

# UNIFORM STANDARD #4

## STAKEHOLDERS RECOMMENDED CHANGES IN REDLINE FORMAT

*Working Document – For Discussion Purposes Only*

### #4 SENATE BILL 1441 REQUIREMENTS

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

### #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:~~

The program shall require licensees to abstain from the use, consumption, ingestion, or administration of prohibited substances unless an exception is specified in the licensee's agreement with the program.

The program shall have a protocol governing all aspects of the testing required to determine compliance with the agreement between the licensee and the program.

The protocol shall include the testing frequency schedule, any exceptions thereto, the consequences to the licensee for non-compliance with his/her testing schedule as described in Uniform Standards 8, 9, and 10, and all other elements listed below.

The protocol shall describe the biological specimens to be tested and the testing methods to be used. Examples of current testing methods that may be utilized, but are not limited to any one include: urine drug testing (UDT), and biological matrices such as oral fluid (saliva), hair, nails, sweat and breath when those matrices match the intended assessment process. The protocol shall describe how additions to the protocol will be made as

#### Legend:

**Red: Text Deletions**  
**Blue: Text Additions**

#### WHAT THIS DOES:

Significantly changes the current standard, requiring each board to create custom "protocols" based on the Uniform Standards that will set the testing frequency, testing methods, and testing exceptions.

#### WHAT THIS DOES:

Requires the boards to approve what tests can be used. Protocols shall include a process to add types of tests that can be performed.

additional methods become accepted.

The protocol shall include provisions that will apply if a licensee is being treated with prescribed medications for a medical condition. The protocol will cover both a time limited course of treatment and an ongoing treatment regimen. The protocol will include the requirements that treatment be under the direction of a physician who meets the criteria and requirements of the program and has been accepted by the program as the licensee’s treating physician. Both the licensee and the treating physician must agree to share information with the program and to communicate with the program’s Medical Director or his/her designee.

When a licensee is receiving prescribed medications as part of treatment for a medical condition, the following elements shall be added to his/her agreement:

- drug tests shall include tests for the presence of the prescribed medication
- regular reports must be submitted to the program by the licensee’s treating physician, documenting that the licensee is continuing in treatment and progressing toward treatment goals and that the licensee is in compliance with the prescribing physician’s prescribed medication regimen

The protocol shall include a provision for periodic review and adjustment, if any, to the licensee’s current situation.

The program’s protocol shall be submitted to the Board for review and acceptance before the program accepts its first licensee, and again on a regular recurring schedule no less than once per year.

**TESTING FREQUENCY SCHEDULE**

A **board program** may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule ~~below~~: defined by the program for the individual licensee. The testing schedule shall be determined by the Medical Director or his/her designee and shall be based on the licensee’s particular history and diagnosis and on the monitoring technology or technologies to be used. Testing on a frequency appropriate for the licensee shall be in place for the duration of the time the licensee is in the program.

**WHAT THIS DOES:**  
Creates a monitoring process for substance-abusing licensees who are receiving prescription medications as part of a treatment.

**WHAT THIS DOES:**  
Eliminates the testing schedule from the current standard, replacing it with a schedule that is determined by a Medical Director or a designee.

**NOTE:** Some stakeholders group have recommended against making any changes to the schedule, contending that the current standard already allows for flexibility and provides important levels of consumer protection.

<b>Level</b>	<b>Segments of Probation/Diversion</b>	<b>Minimum Range of Number of Random Tests</b>
<b>1</b>	<b>Year 1</b>	<b>52-104 per year</b>

II*	Year 2+	36-104 per year
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~~\*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 the program 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.~~ If the program determines that a licensee has failed to comply with the testing schedule, the program will put in place the consequences defined in both the program's protocol and the licensee's agreement.

**WHAT THIS DOES:**  
Provides more flexibility to each board in setting the consequences for testing violations.

**EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**

The program's Medical Director or his/her designee shall take into consideration these elements when determining the testing schedule for a particular licensee:

**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board program 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.~~ successfully completed or is currently participating in a treatment or monitoring program requiring random testing, the program may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to what would be designed for this licensee. In such a situation, the licensee must agree in writing to the exchange of all test results conducted by the treatment or monitoring program before this standard is applied. The test panel used by the treatment or monitoring program must be reasonably comparable to the test panel used by the program.

**WHAT THIS DOES:**  
Adds to the current standard, requiring that test results from another monitoring program be shared before a testing schedule is altered.

**II. VIOLATION(S) OUTSIDE OF EMPLOYMENT**

~~An individual~~The program's protocol may allow for a testing schedule appropriate for 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~~The program's protocol 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.~~ to a drug testing schedule designed by the program sufficient to document abstinence 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 requirement for documented abstinence for 60 days, the licensee shall be subject to completing a full year of the testing frequency schedule designed by the program.

### IV. TOLLING

The program's protocol shall provide for a licensee to continue in its testing program while residing outside of California if the program has approved such a change in the licensee's agreement and has modified the specifics of the testing program accordingly. If a licensee participates in a testing program that has been modified by the program to accommodate the licensee, all conditions and consequences shall apply and shall be enforced by the program.

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.~~ the program shall require monitoring and toxicology screening on a schedule appropriate for the licensee.

#### WHAT THIS DOES:

Provides more flexibility than the current standard for monitoring licensees who did not have a substance-use disorder diagnosed.

## OTHER DRUG STANDARDS

The program's drug testing protocol shall include the following requirements:

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.~~ Collection of specimens shall follow the requirements of the program's protocol for observed collection. The protocol shall include steps to allow collection that meets the program's requirements if observed collection is not available.

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

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

Laboratories shall be capable of reflex testing. (A reflex test is an additional laboratory test that is automatically obtained when the results of a screening test indicate the need for further study. The secondary tests are almost always an additional charge above the initial test.)

### **WHAT THIS DOES:**

Makes changes, potentially significant, to observed collection of specimen during tests.

### **WHAT THIS DOES:**

Adds "reflex testing" to the laboratory requirements.

The program's protocol shall specify "reflex tests" for its screening tests.

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)