

## **AGENDA ITEM 10**

### **DISCIPLINARY PROCESS OVERVIEW AND REVIEW OF PROPOSED BOARD MEMBER DISCIPLINARY REFERENCE MANUAL.**

A draft Disciplinary Reference Manual is attached for review.

# TABLE OF CONTENTS

## Enforcement Process Overview

Complaint Process  
Complaint Process Flowchart  
Citation Process  
Citation Process Flowchart  
Discipline Process  
Discipline Process Flowchart

## Legal Documents

Definitions  
Accusations  
Stipulated Settlement Agreement – Accusations  
Statement of Issues  
Stipulated Settlements – Statement of Issues  
Petition to Compel Physical Examination or Psychiatric Evaluation  
Proposed Decisions – Accusation/Statement of Issues  
Proposed Decisions – Citations  
Default Decisions  
Request to Vacate Default Decision  
Reconsideration

## Board Policies

## Disciplinary Guidelines

**Complaint Process**

DRAFT

**HOLD FOR  
COMPLAINT PROCESS  
FLOW CHART**

**DRAFT**

**Citation Process**

DRAFT

HOLD FOR  
CITATION PROCESS  
FLOW CHART

DRAFT

**Discipline Process**

DRAFT

**HOLD FOR  
DISCIPLINE PROCESS  
FLOW CHART**

**DRAFT**



## Definitions

DRAFT

## Accusations

### Background

Complaint cases have been determined by Board staff to warrant formal disciplinary action. The process is initiated by Board staff transmitting the case to the Office of the Attorney General located closest geographically to the address of record of the licensee. The transmittal memo identifies the code sections that allegedly have been violated and contains supporting documentation (e.g. investigation report, court documents). The assigned Deputy Attorney General (DAG) drafts the Accusation. The Accusation is the legal pleading which outlines the sections the licensee is alleged to have violated.

When the draft Accusation is received it is reviewed for accuracy and completeness (all acts and offenses listed). A request for cost recovery (the Board's cost for investigating and prosecuting the case) is included in all Accusations. Once the Accusation is acceptable it is forwarded to the Executive Officer (EO) for signature.

The EO reviews the draft Accusation and signs and dates the Accusation and forwards the Accusation to the Analyst for service (mailed first class and certified mail to the licensee's address of record) on the licensee. If the Accusation is not acceptable, the EO advises Analyst/Manager of necessary edits. Edits are coordinated with the DAG and the Accusation is resubmitted for the EO's signature.

Once signed, the Accusation package is served on the licensee and the Accusation is posted on the Board's website. The deadline for the Respondent to file a Notice of Defense (NOD) is 15-days from the date of service; the NOD is the licensee's opportunity to contest the charges and requesting a hearing.

If no NOD is received, the DAG prepares a Default Decision. (A delinquent NOD shall be accepted anytime up to the point the Board votes on the Default Decision and a hearing will be requested.)

Often the respondent, or his/her legal representative, will contact the DAG to inquire about the possibility of entering into a Stipulated Settlement Agreement (Stipulation) to avoid the costs and uncertainty of a hearing. Depending on a variety of factors, Board staff may work with the DAG to negotiate appropriate settlements as warranted; this reduces the costs and resolves the matter more timely.

### No Documents Are Provided At This Point

### Review Process

Board members do not see nor are they made aware of the Accusation on its own. The Accusation is provided to the Board when a Stipulation or a Proposed Decision is being considered.

## Stipulated Settlement Agreement - Accusations

### Background

Stipulated Settlement Agreements occur after an Accusation has been filed. The respondent has filed a Notice of Defense to request an administrative hearing to contest the charges and/or provide mitigating evidence. Often the respondent or his/her legal counsel will contact the Attorney General's Office to inquire if a settlement is possible to avoid the uncertainties of a hearing and reduce respondent's legal costs. If the case warrants settlement, Board staff will provide settlement terms to the Deputy Attorney General. Board staff does not take this task lightly and any settlement that is being brought before the Board should be consistent with the Disciplinary Guidelines. Although it may appear the respondent benefits from a settlement the Board benefits by eliminating the costs of holding a hearing, discipline is imposed more timely, and settlement terms generally are more specific and stronger than what would have gotten if the case had gone to a hearing.

### Documents Provided

- Accusation
- Stipulated Settlement Agreement & Disciplinary Order
- Deputy Attorney General Recommendation Memo
- Ballot
- Postage Paid Envelope

### Objective

### Review Process

## Statement of Issues

### Background

### No Documents Are Provided At This Point

### Review Process

Board members do not see nor are they made aware of the Statement of Issues on its own. The Statement of Issues is provided to the Board when a Stipulation or a Proposed Decision is being considered.

DRAFT

## Stipulated Settlement Agreement – Statement of Issues

### Background

Stipulated Settlements occur after a Statements of Issues (SOI) denying an applicant has been filed. The respondent has filed a Denial Appeal to request an administrative hearing to contest the charges and/or provide mitigating evidence. Often the respondent or his/her legal counsel will contact the Attorney General's Office to inquire if a settlement is possible to avoid the uncertainties of a hearing and reduce respondent's legal costs. If the case warrants settlement, Board staff will provide settlement terms to the Deputy Attorney General. Board staff does not take this task lightly and any settlement that is being brought before the Board should be consistent with the Disciplinary Guidelines. Although it may appear the respondent benefits from a settlement the Board benefits by eliminating the costs of holding a hearing, discipline is imposed more timely, and settlement terms generally are more specific and stronger than what would have gotten if the case had gone to a hearing.

### Documents Provided

- Statement of Issues
- Stipulated Settlement Agreement & Disciplinary Order
- Deputy Attorney General Recommendation Memo
- Ballot
- Postage Paid Envelope

### Objective

### Review Process

If the licensee complies with the Order, and the Examination or Evaluation demonstrates cause for disciplinary action, an Accusation is prepared and the Order is referenced in the Accusation but not provided as part of the documentation.

**Petition to Compel Physical Examination or Psychiatric Evaluation  
AND  
Order to Compel Physical Examination or Psychiatric Evaluation**

Background

No Documents Are Provided At This Point

Review Process

Board members do not see nor are they made aware of the Petition or the Order. If the licensee fails to comply with the Order, an Accusation is prepared and the Order is referenced in the Accusation but not provided as part of the documentation.

If the licensee complies with the Order, and the Examination or Evaluation demonstrates cause for disciplinary action, an Accusation is prepared and the Order is referenced in the Accusation but not provided as part of the documentation.

If the licensee complies with the Order, and the Examination or Evaluation demonstrates there is no cause for disciplinary action, an Accusation will not be prepared and the case will never come before the board.

## Proposed Decisions – Accusation/Statement of Issues

### Background

Proposed Decisions are issued by Administrative Law Judges (ALJ) subsequent to an administrative hearing. The Respondent in these matters has filed a Notice of Defense (to an Accusation) or Denial Appeal (Statement of Issues) to contest the merits of the charges and/or provide mitigating evidence for consideration.

The Board is the final decision maker. At its discretion, the Board may adopt the Proposed Decision as its Decision, impose a lesser penalty than that of the Proposed Decision, or if desired increase the penalty. If the Board increases the penalty it must read the transcript of the hearing, review all exhibits, and allow oral/written argument from the parties before acting on the case.

When a Proposed Decision is received in the Board's Office it must be acted on it within 100 days.

Failure to act within 100 days results in the ALJ's Proposed Decision becoming operable by law, the Board loses jurisdiction to act. If the Board votes to non-adopt a Proposed Decision to increase the penalty, the Board must act on the matter within the 100-days from the date it receives the transcripts from the hearing.

### Documents Provided

- Accusation/Statement of Issues
- Proposed Decision
- Ballot
- Postage Paid Envelope

### Objective

### Review Process

Board Members review the charging document (Accusation or Statement of Issues) noting the alleged violations of the Business and Professions Code and California Code of Regulations, along with the circumstances/events surrounding the charges. Board Members review the ALJ's Proposed Decision noting the facts, legal findings, and legal conclusion. Board Members should refer to the Board's Disciplinary Guidelines, particularly the minimum/maximum penalty and recommended conditions, pertaining to each of the violations to ensure that the Proposed Decision is consistent with the Board's Disciplinary Guidelines.

## Proposed Decisions – Citations

### Background

### Documents Provided

- Citation
- Proposed Decision
- Ballot
- Postage Paid Envelope

### Objective

### Review Process

DRAFT



## Default Decision

### Background

A Default Decision occurs if:

1. The respondent fails to file a Notice of Defense to contest the merits of an Accusation.
2. The respondent fails to appear for their scheduled administrative hearing.

Once an Accusation is served the practitioner has 15-days to file a Notice of Defense (NOD). If no NOD is received, a Default Decision is prepared.

Once the Default Decision and Investigatory Package is received from the Deputy Attorney General (DAG) and approved by the Enforcement Manager and Executive Officer a Board member vote package is prepared.

If a regularly scheduled Board Meeting is being held in less than three weeks, the package is held until the Board meeting. Otherwise, the package is sent out for vote by mail.

### Documents Provided

- Accusation
- Default Decision
- Investigatory Package (includes Order to Compel, if applicable)
- DAG Recommendation Memo
- Ballot
- Postage paid return envelope

### Objective

### Review Process

## Request to Vacate Default Decision

Background

Documents Provided

- 
- 
- 

Objective

Review Process

DRAFT

## Reconsideration

### Background

### Documents Provided

- 
- 
- 

### Objective

### Review Process

DRAFT

## BOARD POLICIES

- 1.
- 2.
- 3.
- 4.

DRAFT

**Disciplinary Guidelines**

DRAFT