

**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
PROPOSED MODIFIED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations**

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

a. Section 4101, Article 1, is amended to read as follows:

§ 4101. Delegation of Certain Functions.

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act (section 11500 et seq. of the Government Code), the power and discretion conferred by law upon the Board to order an examination pursuant to section 820 of the Code, receive and file accusations and statements of issues; issue notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings, including the authority to grant a motion to vacate a default decision, approve a settlement agreement for revocation or surrender of a license, or approve an interim license suspension; and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 480, 2570.1, 2570.6, 2570.17, 2570.19, 2570.20, and 2570.23, Business and Professions Code and Sections 11500 et.seq., and 11415.60, Government Code.

b. Section 4146.5 is added to Article 5.5, to read as follows:

§ 4146.5. Effective Dates of Decisions

Unless otherwise specified in an Order of the Board, the effective date of a decision made by the Board pursuant to the Administrative Procedure Act (section 11500 et seq. of the Government Code) shall be established as follows:

(a) A Default Decision and Order shall become effective 10-days from the date of service of the decision on the parties.

(b) A Stipulated Settlement and Order shall become effective 10-days from the date of service of the decision on the parties.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, 125.9, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Sections 11425.50(e), 11519, and 11520, Government Code.

c. Section 4147, Article 5.5 is amended to read as follows:

§ 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 11400 et seq.), the Board shall ~~consider and apply the comply with the Uniform Standards Related to Substance Abuse and~~ Disciplinary Guidelines (July 2011 October 2013), which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. 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 aggravating or mitigating factors; age of the case; or evidentiary problems issues. ~~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, "Quarterly Written Report (4/2011)" and "Work Performance Evaluation (02/2011)" shall be obtained from the Board and are hereby incorporated by reference.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, ~~125.9, 315, 315.2, 315.4~~, 775, 480, 481, 482, 490, 496, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Section 11425.50(e), Government Code.

d. Section 4147.5 is added to Article 5.5, to read as follows:

§ 4147.5. Uniform Standards Related to Substance Abuse.

(a) The Board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011), which are hereby incorporated by reference. The Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public. 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) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all

relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the licensee on probation.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2570.27, Business and Professions Code; and Section 11425.50(e), Government Code.