

AGENDA ITEM 10

CONSIDERATION AND POSSIBLE ACTION ON UPDATING POLICY FOR HANDLING ORDERS (RESULTING FROM HEARINGS) WRITTEN BY AN ADMINISTRATIVE LAW JUDGE THAT ARE NOT CONSISTENT WITH THE BOARD'S DECISION.

The updated policy is attached for review.



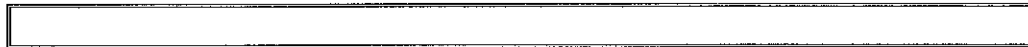
SUBJECT: Editing a Decision Drafted by the ALJ After a Petitioner Hearing	POLICY # ENF – 2015 - 01	DATE ADOPTED: TBD
DISTRIBUTION: All Staff	APPROVED BY: Board of Occupational Therapy	

Background

After a hearing for a Petition for Reinstatement, Petition for Early Termination of Probation, or Petition for Modification of Probation Terms, the Board meets with the Administrative Law Judge (ALJ), who presided over the hearing, in closed session, and directs that ALJ to draft the Board's Decision based on the Board's closed session deliberations. There are times when the resulting Decision drafted by the ALJ on behalf of the Board does not accurately reflect the intent and Decision made by the Board.

When a Decision needs to be edited under the circumstances described above, Board staff relies on a memo from DCA's Legal Affairs Division, dated February 13, 2013, entitled *Procedures on Petition for Reinstatement (or Modification) Decisions* (Memo). According to the Memo, once the Decision is received, the Board staff that was present in closed session reviews the Decision for accuracy, notes any errors or omissions, and sends the Decision, including the noted errors and omissions, to the Board's assigned legal counsel for review. After legal counsel reviews the Decision, legal counsel prepares a memo setting forth the recommended revisions, revises the Decision, if necessary, and sends both to Board staff. Board staff then disseminates both documents to the Board members who were present at the hearing, including direction that, if a Board member believes the Decision as revised does not accurately reflect the Board's Decision, he or she should contact legal counsel, who will revise the Decision, as appropriate, for review and approval by the Board members again.

This process can delay the issuance of the Board's Decision and adversely impact the timing of the reduction/termination of probation or reinstatement of a license, if so ordered by the Board.



Proposed policy

When Board staff receives the Board's Decision drafted by the Administrative Law Judge, Board staff that was present in closed session will review the Decision for accuracy and note any errors or omissions. Minor typographical errors (e.g. specifying '2001' instead of the correct '2010' or specifying 'occupational therapist assistant' instead of the correct 'occupational therapy

assistant'), excluding any terms of probation, will be corrected before forwarding the Decision to legal counsel for review. After legal counsel reviews the Decision, legal counsel will prepare a memo setting forth the proposed revisions and rationale for the changes, revise the Decision, and send both documents to Board staff. Board staff will forward the memo and Decision with legal counsel's proposed edits, if any, to the voting members who were present at the hearing, and ask for confirmation that the Decision accurately reflects the Board's Decision.

If the Board members determine that the Decision does not accurately reflect the Board's Decision, a closed session may be scheduled to discuss the concerns. Afterward all typographical errors will be corrected and incorporated into the Board's Decision.

For major errors in the Decision drafted by the ALJ (e.g. a standard probation term is omitted or facts listed are inaccurate), Board staff will note the errors and send the Decision to legal counsel for review. After legal counsel reviews the Decision, legal counsel will prepare a memo setting forth the proposed revisions and rationale for the changes, revise the Decision, and send both documents to Board staff. Based on the number of edits, Board staff will either: (1) disseminate the memo and revised Decision to the Board members who were present at the hearing for review; or (2) or coordinate the scheduling of a teleconference Board meeting to hold a closed session with the Board members present at the hearing and legal counsel to discuss the revised Decision.

If a teleconference Board meeting is not scheduled to discuss the revised Decision (as in Option (1), above), Board staff will disseminate it to the Board members asking them to reply in an email to Board staff *only* regarding the revised Decision, and either: (1) confirm that the Decision accurately reflects the Board Decision and matches their notes; or (2) advise of any concerns with the revised Decision. Board staff will forward the Board's comments regarding the revised Decision to legal counsel. Based on Board member comments, the Decision will either be signed by the Board's President (or designee) or a closed session may be scheduled to discuss the concerns and content of the Decision.

Implementation Immediately

AGENDA ITEM 11

REVIEW AND POSSIBLE ACTION ON BOARD POLICY TO HEAR CASES INVOLVING UNLICENSED PRACTICE FOR A PERIOD OF MORE THAN ONE YEAR.

The policy is attached for review.

BOARD OF OCCUPATIONAL THERAPY

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SUBJECT: Hearings in Contested Cases After Denial of Licensure Alleging the Unlicensed Practice of Occupational Therapy	POLICY # ENF – 2011 - 01	DATE ADOPTED: December 11, 2011
DISTRIBUTION: All Staff Jan Lachman, SDAG Office of Administrative Hearings	APPROVED BY: Board of Occupational Therapy	
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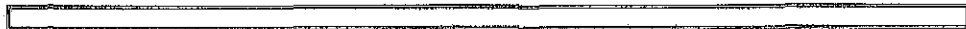
Policy Where an applicant for licensure has been denied a license based upon allegations that he or she has practiced occupational therapy without a license for a period of more than one year, and the denied individual requests, has a right to, and has not waived a hearing pursuant to Business & Professions Code section 485, the Board of Occupational Therapy (Board) will hear the contested case pursuant to Sections 11512 and 11517(a) of the Government Code. The Board will attempt to schedule as many hearings as possible on the same day in the same location for greater efficiency.



Procedure The unlicensed practice by occupational therapy practitioners continues to be an issue requiring immediate attention. Requiring denied applicants to appear before the Board will help ensure a more consistent and efficient handling of hearings after an application for licensure has been denied.



Implementation Immediately



Attachments Government Code Sections 11512 and 11517



AGENDA ITEM 12

CONSIDERATION AND POSSIBLE ACTION ON DEVELOPING PROCEDURE FOR HANDLING ORDERS RESULTING FROM A STATEMENT OF ISSUES HEARING WRITTEN BY AN ALJ THAT ISN'T CONSISTENT WITH THE BOARD'S DECISION.

The draft policy is attached for review.



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SUBJECT: Amending a Decision Drafted by the ALJ after a Board Hearing on a Statement of Issues	POLICY # ENF – 2015 - 02	DATE ADOPTED: TBD
DISTRIBUTION: All Staff	APPROVED BY: Board of Occupational Therapy	

Background

The Board itself hears contested cases based on Statements of Issues, based on unlicensed practice of more than one (1) year, with the presence of an Administrative Law Judge (ALJ) pursuant to Government Code section 11517(b). After the Board holds such a hearing, the Board meets in closed session with the ALJ that presided over the hearing and directs the ALJ to draft its Decision based on the Board's closed session deliberations. There are times when the Decision drafted by the ALJ does not accurately reflect the Board's decision. The purpose of this policy is to establish procedures for amending such decisions.

When a Decision needs to be amended under the circumstances described above, Board staff relies on a memo from DCA's Legal Affairs Division dated February 13, 2013, entitled *Procedures on Petition for Reinstatement (or Modification) Decisions* (Memo). According to the Memo, once the Decision is received, the Board staff that was present in closed session reviews the Decision for accuracy, notes any errors or omissions, and sends the Decision, including the noted errors or omissions, to the Board's assigned legal counsel for review. After legal counsel reviews the Decision, legal counsel prepares a memo setting forth recommended revisions, revises the Decision, and sends both to Board staff. Board staff then disseminates both documents to Board members who were present at the hearing, including direction that, if a Board member believes the Decision does not accurately reflect the Board's decision, he or she should contact legal counsel, who will revise the Decision, as appropriate, for review by the Board members again.

This process can delay the issuance of the Board's Decision and may adversely impact the timing of the license issuance and imposition of discipline, if so ordered by the Board.

Contested
Cases

Government Code Section 11517 specifies the following:

- (a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.
- (b) If a contested case is originally heard before an agency itself, all of the following provisions apply:
 - (1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.
 - (2) No member of the agency who did not hear the evidence shall vote on the decision.
 - (3) The agency shall issue its decision within 100 days of submission of the case.

Please note: 'Submission of the case' refers to the date that parties have completed putting on their cases and the matter is ready for consideration; usually, this will be the same day that the Board deliberated and decided the matter, which is typically the same day as the hearing, unless the matter was held open for any reason.

Proposed policy

When Board staff receives the Decision from the Administrative Law Judge, Board staff that was present in closed session will review the Decision for accuracy and note any errors or omissions. Minor typographical errors (e.g. specifying '2001' instead of the correct '2010' or specifying 'occupational therapist assistant' instead of the correct 'occupational therapy assistant'), excluding any terms of probation, will be corrected before forwarding the Decision to legal counsel for review. After legal counsel reviews the Decision, legal counsel will prepare a memo setting forth proposed revisions and the rationale for any changes, revise the Decision, and send both documents to Board staff. Board staff will forward the memo and Decision with the proposed edits, if any, to the voting members who were present at the hearing, and ask for confirmation that the Decision accurately reflects the Board's Decision.

If the Decision does not reflect the Board's Decision, a closed session may be scheduled to discuss the concerns. Afterward all typographical errors will be corrected and incorporated into the Board's Decision.

For major errors in the Decision (e.g. a standard probation term is omitted or facts listed are inaccurate) Board staff will note the errors and send the Decision to legal counsel for review. After legal counsel reviews the Decision, legal counsel will prepare a memo setting forth the proposed revisions and rationale for the changes, revise the Decision, and send both documents to Board staff. Based on the number of edits, Board staff will either: (1) disseminate the memo and revised Decision to the Board members who were present at the hearing for review; or (2) coordinate the scheduling of a teleconference Board meeting to hold a closed session with the Board members present at the hearing and legal counsel to discuss the revised Decision.

If a teleconference Board meeting is not scheduled to discuss the revised Decision (as in Option (1), above), Board staff will disseminate it to the Board members asking them to reply in an email to Board staff *only* regarding the revised Decision, and either: (1) confirm that the Decision accurately reflects the Board Decision and matches their notes; or (2) advise of any concerns with the revised Decision. Board staff will forward the Board's comments regarding the revised Decision to legal counsel. Based on Board member comments, the Decision will either be signed by the Board's President (or designee) or a closed session may be scheduled to discuss the concerns and content of the Decision.

Implementation

Immediately

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