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DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 5. Medicine [2000 - 2529.8.1] (*Chapter 5 repealed and added by Stats. 1980, Ch. 1313, Sec. 2.*)

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. (AB 1164) 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.)

2364. The board shall administer this article.

(Added by Stats. 1988, Ch. 384, Sec. 1.)

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

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

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

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

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

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

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

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

(Amended by Stats. 2008, Ch. 548, Sec. 10. Effective January 1, 2009.)

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

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

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

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

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

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

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

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

(Amended by Stats. 2008, Ch. 548, Sec. 11. Effective January 1, 2009.)

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

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

(Amended by Stats. 2008, Ch. 548, Sec. 12. Effective January 1, 2009.)

2368. An administrative fee to be established by the board, may be charged for participation in the program; all costs of treatment shall be paid by the participant. These fees shall be deposited into the Contingent Fund of the Osteopathic Medical Board of California.

(Amended by Stats. 1991, Ch. 359, Sec. 14.)

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

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

(Amended by Stats. 2008, Ch. 548, Sec. 13. Effective January 1, 2009.)

2370. The board shall provide for the representation of any persons making reports to the diversion evaluation committee or to the board under this article in any action for defamation for reports or information given to the committee or the board regarding a licensee's participation in the diversion program.

(Added by Stats. 1988, Ch. 384, Sec. 1.)