DISCUSSION ON UPDATING THE BOARD'S DISCIPLINARY GUIDELINES.

The Board's Disciplinary Guidelines are attached.

California Board of Occupational Therapy

DISCIPLINARY GUIDELINES

October 2013

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

DISCIPLINARY GUIDELINES

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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 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).

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.

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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. PENALTIES FOR VIOLATIONS - MINIMUM/MAXIMUM

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 13-24.

BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act

2570.185. – Patient Records

Maximum: Revocation
Minimum: Stayed revocation and 1 year probation on the following conditions:
a. Standard conditions [#1 - #14]
b. Optional condition [28]

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 - #14]
b. Optional conditions [#27 and #31]

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 - #14]
b. Optional conditions [#24, #26, #27, #29, #31]

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 - #14]
b. Optional conditions [#27 and #31]

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 - #14]

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 - #14] b. Optional condition [#24, #27, #29]

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. a. Standard conditions [#1 - #14]

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 - #14] b. Optional conditions [#27 and #31]

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 - #14] b. Optional conditions [#27, #28, #29, #31]

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 - #14]
b. Optional conditions [#27 and #31]

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 - #14] b. Optional conditions [#27 and #31]

Section 2570.28(i): Committing Any Act Punishable as a 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 - #14] b. Optional Conditions [#16, #17, #25, #27, #31]

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 - #14] b. Optional Conditions [#16, #17, #26, #27, #31]

Section 2570.28(k): Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record or any other record

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14]

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 - #14]

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 - #14]

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 - #14]

Section 2570.28(o): Committing Any 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 - #14]

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 - #14]

Section 2570.29(a): Obtain, Possess, Administer to Self, Furnish or Administer to Others, Any Controlled Substance

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #32]

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 - #14] b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #32]

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 - #14] b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

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 - #14] b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

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 - #14] b. Optional conditions [#15, #18, #19, #20a and/or 20b or 20c, #21, #22, #23, #25, #29, #32]

2570.36. Required Reporting of Violations to the Board

Maximum:	Revocation
Minimum:	Stayed revocation and one year (1) year probation a. Standard conditions [#1 - #14]

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 - #14]

Section 123. Conduct constituting subversion of licensing examination; penalties and damages

Maximum:	Denial of application for licensure or revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14]

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 - #14]

Section 125.6: Discrimination by Licensee

Maximum:	Revocation
Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1 - #14]

Section 480(a): Denial of Licenses

Maximum/Minimum: Denial of license

Section 480(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 - #14] b. Optional conditions [#24, #27, #31]

Section 498. Fraud, deceit or misrepresentation as grounds for action against license

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14]

Section 499. Action against license based on licentiate's actions regarding application of another

Maximum:	Revocation
Minimum:	Stayed revocation and two (2) years probation on the following conditions: a. Standard conditions [#1 - #14]

Section 581. Purchase or fraudulent alteration of diplomas or other writings

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14]

Section 582. Use of illegally obtained, altered, or counterfeit diploma, certificate, or transcript

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14]

Section 583. False statements in documents or writings

Maximum:	Revocation
Minimum:	Stayed revocation and two (2) years probation on the following conditions: a. Standard conditions [#1 - #14]

Section 584. Violation of examination

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional condition [#28]

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 - #14] b. Optional conditions [#26, #27, #31]

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 - #14]

Section 810: Grounds for disciplinary action against health care professional

Maximum:	Revocation
Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1 - #14] b. Optional conditions [#27, #28, #31]

Section 17500. False or misleading statements

Maximum:	Revocation
Minimum:	Stayed revocation and two (2) years probation on the following conditions: a. Standard conditions [#1 - #14]

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. Respondent shall submit, in writing, a full detailed account of any and all 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. 4/2011).

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 address 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, 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)**
Respondent shall request and obtain written approval from the Board:
   - Within five days of the effective date of the Decision when currently employed,
   - Prior to commencing employment, or
   - Prior to entering into a contract to provide services,

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, email addresses, fax numbers 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 an authorization and consent form 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. (Authorization to Release Information. Form CBOT-ARI Rev 08/2013).

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. 07/2013).

Reporting by the supervisor 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 four (4) hours of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

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 forty (40) hours per month.

While on probation, respondent shall not work for a registry, placement agency, third party employer, in home health settings, as a traveler, 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 advance and in writing, by the Board.

If respondent is unable to secure employment in his or her capacity, is issued a cease practice order, 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.

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 six months of the effective date of the decision and shall be incorporated as a condition of 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) months 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 shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. Instruction of Continuing Competency/Continuing Education Coursework

While on probation Respondent shall not be an instructor of any coursework for continuing competency, continuing education, presentations, workshops, in-services, institutes, or any courses used to satisfy advanced practice requirements.

13. 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.

14. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

VI. OPTIONAL CONDITIONS OF PROBATION

15. Examination by a Physician

Within 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 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 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

16. Psychological Evaluation

Within 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 Board 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 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.

17. Psychotherapy

Within forty-five (45) 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 sixty (60) 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.

18. 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.

19. 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.

20. Support Groups

20a. 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.

20b. 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.

20c. 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 or as requested by the board staff. 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 20c is not necessary if 20a or 20b is ordered.*

21. 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, or when obtaining refills, 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.

22. Abstain from use of Alcohol

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

23. Submit Biological Fluid or Specimen Samples

23a [This term shall be applied to a Respondent meeting the definition of a substance abusing licensee pursuant to CCR 4147.5]

Respondent shall enroll in the Board's drug-testing program within two (2) business days of the effective date of Probation and shall comply with all contract requirements.

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 fifty-two (52) to one-hundred and four (104) random tests per year within the first year of probation, and a minimum of thirty-six (36) to one-hundred and four (104) random tests per year thereafter, for the duration of the probationary term. A respondent shall request in writing any modifications to testing frequency after the first year of probation. If Respondent tests positive in violation of term 21 or term 22, 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. Any further analysis or review of a test that is positive for a banned substance shall be at respondent's costs. 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.

23b [This term shall be applied to a Respondent that committed a violation involving drugs and/or alcohol, but who is not considered to be a "substance abusing licensee" as referenced in CCR 4147.5]

Respondent shall enroll in the Board's drug-testing program within two (2) business days of the effective date of Probation and shall comply with all contract requirements.

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 frequency of testing shall be no less than thirty-six (36) random tests per year for the duration of the probationary term. If Respondent tests positive in violation of term 21 or term 22, 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. Any further analysis or review of a test that is positive for a banned substance shall be at respondent's costs. 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.

Note to Administrative Law Judge (ALJ): In the event a Respondent successfully rebuts the presumption that they are a substance abusing licensee through testimony and/or evidence provided at hearing, and who is found to have committed a violation involving drugs and/or alcohol, the Board wishes to clarify and establish that it might be in the best interest of public protection to order drug/alcohol testing, but at a less intensive level specified in term 23a. The Board requests that the ALJ explain his or her reasoning for imposing this lesser standard so the Board can better understand and evaluate the Proposed Decision.

24. 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.

25. 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 consent form shall allow the Board to communicate with the worksite monitor. (Authorization and Consent Form. Dev. 10/2011).

26. 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.

27. 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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION AND REINSTATEMENT OF LICENSE

Disciplining of a License:

"IT IS HEREBY ORDERED that [occupational therapist or occupational therapy assistant] license No. [#] issued to respondent [name], is REVOKED. However, the order of revocation is STAYED and the license is placed on probation for [#] years subject to the following terms and conditions:"

Applicant Placed on Probation:

"IT IS HEREBY ORDERED that the application for licensure as an [occupational therapist or occupational therapy assistant] of respondent [name], is GRANTED, and upon successful completion of all licensing requirements a license shall be issued, provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the application is ordered denied, and a new application for licensure will be required. Upon issuance, however, said license shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the license is placed on probation for [#] years subject to the following terms and conditions:"

Reinstatement of a License:

"The petition of [name], for reinstatement of licensure is hereby GRANTED. [Occupational Therapist or Occupational Therapy Assistant] license number [#] shall be reinstated provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the petition is ordered denied, and a new petition for reinstatement will be required. Upon issuance, however, the license shall be immediately revoked. However, the order of revocation shall be STAYED, and petitioner's license shall be placed on probation for a period of [#] years subject to the terms and following conditions:"