STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
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ENFORCEMENT COMMITTEE MEETING NOTICE & AGENDA

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

Directions only: (760) 739-3340

Wednesday, April 27, 2011

1:45 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. Approval of the February 9, 2011, Enforcement Committee meeting minutes.

C. Discussion and consideration of prohibition of teaching continuing education or post-professional courses when a practitioner's license is on probation.

D. Discussion and consideration of amending post-professional education course instructor qualifications.

E. Discussion and consideration of amending proposed regulatory language, Other Acts Constituting Unprofessional Conduct.

F. Review of pending amendments to the Board's Disciplinary Guidelines and consideration of recommending additional changes to Disciplinary Guidelines.

G. Selection of future 2011 meeting dates/locations.

H. Public comment on items not on agenda.

I. Agenda items for next meeting – June 1, 2011

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 B

AGENDA ITEM D

§ 4154. Post Professional Education and Training

a) Post professional education courses shall be obtained at any of the following:
(1) College or university degree programs accredited or approved by ACOTE;
(2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
(3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
(4) Any approved provider. To be approved by the Board the provider shall submit the following:
(A) A clear statement as to the relevance of the course to the advanced practice area.
(B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
(D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
(5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:
(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
<u>(6) Instructor licenses referenced above in subsections 4(C) and 5(B) must be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory board or agency.</u>
(b) Post professional training shall be supervised and obtained at either of the following:
(1) Clinical facilities affiliated with such colleges and universities described in subsection (a) or
(2) Hospital or community based clinical training programs.
(c) Supervised training as it is used in subsection (b) above means, at a minimum:
(1) The supervisor and occupational therapist have a written agreement outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
(2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
(d) Post professional education and training must be completed within the five years immediately preceding the application for approval in each advanced practice area.

AGENDA ITEM C

Suggested New Condition of Probation:

Instruction of Continuing Education Coursework

Respondent shall not be an instructor of any coursework for continuing competency, continuing education, presentations, workshops, in-services, institutes or post-professional competency courses used to satisfy advanced practice requirements, during the first year of probation.

AGENDA ITEM E

5. Section 4149 is added to Article 5.5 to read as follows:

§ 4149. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2570.28(a) and 2570.29 of the Code, "unprofessional conduct" also includes but is not limited to the following:
(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
(2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.
(b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.
(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.
(d) Failure to report to the board within 30 days any of the following:
(1) The bringing of an indictment or information charging a felony against the licensee.
(2) The arrest of the licensee.
(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.
(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.28 and 2570.29, Business and Professions Code.

5. Section 4149 is added to Article 5.5 to read as follows:

§ 4149. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2570.28(a) and 2570.29 of the Code, "unprofessional conduct" also includes but is not limited to the following:
(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
(2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.
(b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.
(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.
(d) Failure to report to the board within 30 days any of the following:
(1) The bringing of an indictment or information charging a felony against the licensee.
(2) The arrest of the licensee.
(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor, including the court name, the case number, and the date of the conviction.
(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.
(5) For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere or "no contest" and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions, misdememeanors, and felonies. "Convictions" does not include traffic infractions with a fine or less than five hundred dollars ($500) unless the fraction involved alcohol or controlled substances.
(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.28 and 2570.29, Business and Professions Code.

AGENDA ITEM F

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

ORDER OF ADOPTION

(1) Adopt new Article 5.5. (commencing with section 4147) in Division 39 of Title 16 of the California Code of Regulations to read as follows:

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

(2) Renumber section 4144 to section 4147 and amend section 4147 in Division 39 of Title 16 of the California Code of Regulations to read as follows:

~~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 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 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, "Quarterly Report of Compliance (3/04)" and "Work Performance Evaluation (3/04)" shall be obtained by the Board, which 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, 475, 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.

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

TABLE OF CONTENTS

- § ~~4144~~ 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines — Page 3
- Uniform Standards for Those Licensees Whose License is on Probation Due to a Substance Abuse Problem — Page 4
- Disciplinary Guidelines — Page 9
- Penalties for Disciplinary Actions — Page 11
- Standard Terms and Conditions of Probation (1-13) — Page 15
- Optional Terms and Conditions of Probation (14-~~28~~ 31) — Page 19
- Rehabilitation Criteria — Page 23
- Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License (reserved) — Page 24

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 ~~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. Optional conditions [#26 and #30]

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. Optional conditions [#26 and #30]

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. Optional conditions [#26 and #30]

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. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]
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. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]
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. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]
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 ~~tolled 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 alcohol~~ic 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 a~~t~~ 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.

California Board of Occupational Therapy

UNIFORM STANDARDS
RELATED TO SUBSTANCE ABUSE
AND
DISCIPLINARY GUIDELINES

~~July 2011~~

July 2012

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

TABLE OF CONTENTS

- CCR Section 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines — Page 3
- Uniform Standards for Those Licensees Whose License is on Probation Due to a Substance Abuse Problem — Page 4
- Disciplinary Guidelines — Page 9
- Penalties for Disciplinary Actions — Page 11
- Standard Terms and Conditions of Probation (1-13) — Page 15
- Optional Terms and Conditions of Probation (14-31) — Page 19
- Rehabilitation Criteria — Page 23
- Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License (reserved) — Page 24

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.

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 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.

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.

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 attorneys , 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.

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.

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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.

BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act

2570.185.
Language:
(a) An occupational therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record.
(b) An occupational therapy assistant shall document the services provided in the patient record.
(c) Occupational therapists and occupational therapy assistants shall document and sign the patient record legibly.
(d) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.

RECOMMEND THE FOLLOWING:

Maximum:	Revocation
Minimum:	Stayed revocation, ??? (XX) days actual suspension and ??? (xx) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions ???

Section 2570.23 - 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 {#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 [#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. Optional conditions [#26 and #30]

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 [#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. Optional conditions [#26 and #30]

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. Optional conditions [#26 and #30]

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, #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, #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]

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

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

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

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]

2570.36.
LANGUAGE:
If a licensee has knowledge that an applicant or licensee may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in writing and shall cooperate with the board in providing information or assistance as may be required.

RECOMMEND THE FOLLOWING:
Maximum:
Minimum:
Standard conditions [#1-#13}
Optional condition [?]

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(c): Denial of Licenses

Maximum/Minimum: Denial of license

<u>Section 490: Grounds for suspension or revocation</u>
LANGUAGE:
490. (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes

and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

RECOMMEND THE FOLLOWING:
Maximum:
Minimum:
Standard conditions [#1-#13}
Optional condition [?]

Section 493: Evidentiary effect of record of conviction of crime involving moral turpitude

LANGUAGE:
493. Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

RECOMMEND THE FOLLOWING:
Maximum:
Minimum:
Standard conditions [#1-#13}
Optional condition [?]

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 [#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]

Section 17500. False or misleading statements
LANGUAGE:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

RECOMMEND THE FOLLOWING:
Maximum:
Minimum:
Standard conditions [#1-#13}
Optional condition [?]

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~~ arrests and convictions to the Board within five (5) days of occurrence.

   CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

   OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. **Compliance with Probation and Quarterly Reporting**
   Respondent shall fully comply with the terms and conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board. Failure by respondent to accept and/or pick up any correspondence sent via express mail, certified mail or registered mail shall constitute a violation of 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 (Quarterly Written Report. Rev 21/2009).

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 staff and his or her Probation Monitor, 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.

   Post Office Boxes are accepted for mailing purposes, however, the Respondent must also provide his or her physical residence as well.

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 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, address change and cost recovery requirements, shall be held in abeyance until respondent resumes practice and/or residence 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 the 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, applying for employment in any capacity, or contracted to provide occupational therapy services, Respondent shall provide a copy of the Board's Decision to each employer, supervisor, or contractor no later than the effective date of the Decision. Respondent shall notify any prospective employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification shall 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 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 (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 extended for that period of time.

8. **Supervision Requirements**
Respondent shall obtain 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 advance and in writing, by the Board.

*****DISCUSSION regarding supervision requirements (other professionals)*****

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~~ six months of the effective date of the decision and shall be incorporated as a condition of ~~this~~ the probation period.

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 designated or failure to complete same no later than 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. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Respondent must submit a proposed payment plan within 30 days of the effective date of the decision and be approved by a Board representative. Payments shall be completed no later than six (6) moths prior to the end of the probation term. 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, t~~ 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)~~ forty-five (45) 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 approved by the Board. The physician and surgeon 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)~~ sixty (60) 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 physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the physician and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. Respondent shall comply with 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

15. Psychological Evaluation

Within ~~sixty (60)~~ forty-five (45) of the effective date of the Decision, respondent shall submit to a psychiatric/psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Bo9ard the name of one or more proposed evaluators for prior approval by the Board. The evaluation shall be performed by a physician and surgeon licensed in California and Board Certified in Psychiatry, or by a clinical psychologist licensed in California and approved by the Board. 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)~~ sixty (60) 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 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. 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.

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 shall 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 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

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 <u>or as requested by the board staff</u>. 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.

<u>NOTE TO ALJ: Condition 19c is not necessary if 19a or 19b is ordered.</u>

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.

Respondent shall 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.

21. Abstain from use of Alcohol

Respondent shall completely abstain from the intake of alcohol during the period of probation.

22. Submit Biological Fluid or Specimen Samples

Respondent shall immediately submit to random and directed 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. If Respondent tests positive for a banned substance, Respondent shall be 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 testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

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.

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.

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.

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

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.

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.

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.

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.
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.

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.

Heather Martin

From: Jessica Sieferman
Sent: Friday, April 22, 2011 11:29 AM
To: Heather Martin
Subject: Uniform Standard #5 and NA/AA meetings

Hey Heather,

I was curious to know if your board will be accepting NA/AA meetings as a group support meeting in Uniform Standard #5: http://www.dca.ca.gov/about_dca/sacc/uniform_standards.pdf.

Currently, our Board requires group support meetings for those on probation with substance abuse and has been accepting NA/AA meetings as meeting that condition. However, based on the facilitator requirements set forth in Uniform Standard #5, I'm concerned that the majority of NA/AA facilitators won't qualify. The first obvious obstacle being that NA/AA is anonymous and the facilitators usually wish to remain that way. Even when I've had NA/AA facilitators cooperate, they still don't meet the first requirement:

> "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."

I've found that the facilitators are recovering addicts/alcoholics who typically have the longest sobriety of the group. I haven't found them being certified or licensed.

Does your Board currently accept NA/AA meetings? If so, will you still accept them after the Uniform Standards go into your regulations?

Thanks for any insight you can provide.

Jessica Sieferman, Probation Monitor
Department of Consumer Affairs
California State Board of Optometry
Phone: 916.575.7184
Fax: 916.575.7292
www.optometry.ca.gov

The Board is committed to providing quality customer service. Please click on **http://www.surveymonkey.com/s/CD3TRQJ** to share your feedback. Thank you.

AGENDA ITEM G

STATE OF CALIFORNIA
APPOINTMENT CALENDAR
STD. 101 (REV. 9/2010)

State Pay Period Calendar for 2011

JANUARY 2011
21 Days 168 Hours

SU	M	TU	W	TH	F	SA
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	P	28	29
30	31					

FEBRUARY 2011
21 Days 168 Hours

SU	M	TU	W	TH	F	SA
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20	21	22	23	B/O	25	26
27	28	1				

MARCH 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
			2	B	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL 2011
21 Days 168 Hours

SU	M	TU	W	TH	F	SA
					1	2
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17	18	19	20	21	22	23
24	25	26	En	28	29	30

MAY 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
			En	E/O	3	4
5	6	7	8	9	10	11
12	13	14	15	B	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

JULY 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1					

AUGUST 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
		2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	P	26	27
28	29	30	E/O			

SEPTEMBER 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
				1	2	3
4	5	6	7	B	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

OCTOBER 2011
21 Days 168 Hours

SU	M	TU	W	TH	F	SA
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

NOVEMBER 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
		1	2	3	P	5
6	7	8	9	E/O	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER 2011
22 Days 176 Hours

SU	M	TU	W	TH	F	SA
				B	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

NOTE: Holidays and pay periods after July 1, 2010, are subject to any collective bargaining agreements negotiated in Fiscal Year 2010–2011 or thereafter.