



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
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ENFORCEMENT COMMITTEE MEETING NOTICE & AGENDA

Palomar Pomerado Health - Palomar Medical Center
Outpatient Rehabilitation
555 East Valley Parkway, 3rd Floor
Escondido, CA 92025

Directions only: (760) 739-3340

Wednesday, February 9, 2011

4:00 pm – Enforcement Committee Meeting

The public may provide comment on any issue before the committee at the time the matter is discussed.

- A. Call to order, roll call, establishment of a quorum
- B. Introductions
- C. Review of Committee Member Roster/Information.
- D. Review and discussion of Enforcement Committee's Roles and Responsibilities and consideration of recommending changes to the Board.
- E. Discussion and consideration of prohibition of teaching continuing education courses when a practitioner's license is on probation.
- F. Review of pending amendments to the Board's Disciplinary Guidelines and consideration of recommending changes to the Board.
- G. Selection of 2011 meeting dates/locations.
- H. Public comment on items not on agenda.
- I. Adjournment

**ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE
ACTION MAY BE TAKEN ON ANY ITEM ON THE AGENDA; ITEMS MAY BE TAKEN OUT OF ORDER**

Questions regarding this agenda should be directed to Heather Martin, Executive Officer, at the Board's office in Sacramento. Meetings of the California Board of Occupational Therapy are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. A quorum of the board may be present at the committee meeting. Board members who are not members of the committee may observe but not participate or vote. Public comment is appropriate on any issue before the workshop at the time the issue is heard, but the chairperson may, at his or her discretion, apportion available time among those who wish to speak. The meeting is accessible to individuals with disabilities. A person who needs disability related accommodations or modifications in order to participate in the meeting shall make a request to Jeff Hanson at (916) 263-2294 or 2005 Evergreen Street, Suite 2050, Sacramento, California, 95815. Providing at least five working days notice before the meeting will help ensure the availability of accommodations or modifications.

AGENDA ITEM D

California Board of Occupational Therapy

ENFORCEMENT COMMITTEE

Roles & Responsibilities

1. Review and provide recommendations to the Board on enforcement and discipline-related proposed regulatory amendments.
2. Review the *Disciplinary Guidelines* annually and provide recommendations to the Board on suggested amendments;
3. Develop and recommend to the Board enforcement-related policies (i.e. Complaint Disclosure, ...)
4. Review and provide recommendations to Board staff on applications for the Expert Witness Program;
5. Establish resource pool of Expert Witnesses to review medical records and Division of Investigation reports to determine whether the allegation has been substantiated.
6. Review and provide recommendations to Board staff on revisions to various applications and forms used by the Board;

Extract from Board ADMINISTRATIVE MANUAL

The purpose of the Enforcement Oversight Committee is to continually seek ways to improve the Board's enforcement activities, develop and review enforcement policies, review enforcement and discipline-related regulatory proposals, review enforcement and discipline-related forms, review and make recommendations regarding the Board's disciplinary guidelines and to assist in identifying situations where enforcement procedures might be improved.

AGENDA ITEM E

From Board of Behavioral Sciences' (BBS) regulations:

§1887.10. COURSE INSTRUCTOR QUALIFICATIONS

(a) A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

- (1) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
- (2) a master's or higher degree from an educational institution in an area related to the subject matter of the course;
- (3) training, certification, or experience in teaching subject matter related to the subject matter of the course; or
- (4) at least two years' experience in an area related to the subject matter of the course.

(b) During the period of time that any instructor has a healing arts license that is restricted pursuant to a disciplinary action in California or in any other state or territory, that instructor shall notify all approved continuing education providers for whom he or she provides instruction of such discipline before instruction begins or immediately upon notice of the decision, whichever occurs first.

A condition for Probation from BBS' Disciplinary Guidelines:

Instruction of Coursework Qualifying for Continuing Education Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

From Physical Therapy Board's (PTB) regulations:

§1399.96. Standards for Approved Providers.

Before it may approve a provider, the approval agency shall require that the provider adhere to the following requirements:

- (a) Topics and subject matter for each course shall be pertinent to the practice of physical therapy as required by section 1399.92.
- (b) Instructors for each course shall be competent in the subject matter and shall be qualified by appropriate education, training, experience, scope of practice or licensure.
- (c) Each course shall have a syllabus that includes learning objectives, bibliography and either a schedule, for courses offered in-person, or an outline, for courses offered online.
- (d) Each course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.
- (e) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.
- (f) Each approved provider shall periodically review its courses to ensure content quality and currency.
- (g) Each participant shall be given the opportunity to evaluate each course and offer feedback to the approved provider. The approved provider shall consider any such evaluations for the purpose of updating or revising courses.
- (h) Each approved provider has a procedure to respond to complaints.
- (i) Each approved provider provides services to all licensees without unlawful discrimination.
- (j) Each approved provider shall maintain records regarding course content and licensee attendance for a minimum of seven years.
- (k) Each approved provider and instructor shall disclose any financial interest in products recommended during a course.
- (l) Each approved provider shall provide a certificate of completion to attendees.
- (m) Each approved provider shall ensure that any information it disseminates publicizing its continuing education courses is true and not misleading. Such information shall include a statement with the name of the approval agency, that such agency may be contacted about any concerns, any approved provider identification number, and the number of hours for which the course has been approved.

NOTE: Authority: Sections 2615 and 2676, Business and Professions Code.

Reference: Section 2676 and 2684, Business and Professions Code.

From Speech-Language Pathology and Audiology Board's (SLPAB) regulations:

§1399.160.10. COURSE INSTRUCTOR QUALIFICATIONS.


A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

- ~~1.~~ (a) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
2. (b) a valid, current certification in the subject area issued by the American Speech-Language-Hearing Association or the American Board of Audiology;
3. (c) training, certification, or experience in teaching courses in the subject matter; or
4. (d) at least two years' experience in an area related to the subject matter of the course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.
Reference: Section 2532.6(e), Business and Professions Code.

From Board of Registered Nursing's (BRN) regulations:

§1454. Approved Providers



(a) For the purpose of this Article, the title "approved provider" can only be used when an individual, partnership, corporation, association, organization, organized health care system, educational institution or governmental agency, having committed no act which would lead to disciplinary action pursuant to Section 1459.1, has submitted a provider application on forms supplied by the Board, remitted the appropriate fee and has been issued a provider number.

(b) An individual, partnership, corporation, association, organized health care system, governmental agency, educational institution and other organizations may be issued only one provider number; provided, however, that any autonomous entity within such organization may be issued one provider number.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

(1) refunds in cases of non-attendance

(2) time period for return of fees

(3) notification if course is cancelled.

(d) The approved provider is required to accept full responsibility for each and every course, including, but not limited to recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor qualifications. When two or more providers co-sponsor a course, only one provider number shall be used for that course and that provider must assume full responsibility for recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor (s') qualifications.

(e) Providers may not grant partial credit for continuing education.

(f) Approved providers shall keep the following records for a period of four years in one location within the State of California, or in a place approved by the Board:

(1) course outlines of each course given

(2) record of time and places each course given

(3) course instructor vitae or resumes

(4) name and license number of registered nurses taking any approved course and a record of any certificate issued to them.

(g) Approved providers must notify the Board, within thirty (30) days, of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course(s), including name and address changes.

(h) Provider approval is non-transferable.

(i) The Board shall audit records, courses, instructors and related activities of a provider.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code. History: 1. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51). 2. Amendment of subsection (a) filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

From Board of Vocational Nursing (BRN) regulations:

§2540.3. Course Provider Approval.

(a) An individual applying for approval as a continuing education course provider must:

(1) Complete and submit an application form supplied by the Board entitled, "Application to be a Continuing Education Course Provider for Licensed Vocational Nurses" (Form 55A-40; 09/05), hereby incorporated by reference. (2) The content of all courses of continuing education must be relevant to the practice of nursing and must:

(A) Be related to the scientific knowledge and/or technical, manual skills required for the practice of vocational nursing, or

(B) Be related to direct and/or indirect patient/client care.

(C) Learning experiences are expected to enhance the knowledge of the vocational nurse at a level above that required for licensure.

(3) Submit one course offering for Board review prior to course provider approval. Include the following information for the course submitted for review: (A) Identifying information for the name, location and contact of the provider. (B) A description of the subject matter of the course as it relates to recent developments in the vocational nursing field or in any special area of vocational nursing practice, including course title; (C) The course objectives; (D) Method(s) of instruction; (E) Total number of hours in the course and the course location; (F) Methods of evaluation: 1. for instructor evaluation of student achievement of course objectives; and 2. for student evaluation of course content and course instructor. (G) Course instructor's qualifications, as specified in Section 2540.4. (b) The Board will issue approval to the provider. A provider will not be approved for more than a two-year period. Following approval by the Board within each two-year period, the provider may offer an unlimited number of continuing education courses.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

(1) refunds in cases of non-attendance

(2) time period for return of fees

(3) notification if course is canceled

(d) The approved provider is required to accept full responsibility for each and every course, including but not limited to recordkeeping, advertising course content, issuance of certificates and instructor qualifications.

(e) Approved providers shall keep the following records for a period of four years:

(1) course outlines of each course given

(2) record of dates and places each course is given

- (3) instructor curriculum vitae or resumes
- (4) names and license numbers of licensed vocational nurses and/or psychiatric technicians who take any course offered by the approved provider and a record of any certificate issued to them.
- (f) Provider approval is non-transferable.
- (g) Approved providers must notify the Board within 30 days of any changes in information that was submitted on the most recent approved application to the board.
- (h) Approval of a licensed vocational nurse continuing education course provider may be withdrawn if the Board later discovers misrepresentation in an advertisement or in any information required by the Board in accordance with this Article.

Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code History: 1. Amendment of subsections (a)(4) and (c) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment of subsection (a) filed 4-22-81; effective thirtieth day thereafter (Register 81, No. 17). 3. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 4. Amendment of section heading and section filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

§2540.4. Course Instructors Qualifications.

Instructors of continuing education courses shall meet two of the following: (a) Completion within two years preceding course approval of specialized training in the subject matter of the course; (b) Completion of academic studies related to the subject matter of the course within two years of course approval; (c) Experience teaching a course with similar subject matter content within the previous two years; (d) Six months of work experience in the subject matter of the course within the previous three years; or (e) Experience in developing academic courses within two years preceding course approval. Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code. History: 1. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 3. Amendment of section heading, first paragraph and subsection (d) filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

AGENDA ITEM F

California Board of Occupational Therapy

Specific Language

Changes to the proposed text are shown by ~~double-strikeout~~ for deleted text and double underline for new text.

Section 4144 of Division 39 of Title 16, Article 5 of the California Code of Regulations is amended to read:

Article 5.5. ~~Uniform Standards Related to Substance Abuse and Disciplinary Guidelines~~ Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ 4144 ~~4147.~~ Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall ~~consider the disciplinary guidelines entitled~~ comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” [~~December 2003~~ July 2010 July 2011], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

~~§ 4148. Required Actions Against Registered Sex Offenders:~~

~~(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:~~

~~(1) Deny an application by the individual for licensure;~~

~~(2) Revoke the license of the individual, and shall not stay the revocation nor place the license on probation;~~

~~(3) Not reinstate or reissue the individual's license.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.~~

~~(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation shall not be subject to the provisions of this section. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.~~

~~NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2965, and 2966, Business and Professions Code.~~

DRAFT

California Board of Occupational Therapy

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND
DISCIPLINARY GUIDELINES**

~~December 2003~~ July 2010 July 2011

Additional copies of this document may be obtained by contacting the Board at its office in
Sacramento, California or from its web site at www.bot.ca.gov.

California Board of Occupational Therapy

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE
AND DISCIPLINARY GUIDELINES**

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California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND
DISCIPLINARY GUIDELINES

Article 5.5 ~~Enforcement~~ Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ 4144 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [~~March 2010~~ July 2011] which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license which scope of practice authorizes him or her to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

FACILITATED GROUP SUPPORT MEETINGS

If a board requires a licensee to participate in facilitated group support meetings, the following shall apply:

When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.

3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. The facilitator shall report any unexcused absence within 24 hours.

WORK SITE MONITOR REQUIREMENTS:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.

- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

~~If a licensee tests positive for a banned substance, the Board shall automatically suspend the licensee's license, immediately contact the licensee and inform him or her that his or her license has been suspended and he or she may not practice until the suspension is lifted. The Board shall also immediately notify the licensee's employer that the licensee's license has been automatically suspended, and that he or she may not practice until the suspension is lifted.~~

Major and Minor Violations

If a licensee commits a major violation, the Board shall order the licensee immediately to cease any practice of occupational therapy, immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

~~If a licensee commits a major violation, the Board shall automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board.~~

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

~~If a licensee commits a minor violation, the Board shall determine what action is appropriate.~~

DRUG TESTING STANDARDS

If a licensee tests positive for a banned substance, the Board shall order that the licensee immediately cease any practice of occupational therapy, and immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. 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.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. 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.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. 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 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.

DISCIPLINARY GUIDELINES

I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorney's administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate. The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

~~Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.~~

II. GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.

e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

III. DEFINITION OF PENALTIES

Revocation: Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a fixed period of time, not to exceed one (1) year.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages ~~8-14~~ 17-26.

BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act

Section 2570.23: Violation of 2570.3 - Unlicensed Person Engaging in Practice - Sanctions

Applicant Maximum: Denial of application for a license
Applicant Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#26 and #30]

Section 2570.28(a)(1),(2),or(3): Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [~~#22 and~~ #23, #25, #26, #28, #30]

Section 2570.28(a)(4): Unprofessional Conduct – False Advertising

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#26, #30]

Section 2570.28(a)(5): Unprofessional Conduct – Discipline by Other Government Agency

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(b): Procuring a License by Fraud, Misrepresentation, Mistake

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional condition [~~#22-#23, #26, #28]~~

Section 2570.28(c):	Violating Any Provision of the Occupational Therapy Practice Act or Regulations
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(d):	False Statement on Application for License or Renewal
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
Section 2570.28(e):	Conviction of Crime Substantially Related to License
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#25 , #26, #27, #28, #30]
Section 2570.28(f) or (g):	Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
Section 2570.28(h):	Committing Fraud, Dishonest or Corrupt Act
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
Section 2570.28(i):	Committing Any Act Punishable as Sexually Related Crime
Maximum:	Revocation
Minimum:	Stayed revocation, ninety (90) days actual suspension and

five (5) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional Conditions [#15, #16, ~~#23~~ #24, #26, #30]

Section 2570.28(j):

Using Excessive Force, Mistreating or Abusing Patient

- Maximum: Revocation
- Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:
 - a. Standard conditions [#1-#13]
 - b. Optional Conditions [#15, #16, ~~#23~~ #25, #26, 30]

Section 2570.28(k):

Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#13]
 - ~~b. Optional Conditions [#14, #17, #19, #21]~~

Section 2570.28(l):

Changing the Prescription of Physician or Falsifying Verbal or Written Orders

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 2570.28(m):

Failing to Maintain Patient Confidentiality

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 2570.28(n):

Delegating Services that Require License to Unlicensed Person

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 2570.28(o):

Committing Act that would be Grounds for Denial under Section 480

- Maximum: Revocation

Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(p):	Failing to Follow Infection Control Guidelines
Maximum:	Revocation
Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.29(a):	Obtain, Possess, Administer to Self, Furnish or Administer to Others, Controlled Substance
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]</u>
Section 2570.29(b)(1)(2) or (3):	Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]</u>
Section 2570.29(c):	Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]</u>
Section 2570.29(d):	Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]

Section 2570.29(e):

Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#13]
 - b. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]

GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE

Section 119:

Misdemeanor Pertaining to Use of a License

- Maximum: Revocation
- Minimum: Stayed revocation and one (1) year probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 125:

Misdemeanor Pertaining to Conspiring with Unlicensed Person for Use of a License

- Maximum: Revocation
- Minimum: Stayed revocation and one (1) year probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 125.6:

Discrimination by Licensee

- Maximum: Revocation
- Minimum: Stayed revocation and one (1) year probation on the following conditions:
 - a. Standard conditions [#1-#13]

Section 480 (a):

Denial of Licenses

Maximum/Minimum: Denial of license

Section 480(a)(c):

Denial of Licenses

Maximum/Minimum: Denial of license

Section 496: Subversion of Licensing Examinations or Administration of Examinations.

Maximum: Denial or revocation of license
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13}
b. Optional condition [~~#22~~ #23, #26, #30]

Section 726:

Sexual Abuse, Misconduct, or Relations with a Patient or Client

Maximum: Revocation
Minimum: Stayed revocation and one (1) year probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#25, #26, #30]

Section 730:

Performing Medical Evaluation Without Certification

Maximum: Revocation
Minimum: Stayed revocation and one (1) year probation on the following conditions:
a. Standard conditions [#1-#13]

Section 810:

Fraudulent Claims

Maximum: Revocation
Minimum: Stayed revocation and one (1) year probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#26, 27, #30]

V. STANDARD CONDITIONS OF PROBATION

(to be included in all cases of probation)

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five (5) days of occurrence.

2. Compliance with Probation and Quarterly Reporting

Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board (~~Attachment A~~) (Quarterly Written Report, rev. 12/2009).

3. Personal Appearances

Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Notification of Address and Telephone Number Change(s)

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.

5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State for more than thirty (30) days, respondent shall notify the Board or its designee in writing within ~~ten (10)~~ five (5) days of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the period of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of occupational therapy while residing in California, respondent shall notify the Board or its designee in writing within five (5) days of the dates of cessation of practice and expected return to practice. All provisions of probation shall remain in effect, and the period of probation shall be extended for the period of time respondent was not engaged in the practice of occupational therapy as required by other employment requirement of this order.

6. Notification to Employer(s)

When currently employed, ~~or~~ applying for employment in any capacity, or contracted to provide occupational therapy services, in any health-care profession Respondent shall ~~notify his/her~~ provide a copy of the Board's Decision to each employer, supervisor, or contractor of the probationary status of respondent's license. This notification ~~to the current employer shall occur no later than the effective date of the Decision.~~ Respondent shall notify any prospective ~~health-care~~ employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification ~~shall be made by providing the employer or prospective employer with~~ include a copy of the

Board's Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervisors and contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing occupational therapy services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board, to allow the Board to communicate with the employer and supervisor or contractor regarding issues including but not limited to the licensee's work status, attendance, performance, and on-going monitoring.

Respondent shall cause each ~~health care~~ employer and supervisor or contractor to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board (~~Attachment B~~) (Work Performance Evaluation Form, rev. 12/2010).

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, within five (5) days if he/she is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

7. Employment Requirements and Limitations

During probation, respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, or his or her license is temporarily suspended, the period of probation shall be ~~told during that time~~ extended for that period of time.

8. Supervision Requirements

Respondent shall obtain ~~prior~~ approval from the Board, when continuing or before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

9. Continuing Education Requirements

Respondent shall complete continuing education directly relevant to the violation as specified by the

Board. Continuing education shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as ~~scheduled~~ designated or failure to complete same no later than ~~100 days prior to the termination of probation~~ one year from the date of the Board's written notification shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. Maintenance of Valid License

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

11. Cost Recovery Requirements

Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one (1) year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one (1) year period.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

VI. OPTIONAL CONDITIONS OF PROBATION

14. Examination by a Physician

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician and surgeon of his/her choice who meets minimum criteria established by the Board. The physician and surgeon ~~must~~ shall be licensed in California and Medical Board Certified in Family Practice, Internal Medicine or a related specialty. The purpose of the examination shall be to determine respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician and surgeon to complete a written medical report to be submitted directly to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that respondent is not physically fit to practice or can only practice with restrictions the ~~examining~~ physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the ~~examining~~ physician's and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with ~~this condition~~ any order to cease practice or restriction of his or her practice until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

15. Psychological Evaluation

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric/ or psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed evaluators for prior approval by the Board to conduct a psychiatric or psychological evaluation. The evaluation shall be performed by a ~~psychiatrist~~ physician and surgeon licensed in California and ~~Medical~~ Board Certified in Psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely or can only practice safely with restrictions, the evaluator shall orally notify the Board within one (1) working day, and then notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

16. Psychotherapy

Within sixty (60) days of the effective date of the Decision, respondent shall submit to the Board the name of one (1) or more proposed therapists for prior approval. Respondent shall participate in ongoing

psychotherapy with a California licensed or legally registered mental health professional approved by the Board. ~~Upon~~ Within ten (10) days of receiving notification of approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

17. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

~~Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall be automatically suspended for minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.~~

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of occupational therapy, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of occupational therapy for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent's license shall ~~remain suspended~~ not practice occupational therapy until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any ~~restrictions or recommendations~~ terms or conditions made by the Board as a result of the clinical

diagnostic evaluation.

18. Rehabilitation Program

Within thirty (30) days of the effective date of the Decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work settings, random bodily fluid or other matter testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. Cost for participation in this program shall be paid by respondent.

19. Support Groups

18. 19a Chemical Dependency Support/Recovery Groups

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous), and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and
- the nature, duration, and severity of substance abuse.

19b. Facilitated Support Group Meetings

Within thirty (30) days of the effective date of the Decision, respondent shall begin attendance at a facilitated support group, and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;

- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

19c. Group Support/Recovery Meetings

Respondent shall begin and continue attendance at a support/recovery group (e.g., Alcoholics Anonymous, Narcotics Anonymous, or a facilitated group) as ordered by the Board or its designee. When determining the type and frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

- a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
- b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
- c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
- d. The facilitator shall report any unexcused absence within 24 hours.

NOTE TO ALJ: *Condition 19c is not necessary if 19a or 19b is ordered.*

19, 20. Abstain from Controlled Substances

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in

sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness or condition. If under such prescription, Respondent shall cause to have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

~~20.~~ 21. Abstain from use of Alcohol

Respondent shall completely abstain from the use intake of alcoholic beverages during the period of probation.

~~21.~~ 22. Submit Biological Fluid or Specimen Samples

Respondent shall immediately submit to random and directed biological fluid alcohol and/or drug testing at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and at minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer. If Respondent tests positive for a banned substance, Respondent's license shall be automatically suspended ordered by the Board to immediately cease any practice of occupational therapy, and may not practice unless and until notified by the Board. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative ~~drug~~ testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

~~22.~~ 23. Take and Pass the Licensure Examination

Respondent shall take and pass the licensure examination currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition precedent to reinstatement of a license, respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or other terms of probation shall be tolled until the respondent has successfully passed the licensure examination and notice of licensure has been mailed to respondent by the Board.

~~23.~~ 24. Worksite Monitor

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Reporting by the worksite monitor to the board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the

oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

23-24, 25. Restriction on Licensed Practice

Respondent shall practice only with a specified client population, in a specified practice setting, or engage in limited occupational therapy services. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in a manner required by the Board.

24-25, 26. Suspension

Respondent is suspended from the practice of occupational therapy for _____ days beginning on the effective date of the Decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension. ~~Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.~~

25-26, 27. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$ _____ and shall provide the Board with proof from _____ attesting that the full restitution has been paid. In all cases, restitution shall be made before the termination of probation.

26-27, 28. Criminal Probation Reports

Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

27-28, 29. Relinquish License and Wall Certificate

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and order.

28-29, 30. Notification to Clients/Cessation of Practice

In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

31. Request for Modification

"Request" as used in this standard is a request made to the Board's designee, and is not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board:

a. Demonstrated sustained compliance with current recovery program.

b. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.

c. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

VII. REHABILITATION CRITERIA

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

VIII. PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY

When considering a petition for reinstatement of the license or a petition for reduction in penalty, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section VII. above.