DISCUSSION AND CONSIDERATION OF THE PROCESS AND PROCEDURE OF BOARD WHEN ISSUING AN ADMINISTRATIVE CITATION.

The following are attached for review:

- Information re: process from Board member disciplinary manual
- Citation process flowchart

Citation Process

Overview

Citations are issued when a violation can be proven. Citations bridge the gap between an education letter and the initiation of formal disciplinary action. Board staff drafts the Citation and Fine for the Executive Officer's (EO) signature. Citations identify the codes that allegedly were violated and contain a summary of the events and circumstances surrounding the alleged violation. On occasion, citations may include an abatement order to correct a matter (e.g. submitting an address change, documenting patient/client records, correcting advertisement, etc.).

Board staff serves the citation to the subject's address of record and tracks the citation for compliance or appeal. The cited individual has 30 days to pay any fine imposed, comply with any abatement order, or appeal the citation. If the fine is paid the matter is closed. If an order of abatement was also incorporated into the citation, the licensee must demonstrate compliance unless a later date for compliance is specified.

If a fine is not paid or appealed within 30-days, Board staff will place a hold on the subject's license renewal and will initiate a series of demand for payment letters. If the subject fails to respondent to the third and final demand letter, the case is referred to the Franchise Tax Board for collection. If an abatement order is not complied with, the Board has the option to file an Accusation with the Attorney General's Office (AGO), for failure to comply with the Citation Abatement Order (see disciplinary process).

There are three options to appeal a citation: (1) Request an informal conference with the EO (or his/her designee); (2) Request an administrative hearing; or (3) Request both an informal conference and an administrative hearing.

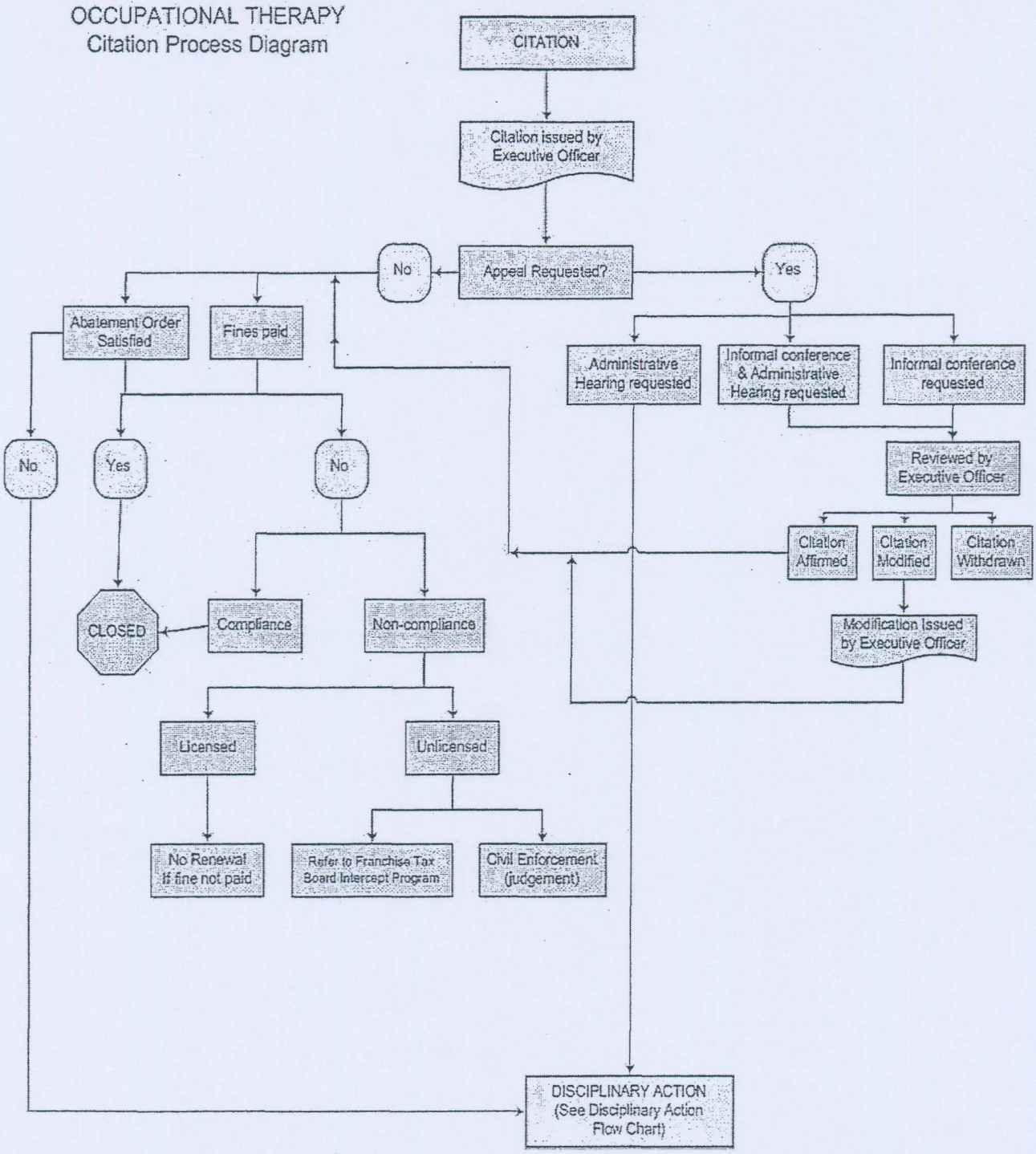
Informal conferences are held by teleconference or in person. If the EO decides to withdraw the Citation and Fine, the citation is closed. If the EO affirms the Citation and Fine, the subject is required to pay the fine unless a request for an administrative hearing was filed. If the EO modifies the Citation and Fine, a modified citation will be served. The subject will then be required to pay the modified citation unless a request for an administrative hearing was filed.

Requests for an administrative hearing are forwarded to the AGO. A Deputy Attorney General (DAG) will be assigned and schedule a hearing date with the Office of Administrative Hearings (OAH). After hearing the case, an Administrative Law Judge (ALJ) will issue a Proposed Decision for the Board to consider.

Board Member involvement

Board Members are not involved in the citation process unless an administrative hearing is requested to appeal a citation. Citations are NOT considered formal disciplinary action since the license is not being revoked or restricted. Instead, Board members are provided statistical data regarding the issuance of citations at scheduled meetings.

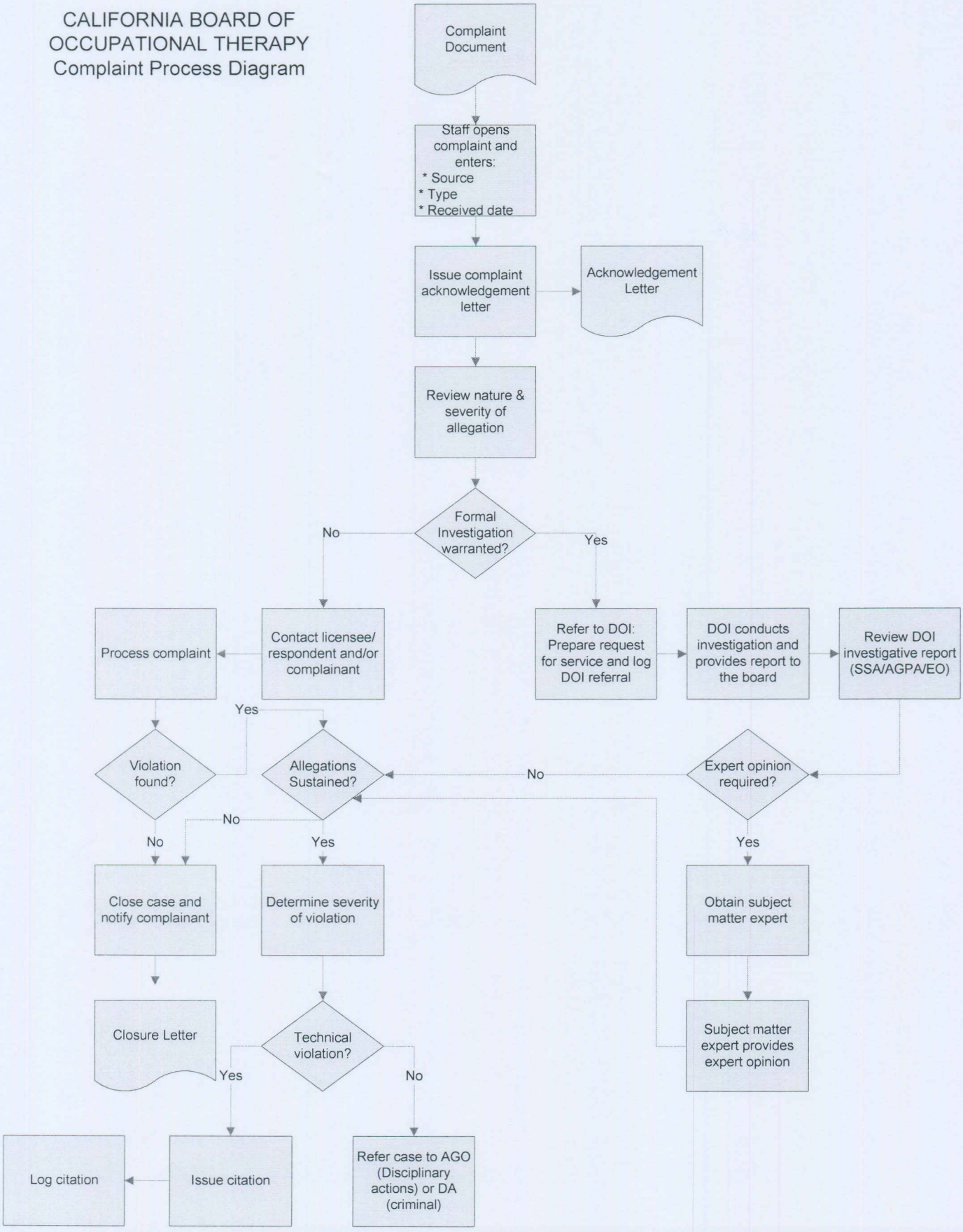
CALIFORNIA BOARD OF
OCCUPATIONAL THERAPY
Citation Process Diagram



AGENDA ITEM 8

DISCUSSION AND CONSIDERATION OF THE PROCESS AND PROCEDURE OF THE EXECUTIVE OFFICER WHEN DECIDING TO INITIATE LICENSEE DISCIPLINE.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Complaint Process Diagram



Discipline Process

Overview

Once a complaint has been investigated and a violation has been substantiated, the Discipline Process begins. The process involves three phases: Investigation; Prosecution, and Adjudication. "Due Process" requires that the licensee be given notice of the proposed action and the basis for the action, as well as the opportunity to be heard (have their day in court, or more specific to us - an administrative hearing).

This section will provide information on processes and steps in the prosecution phase. Once an investigation has concluded and it has been determined that the case warrants formal disciplinary action, the case is transmitted to the Attorney General's Office (AGO). The Board's transmittal will ask that the Deputy Attorney General (DAG) review the case and prepare an appropriate charging document, including an Accusation, Statement of Issues, Petition to Revoke Probation, etc., based on records contained in the transmittal. ("Accusation" will be used for all future references to any legal pleading.)

Once a DAG is assigned, the Accusation is drafted and submitted to Board staff to review. Once approved, the Accusation is signed by the EO and served on the respondent at their address of record. This process can take anywhere from three months to a one year to complete. On occasion the DAG may recommend that the Board withdraw the case or suggest alternative action.

When an Accusation is served, the licensee is advised they must respond within 15 days by filing a Notice of Defense (a form contained in the Accusation service packet) to request a hearing to contest the charges. When an applicant is denied they have sixty (60) days to file an appeal to request a hearing. The licensee/applicant is also provided information on how to obtain copies of materials that will be used in the prosecution at the hearing and is advised to contact the DAG to inquire about the possibility of entering into a settlement if they wish to avoid a hearing.

If a Notice of Defense is not received within 15 days the Board is authorized to proceed with a Default Decision. Staff and the DAG normally allow 20+ days to elapse before initiating action to draft a Default Decision. When the Default Decision is received, staff will make copies and distribute it to Board Members for a vote. (Please reference Default Decisions.)

If a Notice of Defense is received, the DAG will coordinate with the respondent and his/her legal counsel a hearing date. Hearings are usually scheduled between four to nine months from the point the Notice of Defense is submitted (barring continuance requests). During this period the possibility remains that the parties may agree to a Stipulated Settlement prior to the hearing date.

If a Stipulated Settlement is reached, the Stipulation is forwarded to the Board staff to distribute for a vote. (Please reference Stipulated Settlements.)

If the case goes to hearing, an Administrative Law Judge (ALJ) will preside over the hearing and will issue a Proposed Decision approximately 30 days after the hearing. Once the Proposed Decision is received from the Office of Administrative Hearings, the proposed decision will be copied and distributed to the Board Members for a vote. (Please reference Proposed Decisions.)

A reminder to Board Members, *you are the ultimate decision maker in these matters.* You have the authority to decrease or increase penalties. When decreasing or increasing a penalty additional steps are required; the information about these processes and the steps to take are outlined in the sections entitled *Adopt – Decrease Penalty* and *Non-Adopt – Increase Penalty.*