

Maximus documents each participant's return to practice and follows their progress on an ongoing basis until completion of the program. They do not include this information in the annual report.

Recommendation

29. Maximus should consider tracking and trending successful returns to work on a monthly and annual basis, and report this information in the annual report.

Number of Patients Harmed while in the Program

Maximus reports participants have not harmed any patients while in the program. In addition, the Boards are required to use the following criteria to determine if the program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100% of licensees who either entered the program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75% of licensees who successfully completed the program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Regarding the first criterion, the PHCS review of 103 cases indicates 100% of the licensees/participants were all closed for the appropriate reasons and all documentation explained in detail the end status for each participant. Maximus tracks the information on a monthly basis and includes it in the annual report as well.

According to Maximus, the implementation of the second criterion is a Board responsibility and Maximus lacks access to this information after participants have completed the program. B&P code section 156.1 specifies a Board shall retain all participant records for treatment and rehabilitation services for three years from the date of the last treatment or services rendered, or until review for audit by the department. After that time period the documents may be purged. Purging the documents after three years eliminates the ability to measure long range participant outcomes.

Recommendation

30. Participating Boards should attempt to monitor long range participant outcomes after program completion.

Planned Technical Improvements

Hallmark technical features of the Maximus Diversion Program effectiveness and efficiency include, but are not limited to, implementation and application of ISO 9001:3015 standards and processes; use of a Client tracking matrix, Max-CMS and ITG Quality Assurance systems; and a mostly paperless environment.

During the course of the audit, the auditors learned Maximus plans to deploy in 2016 a variety of technical improvements that will address some Treatment Provider obstacles and a number of recommendations to improve program effectiveness and efficiency. All parties to the Diversion Program will benefit. These updated technical improvements include, but are not limited to, the following:

Improvements for Staff

- Increased efficiency for program staff through one login instead of multiple logins, improved navigation, and reduced data entry time.
- The licensee profile will be streamlined and will enable a participant image to be uploaded into the Max-CMS.
- The case log will be organized to include all notes instead of selective information.
- The applicant intake form will be consolidated into one long form with numbered questions that is auto saved instead of eight separate pages that needed to be saved individually. Users will also be able to add or change questions as needed.
- Staff will be able to add/change or delete recovery agreement terms on the fly and an electronic signature will be allowed.
- Scheduling for Maximus operations and administrative staff will be easier and faster. Staff will be able to drag and drop appointments instead of having to cancel old appointments before entering new appointments.

Improvements for Participants

- Participants will be able upload 12-step attendance cards and self-reports instead of faxing or mailing these documents.
- They will also be able to print the intake packet, reports, and the return to work packet. Once data are entered, the Max-CMS will notify the appropriate program staff electronically.
- These improvements should: eliminate paper and lost documents, and reduce mail handling, postage costs, and non-compliance-related tasks and consequences.

Improvements for Treatment Providers

- Treatment Providers will have their own portal.
- Clinical Assessors will be able to enter assessments online instead of submitting manual reports.
- HSG/NSG facilitators and WSMs will be able enter or upload monthly reports.

Improvements for Board staff and DEC Members

- Board staff and DEC members will have 24/7 access to all participant and program information. This will reduce time sorting and reviewing records, transit time waiting for hardcopy information, and printing time, materials and other related costs.

Appendix 1: Diversion Program Business & Professional Code Sections

The following is a partial listing of the enabling Diversion Program statutes within the California Business and Professions Code.

CHAPTER 4. Dentistry [1600 - 1976] (Chapter 4 added by Stats. 1937, Ch. 415.)

ARTICLE 4.7. Diversion Program [1695 - 1699] (Article 4.7 added by Stats. 1982, Ch. 1261, Sec. 1.)

1695.

It is the intent of the Legislature that the Board of Dental Examiners of California seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Board of Dental Examiners of California shall implement this legislation in part by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions. *(Added by Stats. 1982, Ch. 1261, Sec. 1.)*

1695.1.

As used in this article:

- (a) "Board" means the Board of Dental Examiners of California.
- (b) "Committee" means a diversion evaluation committee created by this article.
- (c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(Amended by Stats. 2008, Ch. 548, Sec. 4. Effective January 1, 2009.)

1695.2.

One or more diversion evaluation committees is hereby created in the state to be established by the board. The board shall establish criteria for the selection of the committee. No board member shall serve on any committee.

(Added by Stats. 1982, Ch. 1261, Sec. 1.)

1695.3.

Each member of a committee shall receive per diem and expenses as provided in Section 103.

(Added by Stats. 1982, Ch. 1261, Sec. 1.)

ARTICLE 15. Osteopathic Physician and Surgeon Diversion Evaluation Committee [2360 - 2370] (Article 15 added by Stats. 1988, Ch. 384, Sec. 1.)

2360.

It is the intent of the Legislature that the Osteopathic Medical Board of California seek ways and means to identify and rehabilitate osteopathic physicians and surgeons whose competency may be impaired due to abuse of dangerous drugs and alcohol, so that osteopathic physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Osteopathic Medical Board of California shall implement this legislation by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

(Amended by Stats. 1991, Ch. 359, Sec. 12.)

2361.

As used in this article:

- (a) “Board” means the Osteopathic Medical Board of California.
- (b) “Diversion program” means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.
- (c) “Committee” means a diversion evaluation committee created by this article.
- (d) “Participant” means a California-licensed osteopathic physician and surgeon.
- (e) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(Amended by Stats. 2009, Ch. 140, Sec. 9. Effective January 1, 2010.)

2362.

One or more diversion evaluation committees are hereby created in the state to be established by the board. The board shall establish criteria and appoint the members of the committee pursuant thereto.
(Added by Stats. 1988, Ch. 384, Sec. 1.)

2363.

Each member of the committee shall receive per diem and expenses as provided in Section 103.
(Added by Stats. 1988, Ch. 384, Sec. 1.)

CHAPTER 5.7. Physical Therapy [2600 - 2696] (Chapter 5.7 added by Stats. 1953, Ch. 1826.)

ARTICLE 7. Substance Abuse Rehabilitation Program [2662 - 2669] *(Heading of Article 7 renumbered from Article 5.5 by Stats. 2013, Ch. 389, Sec. 62.)*

2662.

It is the intent of the Legislature that the board shall seek ways and means to identify and rehabilitate physical therapists and physical therapist assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of physical therapy in a manner which will not endanger the public health and safety.
(Amended by Stats. 1996, Ch. 829, Sec. 52. Effective January 1, 1997.)

2663.

The board shall establish and administer a substance abuse rehabilitation program, hereafter referred to as the rehabilitation program, for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more rehabilitation evaluation committees to assist it in carrying out its duties under this article. Any rehabilitation evaluation committee established by the board shall operate under the direction of the rehabilitation program manager, as designated by the executive officer of the board. The program manager has the primary responsibility to review and evaluate recommendations of the committee. *(Amended by Stats. 2013, Ch. 389, Sec. 63. Effective January 1, 2014.)*

2664.

(a) Any rehabilitation evaluation committee established by the board shall have at least three members. In making appointments to a rehabilitation evaluation committee, the board shall consider the appointment of persons who are either recovering from substance abuse and have been free from substance abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The board also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a rehabilitation evaluation committee shall be by the affirmative vote of a majority of members appointed to the board. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion, the board may stagger the terms of the initial members so appointed.

(c) A majority of the members of a rehabilitation evaluation committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each rehabilitation evaluation committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), relating to public meetings, a rehabilitation evaluation committee may convene in closed session to consider matters relating to any physical therapist or physical therapist assistant applying for or participating in a rehabilitation program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A rehabilitation evaluation committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a rehabilitation evaluation committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

CHAPTER 6. Nursing [2700 - 2838.4] (Chapter 6 repealed and added by Stats. 1939, Ch. 807.)

ARTICLE 3.1. Diversion Program [2770 - 2770.14] (Article 3.1 added by Stats. 1984, Ch. 865, Sec. 1.)
2770.

It is the intent of the Legislature that the Board of Registered Nursing seek ways and means to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness so that registered nurses so afflicted may be rehabilitated and returned to the practice of nursing in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Board of Registered Nursing shall implement this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions. *(Added by Stats. 1984, Ch. 865, Sec. 1.)*

2770.1.

As used in this article:

- (a) "Board" means the Board of Registered Nursing.
- (b) "Committee" means a diversion evaluation committee created by this article.
- (c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(Amended by Stats. 2008, Ch. 548, Sec. 17. Effective January 1, 2009.)

2770.2.

One or more diversion evaluation committees is hereby created in the state to be established by the board. Each committee shall be composed of five persons appointed by the board. No board member shall serve on any committee.

Each committee shall have the following composition:

- (a) Three registered nurses, holding active California licenses, who have demonstrated expertise in the field of chemical dependency or psychiatric nursing.
- (b) One physician, holding an active California license, who specializes in the diagnosis and treatment of addictive diseases or mental illness.

(c) One public member who is knowledgeable in the field of chemical dependency or mental illness.

It shall require a majority vote of the board to appoint a person to a committee. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion the board may stagger the terms of the initial members appointed. *(Amended by Stats. 1999, Ch. 655, Sec. 36. Effective January 1, 2000.)*

2770.3.

Each member of a committee shall receive per diem and expenses as provided in Section 103. *(Added by Stats. 1984, Ch. 865, Sec. 1.)*

2770.4.

Three members of a committee shall constitute a quorum for the transaction of business at any meeting. Any action requires a majority vote of the committee.

CHAPTER 7.7. Physician Assistants [3500 - 3546] (Heading of Chapter 7.7 amended by Stats. 1992, Ch. 427, Sec. 5.)

ARTICLE 6.5. Diversion of Impaired Physician Assistants [3534 - 3534.10] (Article 6.5 added by Stats. 1988, Ch. 385, Sec. 2.)

3534.

It is the intent of the Legislature that the board shall seek ways and means to identify and rehabilitate physician assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

(Amended by Stats. 2012, Ch. 332, Sec. 66. Effective January 1, 2013.)

3534.1.

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

(Amended by Stats. 2012, Ch. 332, Sec. 67. Effective January 1, 2013.)

3534.2.

(a) Any committee established by the board shall have at least three members. In making appointments to a committee the board shall consider the appointments of persons who are either recovering of substance abuse and have been free from abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The board also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a committee shall be by the affirmative vote of a majority of members appointed to the board. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion, the board may stagger the terms of the initial members so appointed.

(c) A majority of the members of a committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of

Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider matters relating to any physician assistant applying for or participating in a diversion program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

(Amended by Stats. 2012, Ch. 332, Sec. 68. Effective January 1, 2013.)

CHAPTER 9. Pharmacy [4000 - 4426] (Chapter 9 repealed and added by Stats. 1996, Ch. 890, Sec. 3.)

ARTICLE 21. Pharmacists Recovery Program [4360 - 4373] (Article 21 added by Stats. 1996, Ch. 890, Sec. 3.)

4360.

The board shall operate a pharmacist's recovery program to rehabilitate pharmacists and intern pharmacists whose competency may be impaired due to abuse of alcohol, drug use, or mental illness. The intent of the pharmacists' recovery program is to return these pharmacists and intern pharmacists to the practice of pharmacy in a manner that will not endanger the public health and safety. *(Amended by Stats. 2005, Ch. 621, Sec. 63. Effective January 1, 2006.)*

4361.

(a) "Participant" means a pharmacist or intern pharmacist who has entered the pharmacists' recovery program.

(b) "Pharmacists recovery program" means the rehabilitation program created by this article for pharmacists and intern pharmacists. *(Repealed and added by Stats. 2005, Ch. 621, Sec. 65. Effective January 1, 2006.)*

4362.

(a) A pharmacist or intern pharmacist may enter the pharmacists recovery program if:

(1) The pharmacist or intern pharmacist is referred by the board instead of, or in addition to, other means of disciplinary action.

(2) The pharmacist or intern pharmacist voluntarily elects to enter the pharmacists' recovery program.

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

(Repealed and added by Stats. 2005, Ch. 621, Sec. 67. Effective January 1, 2006.)

4364.

(a) The board shall establish criteria for the participation of pharmacists and intern pharmacists in the pharmacists' recovery program.

(b) The board may deny a pharmacist or intern pharmacist who fails to meet the criteria for participation entry into the pharmacists' recovery program.

(c) The establishment of criteria for participation in the pharmacists recovery program shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. *(Amended by Stats. 2005, Ch. 621, Sec. 69. Effective January 1, 2006.)*

4365.

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

(Amended by Stats. 2005, Ch. 621, Sec. 70. Effective January 1, 2006.)

CHAPTER 11. Veterinary Medicine [4800 - 4917] (Chapter 11 repealed and added by Stats. 1937, Ch. 933.)

ARTICLE 3.5. Diversion Evaluation Committees [4860 - 4873] (Article 3.5 added by Stats. 1982, Ch. 870, Sec. 1.)

4860.

It is the intent of the Legislature that the Veterinary Medical Board seek ways and means to identify and rehabilitate veterinarians and registered veterinary technicians with impairment due to abuse of dangerous drugs or alcohol, affecting competency so that veterinarians and registered veterinary technicians so afflicted may be treated and returned to the practice of veterinary medicine in a manner that will not endanger the public health and safety. *(Amended by Stats. 1995, Ch. 60, Sec. 35. Effective July 6, 1995.)*

4861.

One or more diversion evaluation committees is hereby authorized to be established by the board. Each diversion evaluation committee shall be composed of five persons appointed by the board.

Each diversion evaluation committee shall have the following composition:

(a) Three veterinarians licensed under this chapter. The board in making its appointments shall give consideration to recommendations of veterinary associations and local veterinary societies and shall consider, among others, where appropriate, the appointment of veterinarians who have recovered from impairment or who have knowledge and expertise in the management of impairment.

(b) Two public members.

Each person appointed to a diversion evaluation committee shall have experience or knowledge in the evaluation or management of persons who are impaired due to alcohol or drug abuse.

It shall require the majority vote of the board to appoint a person to a diversion evaluation committee. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion the board may stagger the terms of the initial members appointed.

The board may appoint a program director and other personnel as necessary to carry out provisions of this article.

(Added by Stats. 1982, Ch. 870, Sec. 1.)

4862.

Each member of a diversion evaluation committee shall receive per diem and expenses as provided in Section 103.

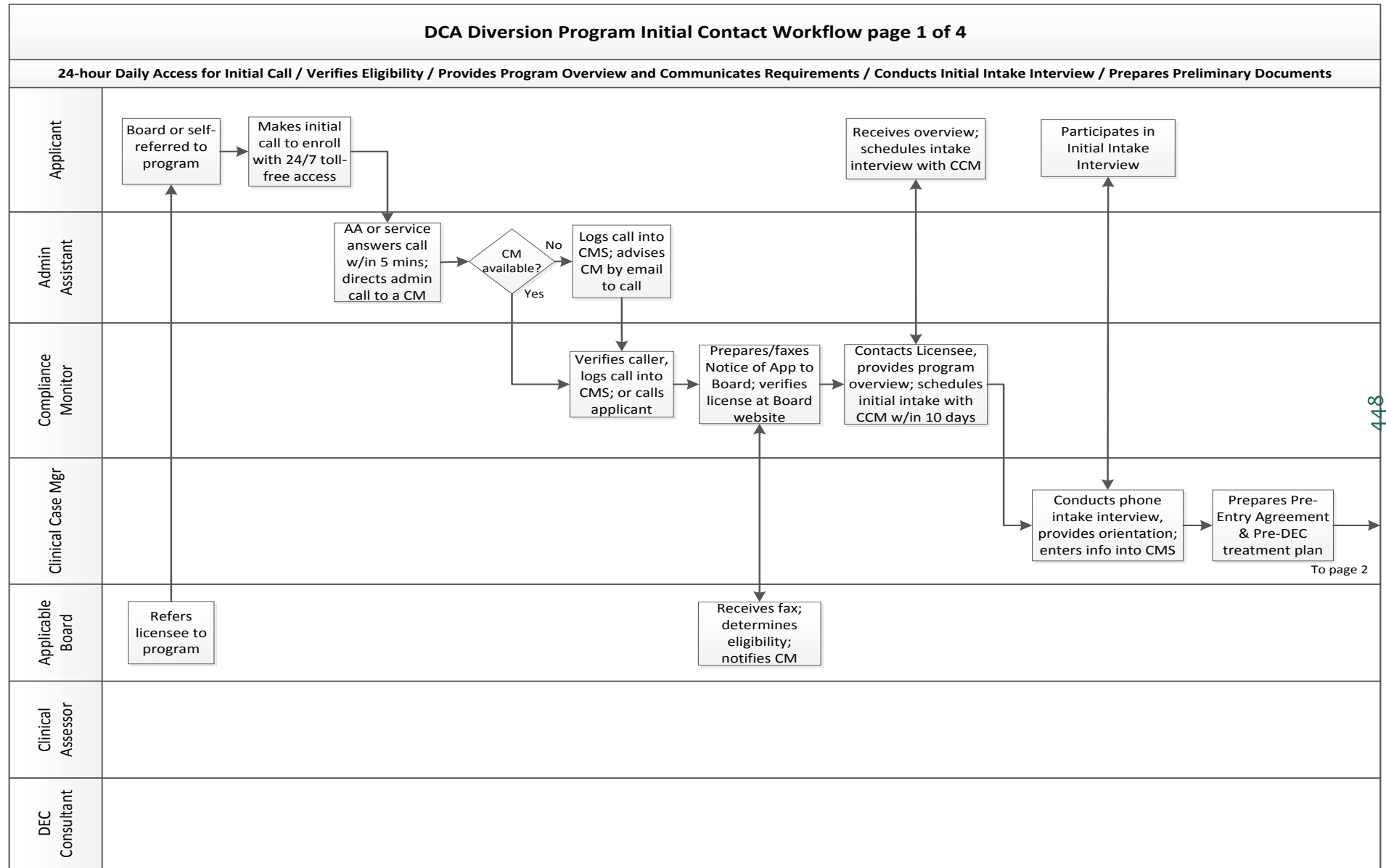
(Added by Stats. 1982, Ch. 870, Sec. 1.)

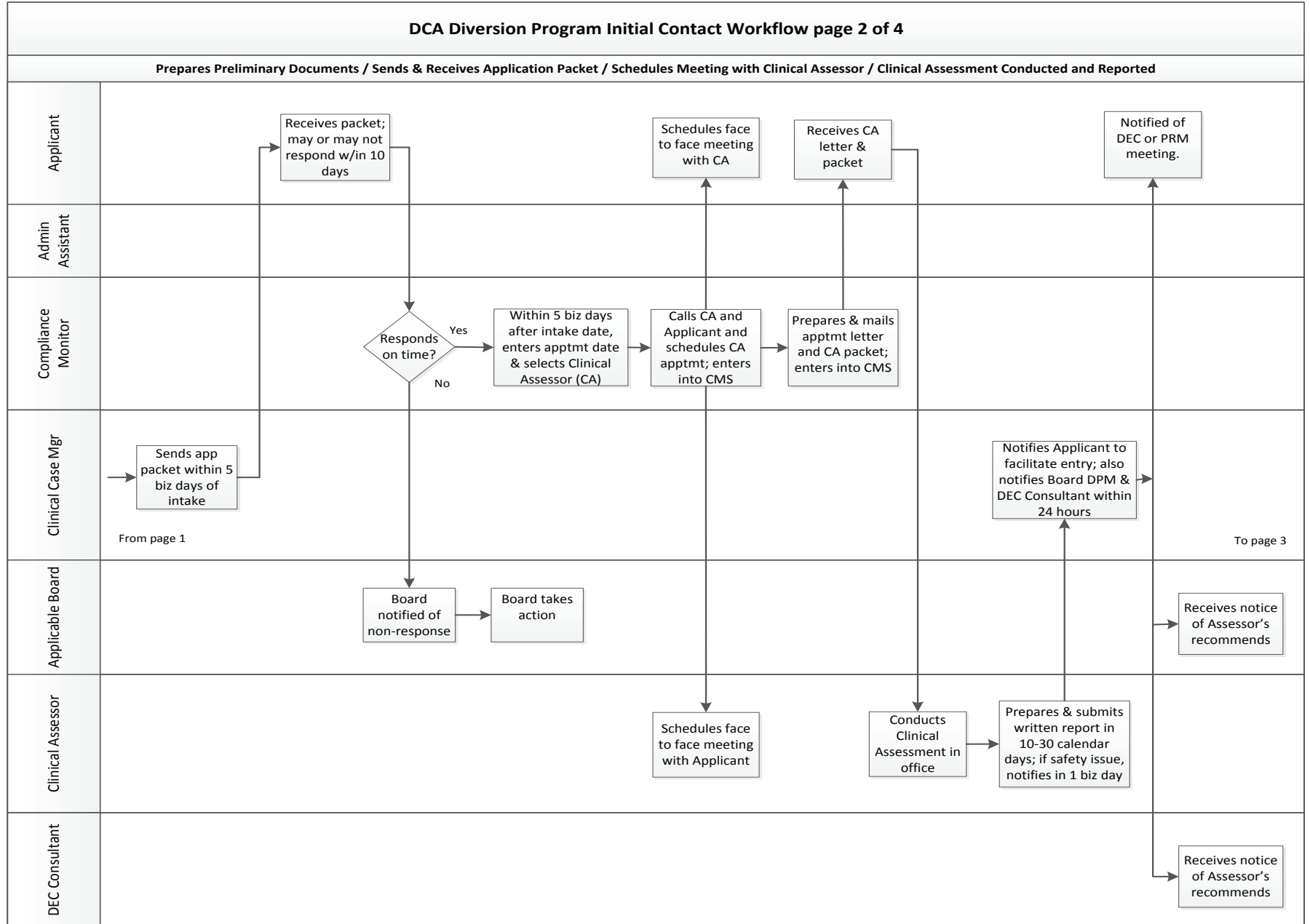
4863.

Three members of a diversion evaluation committee shall constitute a quorum for the transaction of business at any meeting. Any action requires the majority vote of the diversion evaluation committee.

(Added by Stats. 1982, Ch. 870, Sec. 1.)

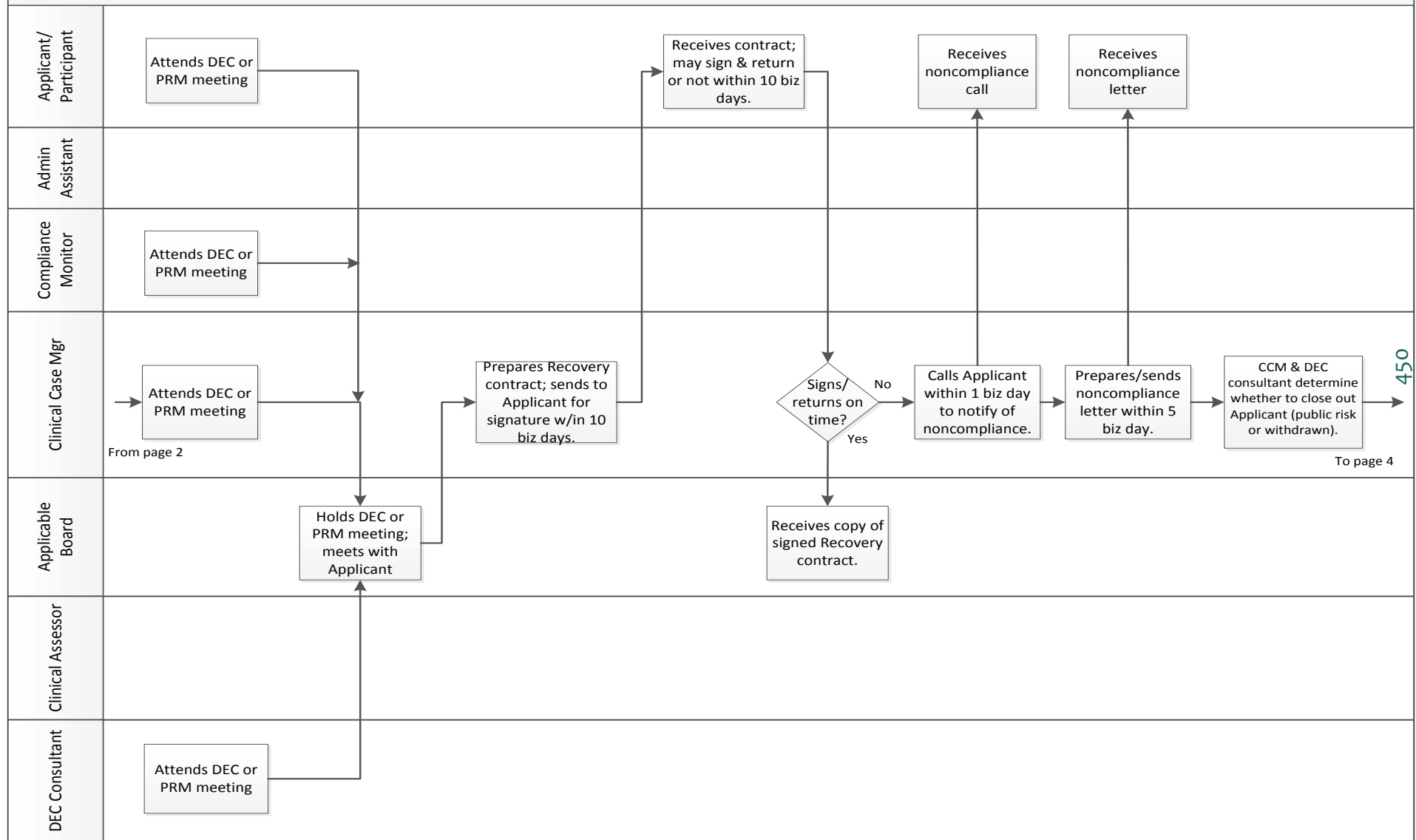
Appendix 2: High Level Flowchart of Initial Participant Contact





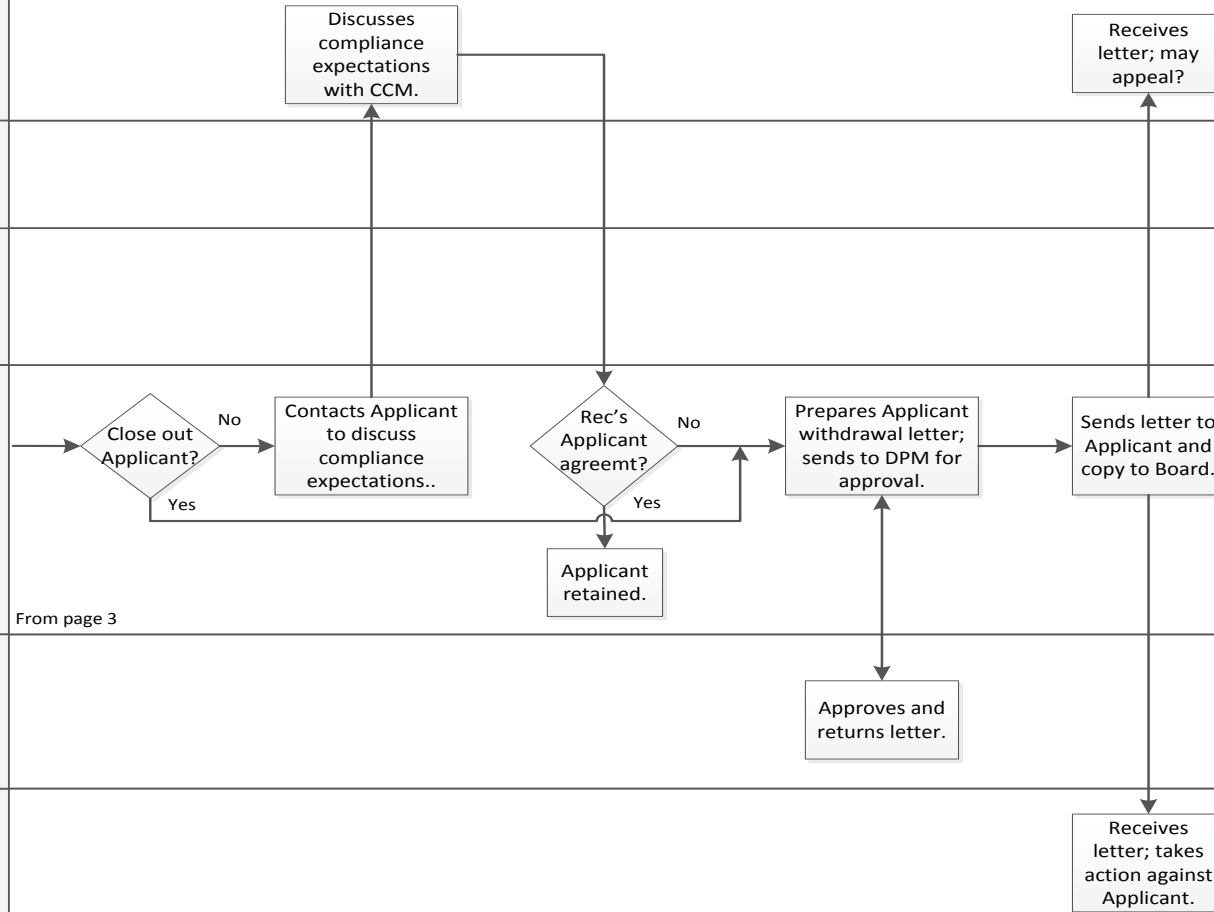
DCA Diversion Program Initial Contact Workflow page 3 of 4

Hold DEC or PRM Meeting / Recovery Contract Developed and Signed or Not / Make Noncompliance Call and Send Noncompliance Letter



DCA Diversion Program Initial Contact Workflow page 4 of 4

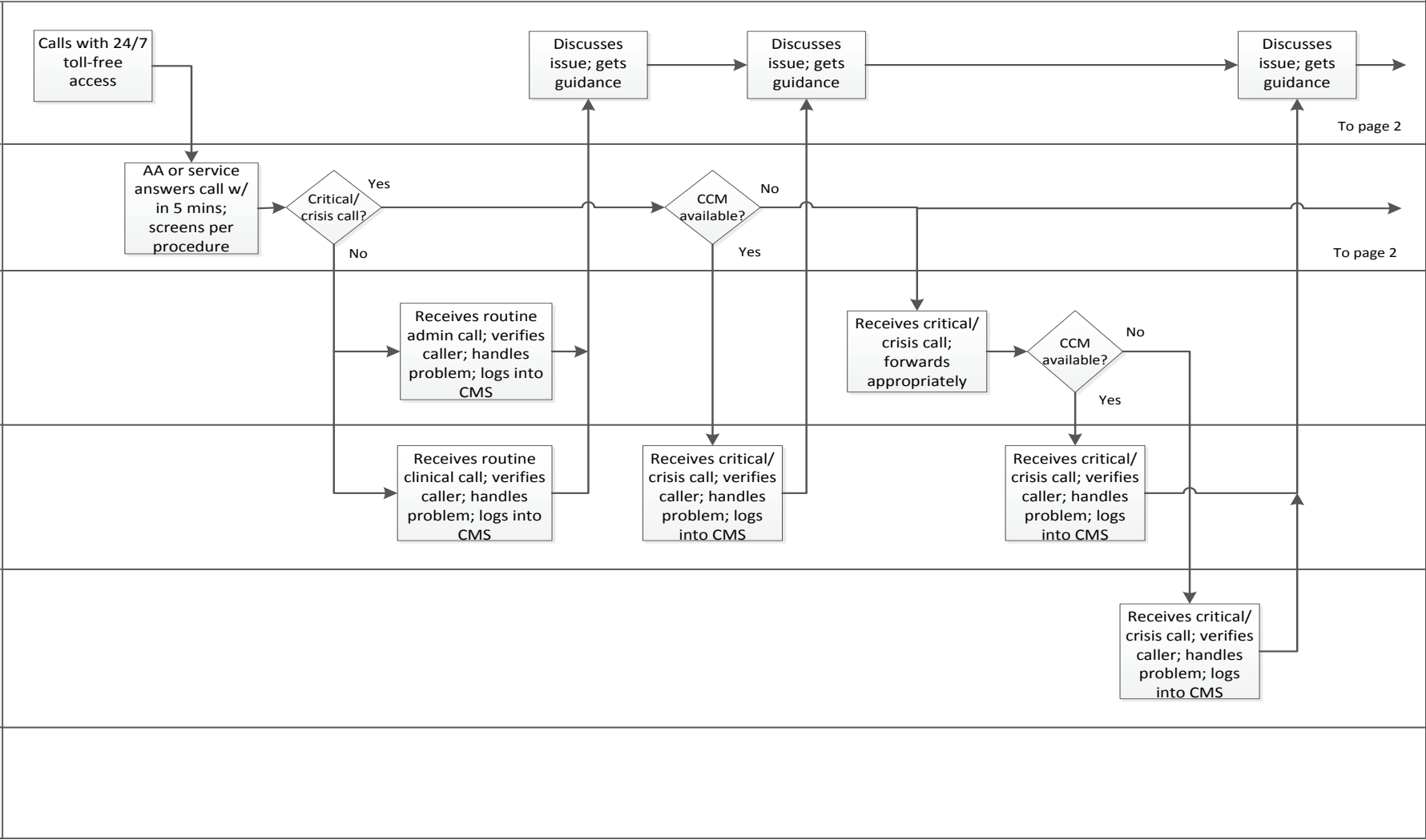
Close Out or Retain Applicant



Appendix 3: High Level Flowchart of Recurring Program Tasks

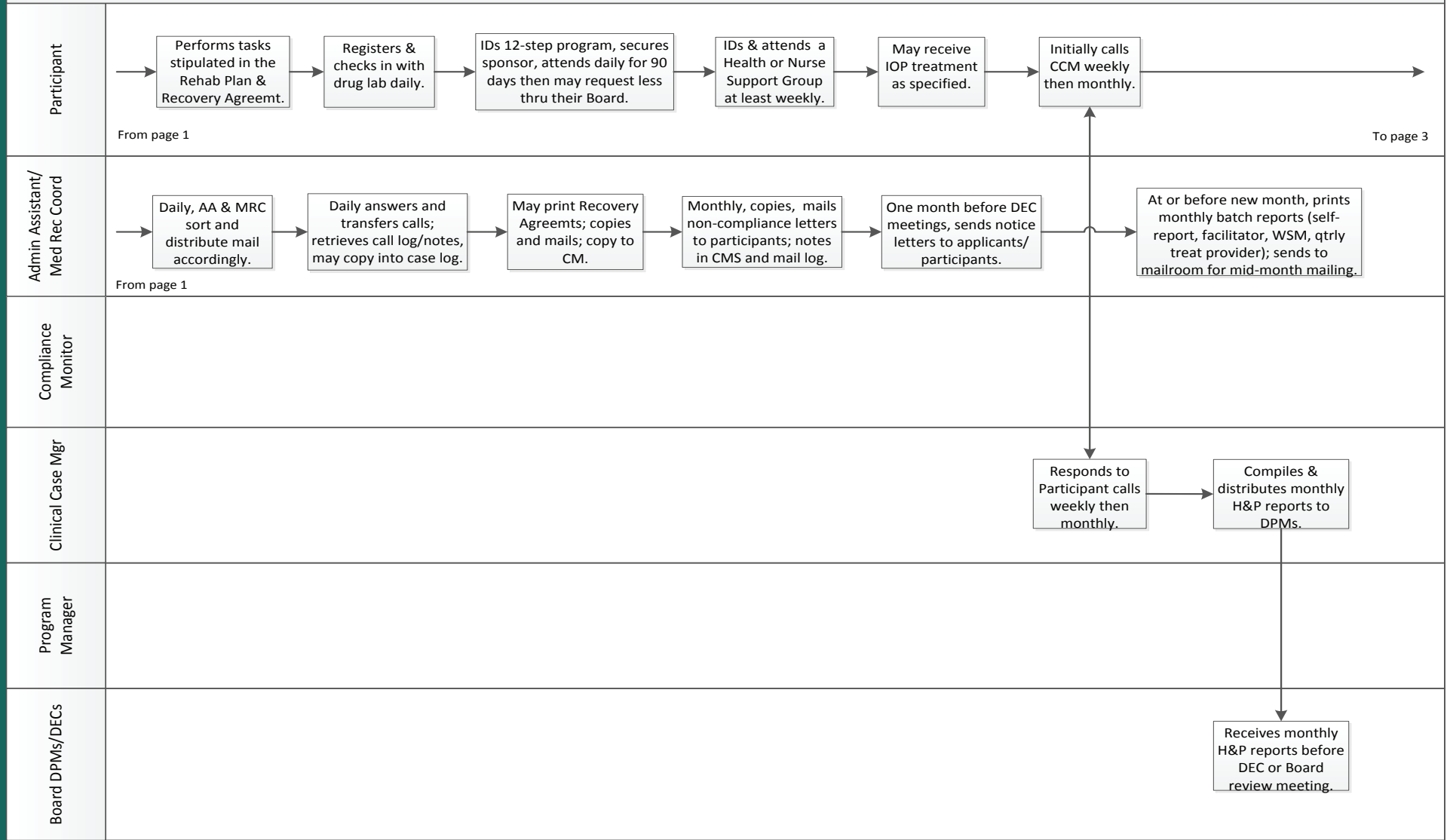
DCA Diversion Program Recurring Workflow page 1 of 4

24-hour Daily Access Calls / Critical-Crisis-Routine Call Handling



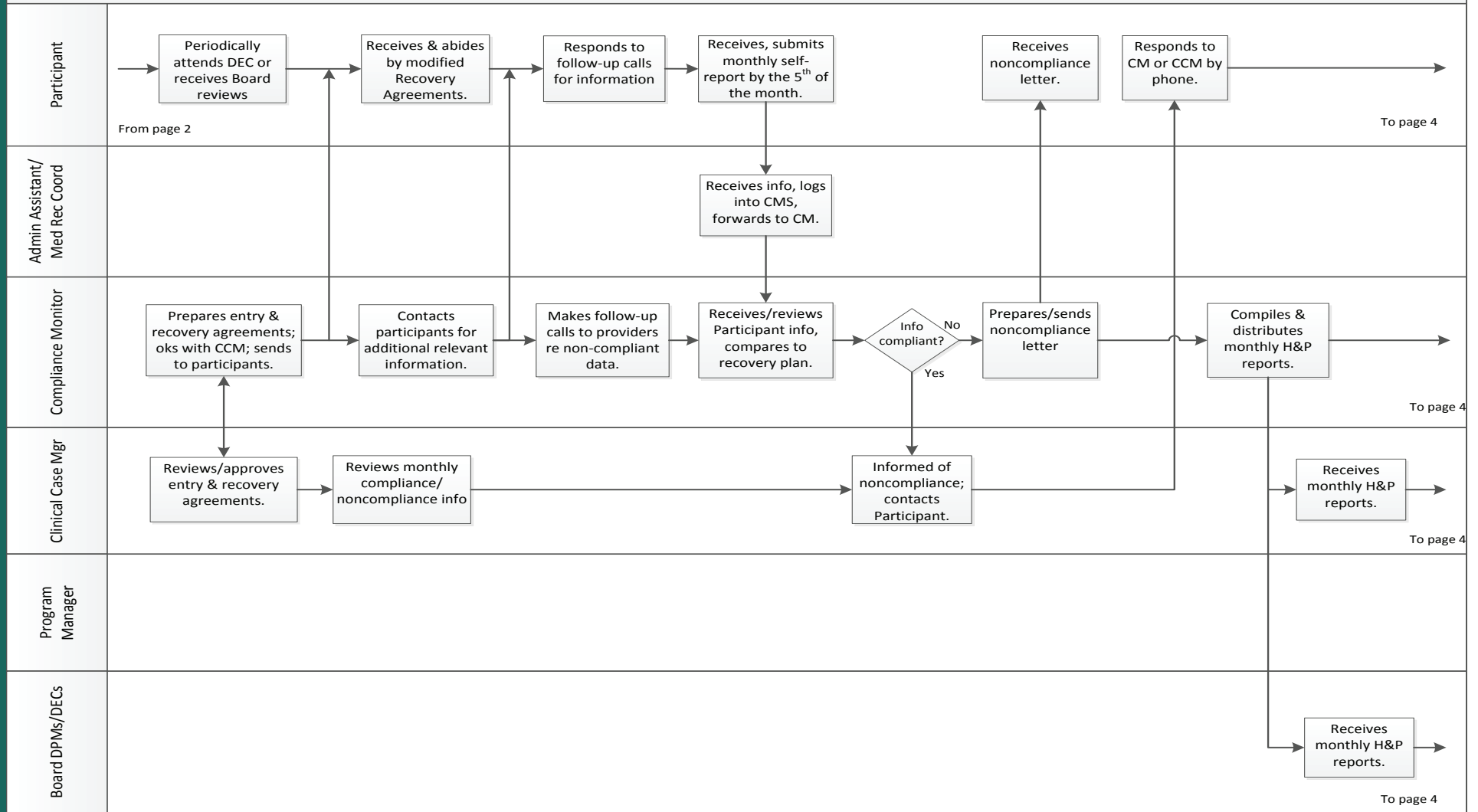
DCA Diversion Program Recurring Workflow page 2 of 4

Daily, Weekly, Monthly, Quarterly Rehabilitation Plan/ Recovery Agreement Phase Activities for 2 to 4 Years



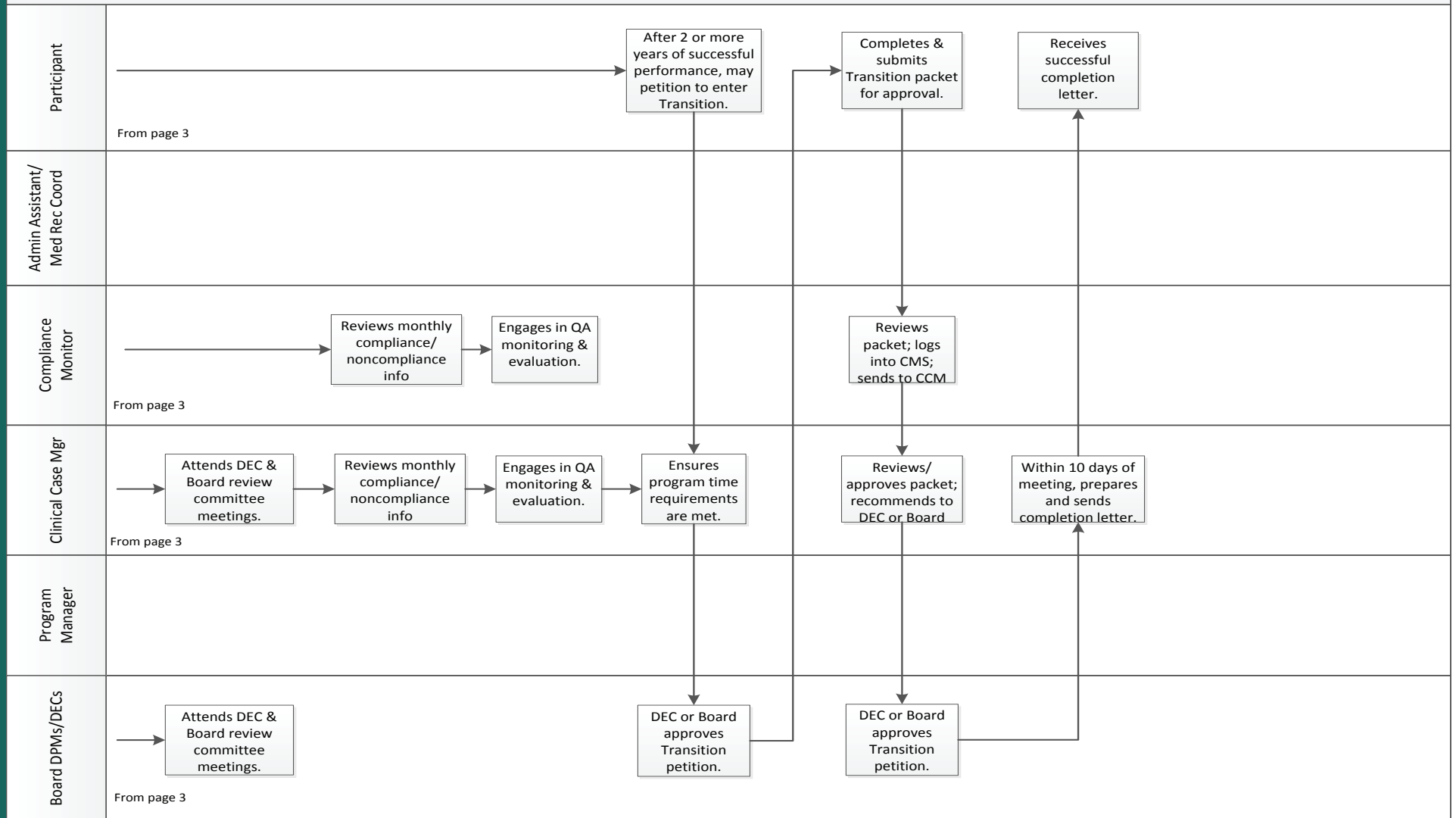
DCA Diversion Program Recurring Workflow page 3 of 4

Daily, Weekly, Monthly, Quarterly Rehabilitation Plan/ Recovery Agreement Phase Activities for 2 to 4 Years



DCA Diversion Program Recurring Workflow page 4 of 4

Transition Phase Activities for 1 Year / Successful Completion



Appendix 4: FirstLab Drug Testing Panel

The following is the drug testing panel used during the audit period.

DRUG GROUP.	SCREEN DETECTION LEVEL* ng/inl**	MASS SPECTROMETRY CONFIRMATION DETECTION LEVEL* na/tnl*
Ethanol (Alcohol)	0.02%	0.02%
Ethyl Glucuronide (ETG/ETS)	250	250
Amphetamines (EMIT)	1000	500
Barbiturates (EMIT)	300	200
Benzodiazepines (EMIT)	300	300
Cocaine Metabolites (EMIT)	300	150
Marijuana Metabolites (EMIT)	20	15
Methadone (EMIT)	300	200
Methaqualone (EMIT)	300	200
Opiates/metabolites (EMIT)	300	300
Phencyclidine (EMIT)	25	25
Propoxyphene (EMIT)	300	200

BENZODIAZEPINES (MASS SPECTROMETRY)		
Alprazolam (Xanax)	50	50
Bromazepam (Clectopam)	***LOD	***LOD
Clorazepate (Tranxene)	100	100
Chlordiazepoxide (Librium)	100	100
Clonazepam (Klonopin)	100	100
Diazepam (Valium)	100	100
Flunitrazepam (Rohypnol)	50	50
Flurazepam (Dalmane)	100	100
Halazepam (Paxipam)	100	100
Lorazepam (Ativan)	100	100
Lormetazepam (Noctamid)	100	100
Medazepam (Nobrium)	100	100
Midazolam (Versed)	50	50
Nitrazepam (Somnibel)	100	100
Oxazepam (Serax)	100	100
Prazepam (Centrax)	100	100
Temazepam (Restoril)	100	100
Triazolam (Halcion)	50	50

NARCOTICS (MASS SPECTROMETRY)		
Buprenorphine (Buprenex)	10	10
Butorphanol (Stadol)	***LOD	***LOD
Dextromethorphan (Rornilar)	100	100
Fentanyl	50	50
Hydrocodone (Vicodin)	100	100
Hydromorphone (Dilaudid)	100	100
Ketamine (Ketalar)	***LOD	***LOD
Meperidine (Demerol)	100	100

Meprobamate/Carisoprodol (Miltown/Soma)	100	100
Nalbuphine (Nubain)	100	100
Naltrexone (Trexan)	***LOD	***LOD
Oxycodone (Percocet)	100	100
Oxymorphone (Numorphan)	100	100
Pentazocine (Talwin)	100	100
Tramadol (Ultram)	***LOD	***LOD

Appendix 5: Contract Performance Standards Measured

#	
1	The Contractor must prepare a yearly calendar of upcoming DEC and PRM meetings. The calendar must be approved by the DPM for that Board and once approved the Contractor will distribute the calendar to all DEC members and the DPM by November 1st preceding each year. (§4.A.17; page 57) (LD's \$500.00/day)
2	Contractor shall prepare and provide a History and Profile Report, and a current list relevant to the applicant/participant(s) monitored by their respective DEC and/or DPM who have had a Positive Drug Screen, Relapse and/or Public Threat Report(s) on each applicant/participant for their respective DEC and DPM no less than five (5) business days prior to the DEC or PRM. (§4.A.17; page 58)(§4.A.15; page 50) (LD's \$500/day)
3	If a positive drug screen is determined to be a relapse by the CCM or DEC Case Consultant, a copy of the drug screen and a Relapse Report must be mailed or faxed to the DPM and DEC consultant within five (5) business days. (§4.A.13. B; page 43) (LD's \$200/day)
4	Contractor shall prepare and provide a written Board specific Monthly Participant Statistical Profile Report on the applicant/participant(s) in the Diversion Program and distribute the report to each DPM for their respective participant(s) within five (5) business days of the end of each month. (§4.A.12; page 41) (LD \$250/day)
5	Contractor shall prepare and provide to the DPM a Monthly Status Report for their respective Board by the tenth of each month. (§4.F.2; page 127) (LD \$250/day)
6	Contractor shall prepare and provide to the DPM a Quarterly Report for their respective Board by the twentieth day of the month following each quarter. (RFP §4.F.3; page 128) (LD \$250/day)
7	Contractor shall prepare and provide to the DPM an Annual Diversion Program Report within 45 days following the end of the state fiscal year, June 30.(§4.F.4; page 131) (LD \$250/day)
8	If terminated, the Contractor shall provide a Termination Report to the DPM and/or DEC Case Consultant within five (5) calendar days from the termination date.(§4.A.10; page 33)
9	BRN: Contractor shall include a Compliance Report with the Monthly Participant Statistical Profile Report detailing the areas for non-compliance for each applicant/participant that must be distributed to the DPM, DEC Chairperson, and assigned DEC Case Consultant monthly and within five (5) business days of the following month.(§5.A. 12; page 133)
10	BRN: A supplemental report shall be provided to each DEC regarding that particular DEC's applicant/participant cases. This report along with the History and Profile Report (H&Ps) shall be mailed and received by the DEC and DPM. (§5.A. 15; page 141) (per contract, provided at DEC)
11	Contractor shall verify a self-referral participant's license online with the Board's website prior to accepting him or her into the Diversion Program and quarterly to ensure the licensee has a current and valid license. (§6. A. 2; page 149 and §8.A.2; page 165) DBC and PTBC; (§9.A.2.; page 175)
12	DBC: The CCM shall consult with the DPM and DEC Chair to determine if the licensee needs to be removed from practice no more than seven (7) business days after completing the initial intake interview. (§6. A. 5; page 149)
13	A written breakdown of the Diversion Program requirements, the applicant/participant's financial obligation, and the required consent forms shall be mailed to the applicant/participant within five (5) business days of the initial intake interview. The CCM shall inform the applicant/participant to return the consent forms within 10 days of receipt. (§4.A.4; page 19)
14	The CCM... assigned to the applicant/participant's Board shall conduct an applicant/participant initial intake interview within 10 business days of application to the Diversion Program. (§4.A.5; page 20)
15	The clinical in-person assessment(s) shall take place within 10 days from the date of the CCM's initial clinical intake assessment interview. (§4.A.6; page 22)
16	The clinical assessor shall submit his or her written assessment of the applicant/participant to the Contractor within 30 days of the clinical in-person assessment. (§4.A.6; page 22)

17	If the clinical assessor recommends the applicant/participant requires immediate in-patient treatment, the clinical assessor shall notify the Contractor within one (1) business day. Upon notification from the clinical assessor, the CCM shall notify the DPM or DEC Case Consultant within 24 hours of the clinical assessor's recommendation. (§4.A.6; page 22)
18	The DPM must be notified within one (1) business day that the Intake has been completed along with the date and location of the applicant's first DEC meeting. (§5.A. 5; page 133)
19	BRN: The DPM must be notified of the scheduled date of the Intake within one (1) business day of scheduling. (§5.A. 5; page 133)
20	All Pre-Entry and Recovery Contracts shall be prepared and mailed to the applicant/participant and the DPM within 10 business days of approval by DEC or DPM. (§4.A.8; page 24)
21	All applicant/participants must have a designated worksite monitor. The Contractor shall validate that the approved worksite monitor is in place. (§4.A.9; page 29)
22	The CCM assigned to the applicant/participant shall contact the applicant/participant's worksite monitor within 10 business days from receipt of worksite monitor notification to communicate the responsibilities of being a worksite monitor and to review how to identify and detect certain indicators of relapse or threat to themselves or the public and how to report such instances to the CCM. (§4.A.9; page 29)
23	The Contractor shall provide... Successful Completion... Letter to the participant within 10 business days from the date of the DEC or PRM meeting or if terminated, from the date of termination (§4.A.10; page 31)
24	The Contractor shall provide a Termination Letter to the participant within 10 business days from the date of the DEC or PRM meeting or if terminated, from the date of termination (§4.A.10; page 31)
25	If the applicant/participant fails to return a signed copy of the contract as required, the Contractor shall... mail a Non-Compliance Letter within five (5) business days to the DPM and applicant/participant. (§4.A.10; page 31)
26	If the applicant/participant fails to return a signed copy of the contract as required, the Contractor shall verbally notify the applicant/participant within one (1) business day... (§4.A.10; page 31)
27	The Non-Compliance Letter must be prepared and mailed to the applicant/participant within five (5) business days of discovery of non-compliance. (§4.A.11; page 38)
28	The Non-Compliance Letter must be prepared and mailed to the DPM and/or Board's designee within five (5) business days of discovery of non-compliance. (§4.A.11; page 38)
29	For any termination resulting from non-compliance that is not deemed a public risk, the CCM shall provide to the DPM and/or Board's designee within five (5) business days of the termination a Termination Letter. (§4.A.11; page 22)
30	BOP: If the confirmed positive drug screen is positive for any unauthorized substance, the CCM shall verbally notify the Board's DPM within one (1) hour of notification by the drug testing provider either via telephone or email that pursuant to the participant's recovery contract they are prohibited from practicing. (§7.A.13.A; page 158)
31	Non-negative drug screens are reported to the DPM or DEC Case Consultant on a Non-negative Drug Screen Report within one business day (§4.A.13; Page 46)
32	If the confirmed positive drug screen is positive for any unauthorized substance, the CCM shall verbally notify the applicant/participant within one (1) hour of notification by the drug testing provider that he or she has tested positive for an unauthorized substance and they are immediately removed from practicing until further notice. (§4.A.13; page 43)

33	If a confirmed positive drug screen is positive for any unauthorized substance, The CCM shall notify the worksite monitor within one (1) hour of notification by the drug testing provider that pursuant to the applicant/participant's recovery contract they are prohibited from practicing until further notice. (RFP §4.A.13; page 43)
34	If a confirmed positive drug screen is positive for any unauthorized substance, The CCM shall notify and confer with the Board's DPM or DEC Case Consultant within one (1) business day and provide remediation plans. (§4.A.13; page 43)
35	If a confirmed positive drug screen is positive for any unauthorized substance, The CCM must notify the applicant/participant's support group facilitator within one (1) business day. (§4.A.13; page 43)
36	Any treatment contract modifications resulting from a positive or non-negative drug screen or relapse shall be provided to the applicant/participant via telephone within (1) business day (§4.A.13; page 43)
37	A modified Recovery Contract shall be mailed within five (5) business days after consulting with the Board's DEC Case Consultant and/or DPM regarding any treatment contract modifications resulting from a positive or non-negative drug screen or relapse. (§4.A.13; page 43)
38	If the applicant/participant fails to return a signed copy of the modified Recovery contract resulting from a positive or non-negative drug screen or relapse as required, the Contractor shall verbally notify the applicant/participant within one (1) business day and shall mail a Non-Compliance Letter within five (5) business days to the DPM and applicant/participant. (§4.A.13; page 43)
39	In the event that an applicant/participant has been determined by the appropriate authority as designated in the Board Specific Requirements to be a threat to themselves or others, the CCM assigned as the designated consistent team for that applicant/participant must notify the DPM and/or DEC Case Consultant within one (1) business day by sending a Public Threat Report. (§4.A.14; page 48)
40	If the applicant/participant is terminated from the Diversion Program, the CCM shall submit a Termination Letter to the applicant/participant and the DPM within five (5) business days (§4.A.14; page 48)
41	All closure documents, files, and a written in-depth Public Threat Report describing the justification as to why the applicant/participant is being terminated must be mailed only to the DPM, DEC Consultant & Participant within five (5) business days of the closure.(§4.A.14; page 48,§ 5.A.14; Page 140)
42	Contractor shall have a CCM attend HSG/NSG support group meetings at a minimum once per year to ensure that the groups are functioning properly and that the facilitator is supporting the goals and objectives of the Diversion Program unless otherwise indicated in Board Specific Requirements. (§4.B.4; page 81)
43	Contractor shall survey the participant who successfully completed or was terminated from the program within thirty (30) days of exiting the program. (§4.F.1; page 120)
44	Contractor shall meet quarterly with the DPMs for a Quality Review Meeting to report verbally and in writing on the quality of the program. (RFP §4.F.1.1; page 122)
45	Contractor shall investigate and resolve complaints made about services provided by Contractor's staff or subcontractors. The Contractor shall provide written documentation to the DPM detailing the initial complaint(s) and corrective action(s) taken within ten (10) days of receiving the complaint. Contractor will develop a standardized complaint resolution process that will be approved by the DPMs. (§4.B.3, page 80)

Appendix 6: Auditee Responses

The following includes audit responses prepared by Maximus and the seven participating Boards. Inaccuracies identified by the auditees in the draft report have been corrected in this final report.

MAXIMUS Response to the DCA audit of the California Health Professionals Diversion Program Conducted by CPS-HR Consulting February 10, 2016

EXECUTIVE SUMMARY

MAXIMUS appreciates the opportunity to participate in this audit and respects the decision of the Department of Consumer Affairs (DCA) to conduct such an audit. We understand the importance of an agency to audit and confirm that an Administrative Vendor is in compliance with contract requirements and the program is operated as designed.

We applaud the DCA for the incorporation of key elements contained in SB1441 Uniform Standards into the program before the legislation was enacted. As noted in our responses, the 2015 contract has resulted in several improvements to processes and procedures that further strengthen the program. Quality and continuous improvement are core tenets of the services MAXIMUS provides to its clients and stakeholders.

We recognize that there were no audit findings, and are responding to the recommendations of the Audit Team. All actions that are described in the responses are the responsibility of the Project Manager to implement.

We continue to work closely with the DCA to continue to improve the processes which protect the safety of the healthcare consumers of California.

RECOMMENDATION #1:

If applicable and warranted, other DCA healing arts Boards should consider participating in the Diversion Program, and in particular, the Medical Board of California and Board of Vocational Nursing and Psychiatric Technicians.

MAXIMUS RESPONSE:

Thank you for the recommendation for standardization of services to add the DCA healing arts boards who do not currently participate in the Diversion Program. Although MAXIMUS is not required to respond to this specific recommendation, we do believe in the mission of the Diversion program and support this recommendation for the Boards that are not currently served by the Program. MAXIMUS stands at the ready to assist the Boards in drafting the appropriate legislation to allow for implementation of this recommendation.

RECOMMENDATION #2:

The BRN should consider making probationers attend the Diversion Program as a condition of probation.

MAXIMUS RESPONSE:

Thank you for the recommendation for standardization of services to Probationers managed by the BRN Enforcement unit. MAXIMUS is not required to respond to this recommendation, however, wishes to state that several other Boards currently enroll the Probation Participants in the Diversion Program to assist with management of their Substance Use Disorders. This is a very effective partnership for these Boards, assists them to interpret and manage the clinical aspects of Addiction, and allows the Probation Monitors to conduct their enforcement duties without distraction.

RECOMMENDATION #3:

Maximus should identify a program staff member whose sole responsibility is to become knowledgeable about health insurance coverage benefits and referral sources, and periodically update the Clinical Case Managers and Compliance Monitors.

MAXIMUS RESPONSE:

MAXIMUS recognizes the value of employing an individual whose sole responsibility it is to become knowledgeable about health insurance coverage benefits and referral sources, and periodically update the Clinical Case Managers and Compliance Monitors; however such a position is not contractually required and is beyond what the program can support financially at this point in time.

RECOMMENDATION #4:

Program participants should assume personal responsibility to contact and research coverage options and costs with the health insurance companies listed on the Covered California website.

MAXIMUS RESPONSE:

MAXIMUS concurs with the recommendation to place personal responsibility for insurance coverage options and costs onto the program participants, however, participants are often overwhelmed and fragile when entering the program, and they need the program's assistance to sort through the many options available to them. In response to this recommendation, and although not contractually required, MAXIMUS will investigate the feasibility of creating a tool to assist participants with referral sources and coverage options.

RECOMMENDATION #5:

Maximus should consider and evaluate all of the Diversion Program Manager (DPM) recommendations and, at a minimum, provide the DPMs with recovery training.

1. Hire more CCMs and increase the number of participants.
2. Identify ways to better manage or reduce participant costs.
3. Identify ways to better treat participants suffering from mental illness.
4. Provide DPMs with recovery training.

MAXIMUS RESPONSE:

1. MAXIMUS staffing meets or exceeds the contractual requirement of a maximum of 130 participants per Clinical Case Manager/Compliance Monitor Team.
2. MAXIMUS is sensitive to the program costs, and concurs that the frequency of Random Drug Testing that is required by the Uniform Standards has increased the costs participants must bear. We encourage participants to work together to identify collection sites with lower fees, and the CCMs and Boards/DECs evaluate testing frequencies often in order to reduce them if possible. Due to the extensive nature of the test panel, the per-test fee is the lowest MAXIMUS was able to negotiate among possible vendors. MAXIMUS will continue to work to identify ways to manage or reduce participant costs.
3. The Board of Registered Nursing has called together a subcommittee of Intervention Program Committee Chairs who have volunteered to review the guidelines currently in use to manage Mental Health Participants. MAXIMUS will be involved in this process and will actively participate in developing the improved guidelines.
4. Although not contractually required, MAXIMUS has provided multiple sessions of training in conjunction with the Laboratory Subcontractor which have been made available to all DPMs. In the past, training has been provided at no charge to the DPMs in a variety of formats, including all-day workshops, via interactive

web conference, and in one-hour webinars. The Diversion Project Manager makes relevant articles and publications available to the DPMs as they become available. The MAXIMUS Project Manager has also provided small group or one-on-one training as requested.

RECOMMENDATION #6:

Maximus should consider and evaluate all of the stated Treatment Provider obstacles/ challenges, then prioritize and implement the recommendations accordingly.

MAXIMUS RESPONSE:

MAXIMUS appreciates the opportunity to review the challenges faced by the Clinical Assessors, Support Group Facilitators, and Worksite Monitors, and commits to reviewing the suggestions for improvements. It is noted that Clinical Assessor recommendations # 4 and 5 are at the discretion of the Boards if the enabling statutes permit, and if not, would require legislative changes to implement. In response to a recurring request to provide online reporting access, MAXIMUS is developing an enhanced version of the online case management system, which will allow for online transmission of forms and an update to the clinical assessment tool by July, 2016.

RECOMMENDATION #7:

As evidenced by the success of the auditor's online survey, Maximus should periodically reach out to Treatment Providers and other stakeholders to identify ongoing issues and opportunities for continuous improvement.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS values the input from stakeholders. It appears that direct email invitations are very effective in generating a response to surveys, and this method will be considered in the future.

RECOMMENDATION #8:

Maximus and the Boards should ensure each credential review is completed in compliance with the Uniform Standards, including evidence of: a license, experience and insurance; do not accept licensees with whom they have had a personal, financial and business relationship within the last year; and Board approval.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS will implement the credentialing changes that have been suggested.

RECOMMENDATION #9:

Per healthcare standards, perform and document an OIG clearance for each Treatment Provider at <https://exclusion.oig.hhs.gov>

MAXIMUS RESPONSE:

Thank you for the recommendation. Although not contractually required, MAXIMUS will consider implementing an OIG clearance for Support Group Facilitators and Clinical Assessors.

RECOMMENDATION #10:

Per healthcare standards, require all Treatment Providers with access to records to sign HIPPA confidentiality statements.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS will implement the use of a confidentiality statement for the treatment providers who access the participant records.

RECOMMENDATION #11:

Maximus should consider hiring a part-time CCM to cover vacations, illness and time away at DEC meetings, etc. This will improve the management of multiple calls.

MAXIMUS RESPONSE:

Thank you for this recommendation. MAXIMUS is currently in the process of filling a part-time Clinical Case Manager position to assist with coverage of Case Manager duties.

RECOMMENDATION #12:

Maximus program staff should continue to document reasons for delay.

MAXIMUS RESPONSE:

Thank you for the recommendation. The Audit Team reports that “There was only one delay that was not explained in the case logs or participant’s profile.” MAXIMUS agrees that it is good practice to document the reasons for the delays, and the Diversion staff will be reminded to do so.

RECOMMENDATION #13:

All program staff should take advantage of the improved spelling and grammar check feature in the upgraded Max-CMS.

MAXIMUS RESPONSE:

Thank you for the recommendation. As noted in the audit report, the upgraded version in 2016 will make spell check available to all employees and treatment providers and should correct much of this problem.

RECOMMENDATION #14:

The Project Manager should review and revise closing notes as necessary.

MAXIMUS RESPONSE:

Thank you for the recommendation. The Project Manager currently reviews the majority of closure notes written by the Clinical Case Managers, and will continue to do so.

RECOMMENDATION #15:

Use the participant’s first or last name rather than pronouns only to prevent misunderstandings with case log entries.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS will review options for improving clarity of documentation.

RECOMMENDATION #16:

Maximus should develop and implement a written policy for making deletions and retractions to case logs. The American Health Information Management Association website (<http://www.ahima.org>) has examples and sample policies Maximus could use.

MAXIMUS RESPONSE:

Thank you for the recommendation. Permission to delete and edit case log notes is limited to the Project Manager, the Operations Manager, and the Information Systems Administrator. This access will continue to be restricted, and a written policy will be developed to manage this process.

RECOMMENDATION #17:

Maximus program staff should track and trend the reasons for program withdrawal to determine the number of participants who withdrew for financial and other reasons.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS will begin tracking this data, beginning January 1, 2016.

RECOMMENDATION #18:

Maximus program staff should improve or modify the Program Handbook in a variety of ways.

1. Explain in the Handbook how to properly dispose of drugs according to the US Food and Drug Administration web site, and emphasize that participants may not give the drugs they are discarding to other persons for their use.
2. Attach a letter to the applicant's packet to encourage reading/re-reading the Handbook until they are familiar with the rules and expectations (participants are required to sign, date and return the Handbook Acknowledgment Signature Sheet), and consider giving applicants a pre-DEC test to validate their understanding.

MAXIMUS RESPONSE:

Thank you for the recommendation. These recommendations will be taken into consideration and will be discussed with the Diversion Program Managers. The information on how to properly and safely dispose of medications will be added to the Handbook.

RECOMMENDATION #19:

Maximus program staff should improve or modify the Program Handbook in a variety of ways

- Add an index so applicants/participants can easily find needed information.
- Modify the drug testing information to include stronger language about the consequences of missing a call into the lab and missing a random drug test.
- Use bold letters or highlight the essential compliance information.
- Insert the Maximus Diversion Program Random Body Fluid letter into the Handbook and include additional information regarding caffeine and protein. For example: "Please be aware that any confirmed positive, dilute or out of range random body fluid testing (RBFT) may result in immediate suspension of work privileges.
- Tips to ensure test results fall within acceptable ranges include:
 - Do not use any mind-altering substances.
 - Test before 10:00 AM.
 - Avoid the use of caffeine before testing, including coffee and caffeinated drinks like energy drinks and sodas.
 - Limit fluid intake before the test.
 - Consume some protein in the morning before the test, such as an egg or protein bar, plain yogurt with fruit and nuts, breakfast burrito with black beans and cheese, whole wheat bread with 2 tablespoons of peanut butter, etc.
- Avoid exercise before testing."
- Include information about how participants can prove they followed the protocol at the collection site, such as taking a photo of the specimen, and/or post test data.

- Many participants with an upper respiratory infection unknowingly took over-the-counter (OTC) medications without thinking of the consequences of taking a banned substance. CCM's suggest Mucinex without DM for coughs. Participants might also consider using home remedies such as hot tea and honey, saline gargles, humidifiers and 'Nedi' pots with saline water for nasal cleansing rather than other OTC drugs that contain prohibited ingredients.
- Include information on ways to remember to call the lab, such as setting alarms and/or always calling at the same time every day.
- Suggest possible call reminder tools, including but not limited to: paper calendars, check lists, Google calendar or similar smart phone applications.

MAXIMUS RESPONSE:

Thank you for the multiple recommendations for improvement of the Program Handbook. These suggestions will be reviewed and implemented as appropriate.

RECOMMENDATION #20:

Maximus program staff should improve or modify the Program Handbook in a variety of ways.

- Remind participants that multiple minor violations hinder progress in the program and that 100% compliance is expected before being allowed to move to the transition phase.
- Revise the MSR information on page 8 to indicate the first page of the MSR must be submitted with the rest of the report and include a notation regarding the same on the first page.
- Revise the WSM information on page 9 to advise participants to check with their WSM by the first of the month to ensure their report is submitted timely.
- Revise the Treatment Provider Progress Report information on page 7 to advise participants to check with their treatment provider by the first of each month to ensure their reports are submitted timely.
- Revise the Support Group Facilitator information on pages 7-8 to advise participants to check with their group leader by the first of each month to ensure their reports are submitted timely.
- Include reminder tools such as, but not limited to: paper calendars, check lists, Google calendar or similar smart phone applications.
- Suggest participants call or email the Maximus CM or CCM monthly to verify that all reports have been received in a timely manner.

MAXIMUS RESPONSE:

Thank you for the multiple recommendations for improvement of the Program Handbook. These suggestions will be reviewed and implemented as appropriate.

RECOMMENDATION #21:

Maximus should include medicine disposal information from the USFDA website in the Program Handbook.

MAXIMUS RESPONSE:

Thank you for the recommendation. This recommendation appears to be a duplicate of #18, and is addressed above.

RECOMMENDATION #22:

Maximus should consider advising participants to seek out Mental Health Services from their local county government Adult System of Care, when appropriate.

MAXIMUS RESPONSE:

Thank you for the recommendation. The MAXIMUS Clinical Case Mangers offer a variety of referrals to treatment, and this resource will be made available to participants.

RECOMMENDATION #23:

Maximus should contact the California Chapter of the American Organization of Nurse Executives and California Hospital Association to speak at a regional or state-wide meeting regarding the prevention and detection of nurses diverting drugs.

MAXIMUS RESPONSE:

Thank you for the recommendation. The MAXIMUS Project Manager and a representative of the BRN provided a presentation to the Southern California chapter of the California Hospital Association and more recently to the Kern County Chapter of the California Association of Nurse Leaders. MAXIMUS and the BRN are scheduled to present to the San Diego chapter of the California Association of Nurse Leaders in March, 2016. MAXIMUS will continue to reach out to these organizations to expand awareness of the Diversion Programs.

RECOMMENDATION #24:

The Board's should collectively consider identifying an acceptable, but less frequent, random testing schedule that would accomplish the goal and reduce participant cost and loss, then modify Uniform Standard 4 accordingly.

MAXIMUS RESPONSE:

MAXIMUS is not required to respond to this recommendation.

RECOMMENDATION #25:

The non-DEC Board's should consider evaluating the effectiveness of the participants' non-attendance at Board review meetings, and consider ways to improve interpersonal interaction by Skype, Face Time or other forms of communication.

MAXIMUS RESPONSE:

MAXIMUS is not required to respond to this recommendation.

RECOMMENDATION #26:

The Maximus Quality Analyst should periodically audit the FirstLab website files to ensure all program participants being drug tested are included in the database.

MAXIMUS RESPONSE:

Thank you for the recommendation. The Laboratory Vendor has recently implemented a process to notify MAXIMUS when a new applicant establishes an account with the Lab. This will ensure that any delays are identified. In addition, the MAXIMUS QA Coordinator will implement a periodic comparison of MAXIMUS and FirstLab participant enrollment information.

RECOMMENDATION #27:

Maximus should revise the intake report accordingly to eliminate the confusion between monthly and year-to-date reporting.

MAXIMUS RESPONSE:

Thank you for the recommendation. MAXIMUS will review the report for accuracy and clarity.

RECOMMENDATION #28:

Maximus should consider tracking and trending major violations and actions taken, and report this information in the annual report.

MAXIMUS RESPONSE:

Thank you for the recommendation. This data will be tracked beginning January 1, 2016.

RECOMMENDATION #29:

Maximus should consider tracking and trending successful returns to work on a monthly and annual basis, and report this information in the annual report.

MAXIMUS RESPONSE:

Thank you for the recommendation. This data will be tracked beginning January 1, 2016.

RECOMMENDATION #30:

Participating Boards should attempt to monitor long range participant outcomes after program completion.

MAXIMUS RESPONSE:

MAXIMUS is not required to respond to this recommendation.



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BOARD OF REGISTERED NURSING
PO Box 944210, Sacramento, CA 94244-2100
P (916) 322-3350 F (916) 574-8637 | www.m.ca.gov



February 10, 2016

CPS HR Consulting
241 Lathrop Way
Sacramento, CA 95815

Dear Auditor,

Enclosed is the Board of Registered Nursing's (BRN) response to the CPS HR Consulting draft report, "Department of Consumer Affairs — Contract and Performance Audit of the DCA Diversion Program provided by Maximus Health Services" dated January 28, 2016.

Thank you for the opportunity to respond to the draft audit report. Please contact Don Henry Walker, Intervention Program Manager, at (916) 574-7619 if you have any questions.

A handwritten signature in black ink, appearing to read 'Stacie'.

Stacie Berumen
Assistant Executive Officer
Board of Registered Nursing

**Board of Registered Nursing (BRN) Response to CPS HR Consulting's Draft Report:
"Department of Consumer Affairs — Contract and Performance Audit of the DCA
Diversion Program provided by Maximus Health Services"
January 28, 2016**

Recommendations

- 1) If applicable and warranted, other DCA healing arts Boards should consider participating in the Diversion Program, and in particular, the Medical Board of Vocational Nursing and Psychiatric Technicians.**

The BRN agrees with this recommendation.
No action plan needed.

- 2) The BRN should consider making probationers attend the Intervention Program as a condition of probation.**

The BRN will consider this recommendation.

Action Plan: The BRN will review the probation program to determine if opportunities exist to require probationers with substance use disorder to attend the Intervention Program as a condition of certain probation orders.

Contact Person: Elizabeth Elias, Probation Program Manager

- 4) Program participants should assume personal responsibility to contact and research coverage options and costs with the health insurance companies listed on the covered California website.**

The BRN agrees with this recommendation.

Action Plan: The BRN will add language to the BRN website FAQ section that refers individuals without health insurance coverage questions to the Covered California website.

Contact Person: Don Henry Walker, Intervention Program Manager

- 8) MAXIMUS and the Boards should ensure each credential review is completed in compliance with the Uniform Standards, including evidence of a license, experience and insurance; do not accept licensees with whom they have had a personal, financial and business relationship within the last year, and Board approval.**

The BRN agrees with this recommendation.

**Board of Registered Nursing (BRN) Response to CPS HR Consulting's Draft Report:
"Department of Consumer Affairs — Contract and Performance Audit of the DCA
Diversion Program provided by Maximus Health Services"
January 28, 2016**

Action Plan: The BRN is in compliance with this recommendation. The BRN has a policy document NSG P-10 that addresses this recommendation.

Contact Person: Don Henry Walker, Intervention Program Manager

24) The Boards should collectively consider identifying an acceptable, but less frequent, random testing schedule that would accomplish the goal and reduce participant cost and loss, then modify Uniform Standard 4 accordingly.

The BRN agrees with this recommendation.

Action Plan: This would require the Department of Consumer Affairs to reconvene the Substance Abuse Coordination Committee who created the document, "Uniform Standards Regarding Substance-Abuse Healing Arts Licensees" that specifies the testing requirements in Uniform Standard 4.

The BRN is willing to participate in the process to develop acceptable random testing requirements.

Contact Person: Don Henry Walker, Intervention Program Manager

30) Participating Boards should attempt to monitor long range participant outcomes after program completion.

The BRN will consider this recommendation. The BRN requests clarification of the definition of "long range."

Action Plan: Business and Professions Code (B&PC) section 2770.12(b) states in pertinent part that all board and committee records pertaining to participation in the Intervention Program shall be kept confidential and not subject to discovery or subpoena, except as specified. B&PC section 2770.12(a) states in pertinent part that all records for a registered nurse who has successfully completed the intervention program shall be purged. B&PC section 156.1 specifies that a board shall retain all records for treatment and rehabilitation services for three years from the date of the last treatment or service rendered or until reviewed for audit by the department. After that time period the documents may be purged.

Based on the current laws stated above the information requested may only be available for three years yet participation in the program is deemed confidential. The BRN would need to seek guidance from DCA legal counsel as to what information is available to monitor outcomes.

Contact Person: Don Henry Walker, Intervention Program Manager



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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDUARD G. BROWN JR.
Dental Board of California
 2005 Evergreen Street, Suite 1550, Sacramento, California 95815
 P (916) 263-2300 | F (916) 263-2140 | www.dbc.ca.gov



February 10, 2016

CPS HR Consulting
 241 Lathrop Way
 Sacramento, CA 95815

Attention: Jeff Mikles

Dear Mr. Mikles:

I have reviewed the draft report "Contract and Performance Audit of the DCA Diversion Program provided by Maximus Health Services", dated January 28, 2016. The report is comprehensive and well written. I do have a few comments.

On page 13 in the last paragraph you refer to entry into the Diversion program via "in lieu of discipline" and go on to reference the Board of Pharmacy (BOP) and the Dental Board (DBC). I recommend that last sentence be revised to reference the dental law as well as the pharmacy law....."if there has been no significant violation of pharmacy or dental laws, respectively".

Also, on page 16 in the last paragraph that starts "In 2011, Senate Bill 1441..." The second sentence implies that the DCA Substance Abuse Coordination Committee still exists. It does not. Therefore the sentence should indicate that the committee was comprised of 20 Executive Officers.....

Your recommendations for all boards have been noted. Once the report is final, I will take these recommendations to the Board for consideration.

Please feel free to contact me if you have any questions. I can be reached at Karen.fischer@dca.ca.gov or (916) 263-2188.

Sincerely,

Karen M. Fischer, MPA
 Executive Officer

PHYSICIAN ASSISTANT BOARD

**RESPONSE TO THE JANUARY 2016
CONTRACT AND PERFORMANCE AUDIT OF THE
DCA DIVERSION PROGRAM PROVIDED BY
MAXIMUS HEALTH SERVICES**

Recommendation	PAB Response
1	Agree. The PAB believes that the Diversion Program provides an additional level of consumer protection with regard to licensees who have drug and alcohol issues. Other Boards could benefit from such a program. Board staff and probation monitors do not possess the knowledge to appropriately manage these types of licensees and probationers. Maximus does. At the PAB the probation monitors and Maximus staff work cooperatively to ensure that probationers are in compliance with all terms of their probation, including abstinence from drugs and alcohol.
4	Generally agree. While we agree that participants should assume responsibility to contact and research coverage options, they are often not in a condition to do so. The PAB believes that Maximus should have the ability to assist or direct participants to appropriate resources.
8	Agree. Maximus should take the lead on this due to their knowledge and experience in this area.
24	Disagree. While the PAB is sympathetic to drug testing costs incurred by participants, as a consumer protection agency we are more concerned with ensuring consumer protection. The PAB needs the flexibility to test as often as appropriate. Additionally, the PAB must comply with the Uniform Standards. Drug testing is the most effective tool to ensure that participants/probationers are not using drugs and/or alcohol. The PAB utilizes alternative tests such as blood and hair. DCA boards review the test panels to ensure that they are up-to-date and at the lowest cost as available.
25	Agree. Alternative methods of communication would be beneficial to participants. The PAB also encourages the CCM to meet with PAB participants when attending DEC meetings for other boards.
30	Disagree. While these statistics would be valuable, we might have difficulty in following up with prior participants due to the fact that these are medical issues and would be confidential. To the best of my knowledge, the PAB does not have legal authority to randomly inquiry as to a prior participant's health issues with regard to drug and alcohol concerns once the probation is completed. The PAB has the authority react to new complaints or criminal convictions and those involving prior discipline history would be taken into consideration when investigating the new compliant.

Veterinary Medical Board Audit Response

From: Mathes, Ethan@DCA
Sent: Friday, February 12, 2016 12:23 PM
To: Wallace, Annecia@DCA
Cc: DelMugnaio, Annemarie@DCA
Subject: RE: Maximus audit responses

Greetings Annecia,

Here are my comments, some are duplicative/similar to CPS's comments:

- Maximus should consider new DPM training, but at the minimum yearly refresher training covering all facets of the program, contract, recovery, etc. (and including an orientation manual?)
- Maximus should audit its program costs and costs paid by participants generally and provide suggestions on reducing costs to participants
- Maximus should audit the effectiveness of the program, including the effectiveness of a 3-year minimum mandatory participation
- Maximus should study/evaluate in cooperation with boards how to increase program participation, especially in light of diminishing participation in the last 3 years
- Maximus should study different means for participants to subsidize their recovery via insurance, and pass that information along during intake

One note on the audit for accuracy, the Board's participant co-pay in Table 7 is incorrectly identified and yearly; it is a one-time fee.

That's about it!

Regards,

Ethan Mathes
Operations Manager
Veterinary Medical Board
1747 N. Market Blvd., Suite 230
Sacramento, California 95834-2934
Phone: (916) 515-5227
Fax: (916) 928-6849

February 16, 2016

To: Annecia Wallace

From: Board of Pharmacy

Comments on Draft Audit as Conducted and Prepared by CPS

In general the board is concerned with the “semantic allness” used in portions of this report. We have provided some instances below in the specific comments, but feel compelled to note that portions of the report appear to indicate that it was the consensus of all DPMS when making some statements. This is not true. Further, the board is not clear how some of the conclusions were reached and as such question some of the conclusions as applicable to the Board of Pharmacy program. In the hopes it is helpful the Board of Pharmacy has referenced specific page numbers as well as the Board of Pharmacy’s comment.

Board of Pharmacy Specific Comments

Page 6 Drug Test File Audit Results

The Board of Pharmacy understands the four drug test files that are identified in the audit were applicants that declined to join. Therefore, these participants would not have signed up with First Lab.

Page 8 Second sentence

The year needs to be fixed to 2016 not 2106.

Page 12 Board of Pharmacy section codes needs a dash between 4360-4373.

Page 13 The definition provided in the audit of referral types is inaccurate. For instance the In Lieu of Referral specifies in the audit this definition pertains to BOP and DBC, which is inaccurate. The definition for In Lieu of Referral in the contract only pertains to BOP and the definition itself in the contract is different than what is defined in the audit.

The definitions provided below is the exact language provided in contract. The statistical information that is provided within the definitions in the audit report may need to be revisited to ensure the data is based on the accurate definition. This could present a problem in the future if the data does not match the statistical information reported by Maximus vs. the audit. The appropriate definitions included in the contract are provided below.

Definitions of Referral Types per Contract

Board Referrals

1) Investigative/Informal Referral (BOP, DBC, and DHCC) A licensee who may have a Board investigation pending, and upon recommendation of a Board inspector/investigator, may seek admission into the Diversion Program. The participant signs a release authorizing the Contractor to discuss his or her progress with the Board’s DPM.

2) Non-Disciplinary Referral (BRN) A licensee referred to the Diversion Program by the Board, based on information or complaint received by the Board, indicating that the licensee may be impaired due to substance abuse disorder or mental illness.

3) Probation/Disciplinary Referral A licensee referred to the Diversion Program by the Board as a condition of a Board-imposed disciplinary action.

4) In Lieu of (BOP) A licensee who the Board investigated and referred into the program to be assessed in order to determine if the licensee has a substance use disorder.

Self-Referral

1) A licensee who voluntarily seeks admission into the Diversion Program.

Page 14

Top paragraph after bullets

The language should reflect recovery plan not rehabilitation plan in the second sentence.

The statement in the last sentence of the first paragraph is inaccurate.

“However, if a participant does not successfully complete the program, the original complaint, would be sent to enforcement.” This statement is inaccurate for the Board of Pharmacy Program because the board never diverts a licensee from the investigation process. Although it may be true for some board programs, there is no qualifier applied to the sentence if that is the case.

Under Program Intake and Clinical Assessment

The last sentence in the first paragraph should reflect recovery plan not treatment plan.

Page 19

Under the heading Worksite monitors.

Should read - WSM observe participants up to a maximum of 100% and not just one day a week as appears in the audit. The worksite monitoring percentage can be reduced to zero percent in the transition phase. The worksite monitor percentage that is established for the participant depends on what stage the participant is at in his/her recovery.

Page 24

The last sentence in the paragraph.- One closure type that is conspicuously absent is financial hardship.

This is not a closure type.

Page 40

Under As a result of the DPM meeting, CPS learned the following:

The bullet that pertains to speaking on behalf of “All DPMs” leads the reader to believe this statement is agreed upon by all DPMs. The Board of Pharmacy did make such a claim regarding formal training.

The bullet that pertains to DPMs stating “some DEC’s have gotten away with poor practices”, the Board of Pharmacy is concerned this leads a reader to believe all DPMs agree with this statement. The Board of Pharmacy does not have DEC’s and is not in a position to make such a statement.

As a result, the DPMs suggested the following Diversion Program improvements.

The bullets in this section lead the reader to believe this is agreed upon by all DPMs.

- Page 42 Under Clinical Assessors recommend - Institute DEC's for all professions
The Board of Pharmacy is concerned with this overall statement and questions if all the clinical assessors truly recommend this.
- Page 43 Under HSG Facilitators claim the following obstacles/challenges in bullet number 2 - Maximus does not give enough consideration to HSG facilitator feedback.
The Board of Pharmacy takes exception to this comment. The Board of Pharmacy routinely requests feedback from the HSG facilitators and considers such feedback as part of the overall clinical picture of the participant. The Board of Pharmacy questions if all health support group facilitators made this statement and applied it to all board programs.
- Under HSG Facilitators recommend in bullet number 2 - Provide HSG facilitators with access to intake summary, evaluations, and treatment reports.
The clinical assessors are required to independently assess the licensee.
- Page 44 Under Worksite Monitor Responses in the section WSMs recommend in bullet number 3 - Provide improved access to Board Diversion Program Managers.
The Board of Pharmacy suggests that clarification should be sought in regards to this statement as the WSMs communicate directly with the clinical case managers. Further, worksite monitors are interviewed by the Board of Pharmacy staff, generally on a quarterly basis to gain understanding of how a participant is performing at work. This is in addition to the worksite monitor reports provided.
- Page 50 Under Recommendations
In the bullet pertaining to the handbook the bold section – remove the term **“suspension”** and replace with **“removed from practice.”** The Board of Pharmacy does not delegate the authority to the vendor to suspend a license, rather the board does this.
- Page 54 The first paragraph at the top of the page
In the sentence, “As a result, the DPMs claim self-referrals into the program have almost stopped and participant levels have dropped”, the use of the word “claims” attributes this statement to all DPMs. The Board of Pharmacy does not believe this is an accurate statement.

Board Review and DEC Meetings

In the second paragraph, last sentence, in stating “through reading meeting minutes”, what type of meeting minutes contain statements by participants? The DEC and Review Meetings have summary notes from the meetings that contain changes to a participants recovery plan. For example: participant is approved to reduce attending five 12-step meetings to four 12-step meetings per week.

With respect to the first bullet, the Board of Pharmacy is curious to know if the auditors surveyed board participants. If not, we are unclear how the statement can be made. The Board of Pharmacy is concerned with the overall

representation of non-DEC boards. Furthermore, the Board of Pharmacy is not aware of any board meeting minutes that would reflect comments made by participants and is unaware of any discussion at a board meeting or review meeting when a board participant has made these assumptions.

Second Bullet – DEC's

The Board of Pharmacy is not aware of any board meeting minutes that would reflect comments made by participants and recommends that additional information be sought to clarify if minutes from DEC meetings are maintained that include specific quotes from participants.

Page 55 Recommendation to use SKYPE for non-Dec boards to improve interpersonal interaction.
The Board of Pharmacy takes exception to this comment as all probation referred participants meet with Board of Pharmacy inspectors on a quarterly basis to ensure compliance not only with his/her probation but with the Pharmacist Recovery Program. In addition, the Board of Pharmacy inspectors also meet with the worksite monitors in person.

Audit Grid

Recommendation Respondents

1. The Board of Pharmacy does not have a position on whether other boards participate in the Diversion Program.
4. The contracted vendor is there to assist participants with locating services. However, the Board of Pharmacy also thinks it is the responsibility of the participant.
8. As part of the scope of work, the credential review is included in the contract.
24. The drug testing was established by the Uniform Standards Committee as implementation of SB 1441.
25. As stated above, the Board of Pharmacy has concerns with this recommendation. Refer to the board's comment from page 55 of the report.
30. The Board of Pharmacy has in the contract in its Board Specifics section 7.F.1 to conduct an annual longitudinal study of former BOP participants who have successfully completed the Pharmacist Recovery Program within the past three years. This recommendation appears to apply to all programs. The board requests clarification on the specific recommendation, i.e. should it be done every three years, standard questions to assess, etc.

Physical Therapy Board Audit Response

From: Kaiser, Jason@DCA
Sent: Tuesday, February 16, 2016 4:29 PM
To: Wallace, Annecia@DCA
Subject: RE: Any more Board responses?

Hi Annecia,

After looking at the Matrix of responses you provided, I assuming we fit under the categories of "All Boards" and Non-DEC Boards".

Here is PTBC's take on the audit report.

For findings for "All-Boards",

- 1) The PTBC concurs with recommendation 1.
- 4) The PTBC concurs with recommendation 4.
- 8) The PTBC concurs with recommendation 8
- 24) The PTBC concurs with recommendation 24.

30) The PTBC does not concur with recommendation 30. Once a probationer has completed the Maximus program, they typically have 1 more year of probation compliance. Subsequent to that, should the Board have to have to monitor the licensee outside of the Disciplinary Order, we would be doing so without authority or ability to collect costs, which would be an additional draw on the Boards resources that could not be absorbed.

For findings for "Non-DEC Boards",

- 25) The PTBC concurs with recommendation 25.

Let me know if you need anything else for the response.

Thanks.

Jason Kaiser
 Executive Officer
 Physical Therapy Board of California
 2005 Evergreen St. Suite 1350
 Sacramento CA. 95815
 916-561-8278



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STATE BOARD
OF PHARMACY