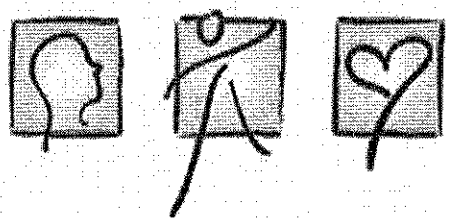
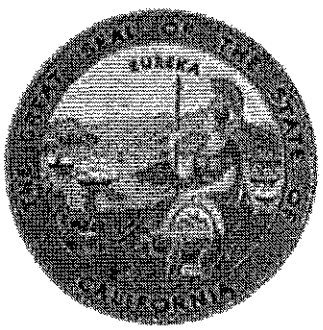
DISCUSSION ON UPDATING THE BOARD'S DISCIPLINARY RESOURCE MANUAL.

The Board's Disciplinary Resource Manual is attached.

California
BOARD OF OCCUPATIONAL THERAPY



Board Member Disciplinary Resource Manual



Section 1

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Enforcement Process Overview

Complaint Process

Overview

When Board staff receives a complaint regarding an occupational therapist or occupational therapy assistant, an initial review is conducted to determine if there is a violation of the Practice Act and if we have legal authority (jurisdiction) to take action. If these conditions are not met, the complaint is closed as "No Jurisdiction". If it is determined the allegation might be a violation, and there is legal authority to take action, Board staff conducts an investigation.

Examples of complaints that fall within the Board's jurisdiction include, but are not limited to:

1. Practicing occupational therapy without a license;
2. Alcohol or substance abuse;
3. Impaired practice due to alcohol or substance use;
4. Gross negligence/incompetence;
5. Patient abuse and neglect;
6. Sexual, violent, assaultive or abusive offenses;
7. Fraud, Fiscal dishonesty, theft or larceny offenses;
8. Mentally impaired and unsafe to practice;
9. Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code;
10. Conviction of a crime involving harassment or stalking (as defined by the Penal Code);
11. Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code);
12. Failure to comply with any mandatory reporting requirements;
13. Unprofessional conduct;
14. Failing to provide appropriate supervision;
15. Failing to appropriately or adequately document patient records;
16. OTs or OTAs on probation who have violated their probation conditions;
17. Aiding or abetting unlicensed practice;
18. A violation of the Ethical Standards of Practice;
19. Other acts or convictions substantially related to the practice of occupational therapy.

Complaints that are outside the Board's jurisdiction include, but are not limited to:

1. Interpersonal conflicts
2. Employee-employer relations
3. Labor issues
4. Rudeness or impolite behavior
5. Complaints against health care practitioners that are not OTs, OTAs, health care facilities, clinics, or agency operations

When the public or another agency files a complaint with the Board, staff will acknowledge receipt of the complaint, in writing, within ten (10) days.

The fundamental purpose of an investigation is to determine if the allegation(s) has merit and is the basis for discipline. The investigative process may involve requesting more information from the complainant, including but not limited to written declarations, documentation, employment records, and billing statements. If treatment notes or records are needed, the complainant is asked to sign an authorization allowing the release of their medical records. Employers, witnesses, supervisors, and administrators may be interviewed or asked to provide written statements and/or records to help ascertain if the allegations have merit. In all cases, Board staff or the Division of Investigation (DOI) Investigator will attempt to obtain the subject's insight and perspective into the allegations. If the subject declines to participate in the investigation, it does not preclude the Board from taking action based on evidence it develops. However, a failure to cooperate/ participate may compromise the investigation process. Complaints of a more serious nature or which contain allegations of harm to the public or which will require extensive record retrieval are forwarded to DOI for investigation by a sworn peace officer.

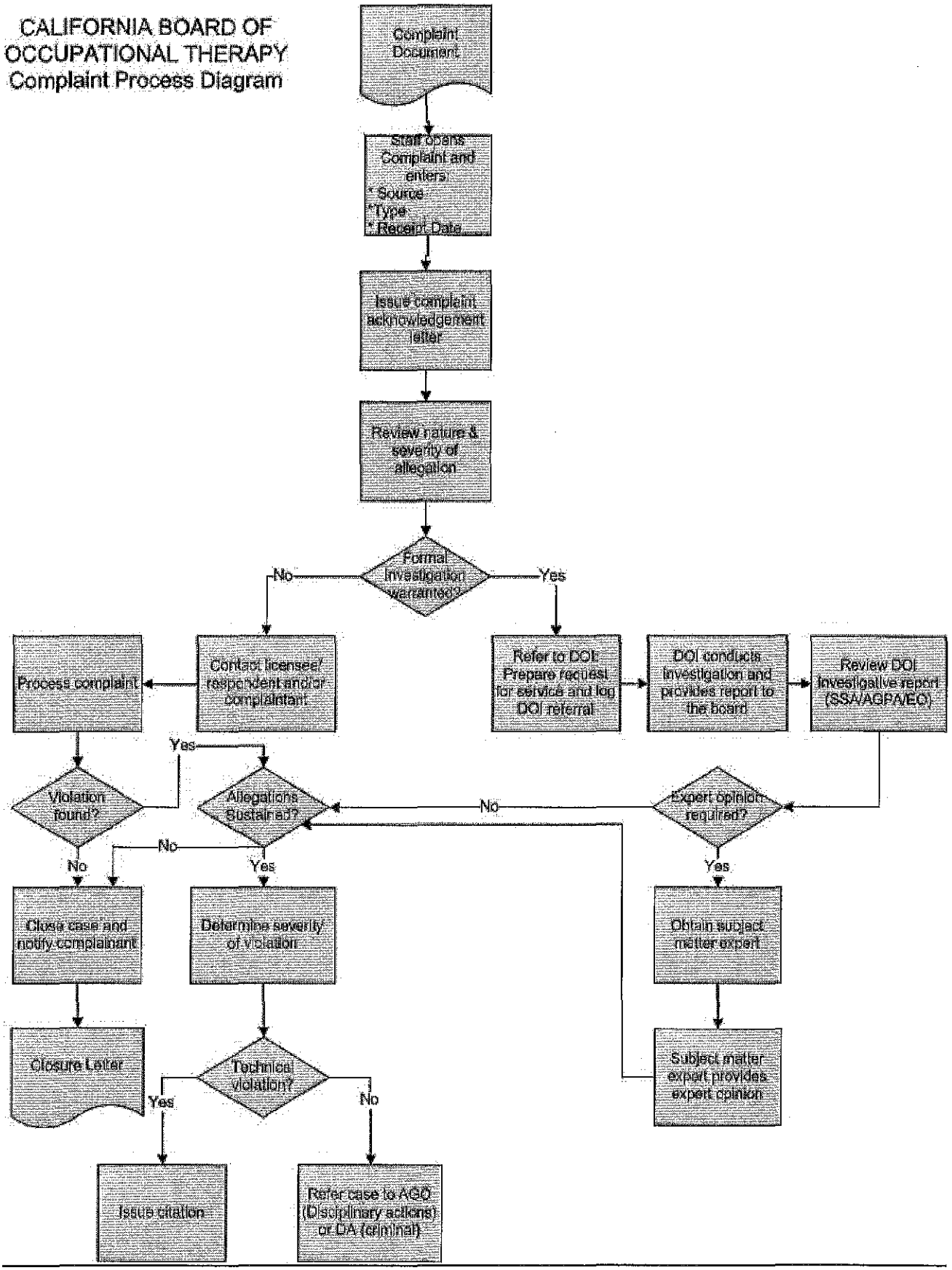
When the investigation concludes, if the evidence does not support the allegations, the complaint is closed and both the subject and complainant are notified. If a violation is substantiated, the case analyst will recommend action to be taken. Violations of a lesser a nature typically are resolved by issuing an education letter or a citation and fine. More serious cases warrant the initiation of formal disciplinary action with the Office of the Attorney General (AGO) to seek revocation, suspension, or probation of the license.

Board Member Involvement

Board Members are not involved in this process; this is purely a Board staff process. Should the matter progress to the point formal action is being initiated, Board Members will need to be unbiased in rendering a decision on the matter.

Board Members are reminded that if anyone contacts them to discuss a complaint, investigation, or who indicates disciplinary action has been initiated against them, you are to advise the individual that you are unable to discuss the matter and refrain from further discussion. You are encouraged to advise the individual that continued discussion could result in your being disqualified from voting on the matter. [Please also contact the Executive Officer to advise of any direct contact by a licensee.]

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Complaint Process Diagram



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.

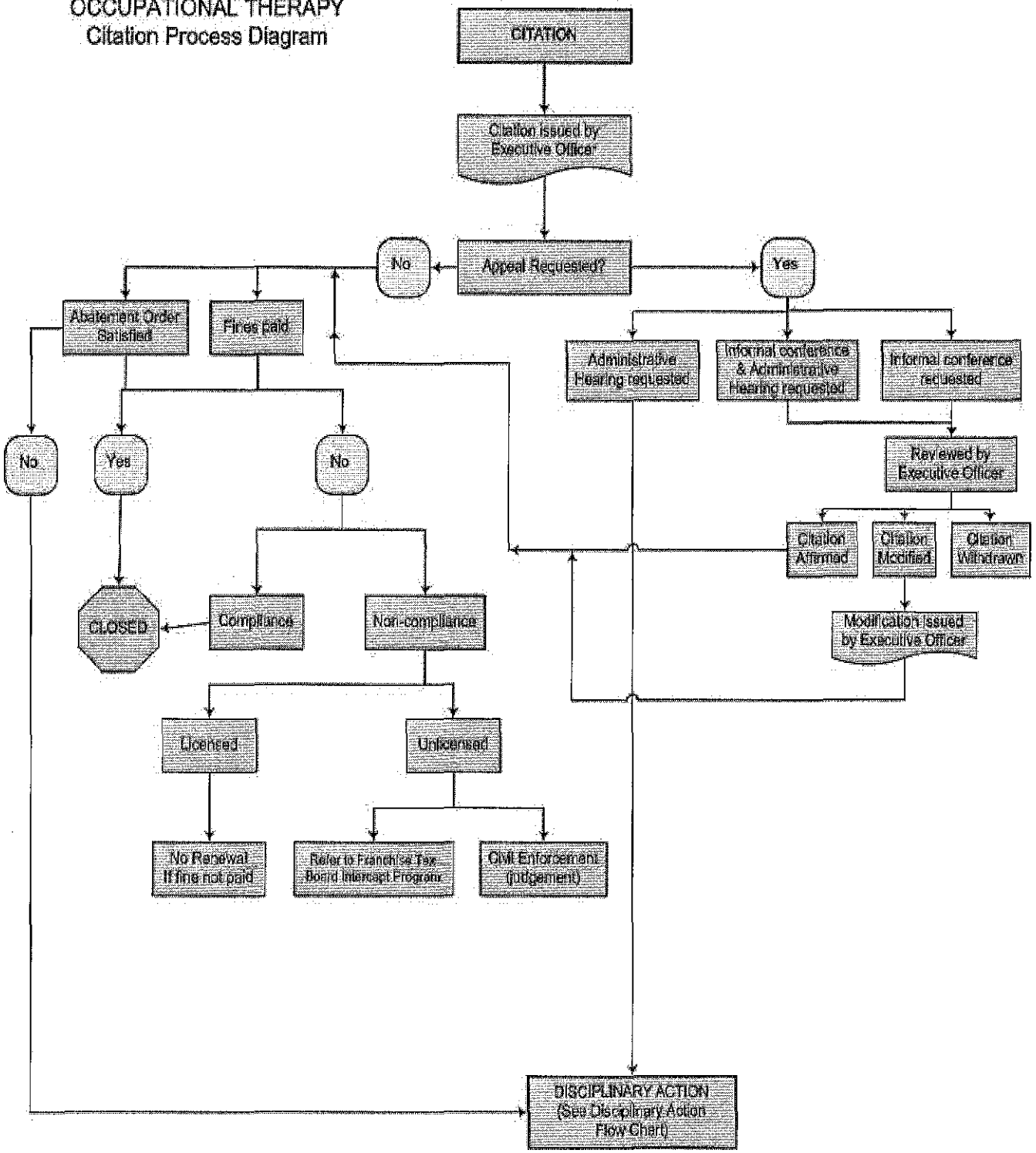
Informal conferences are held by teleconference or in person. If the EO decides to withdraw the Citation and Fine, the citation is closed. If the EO affirms the Citation and Fine, the subject is required to pay the fine unless a request for an administrative hearing was filed. If the EO modifies the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



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.

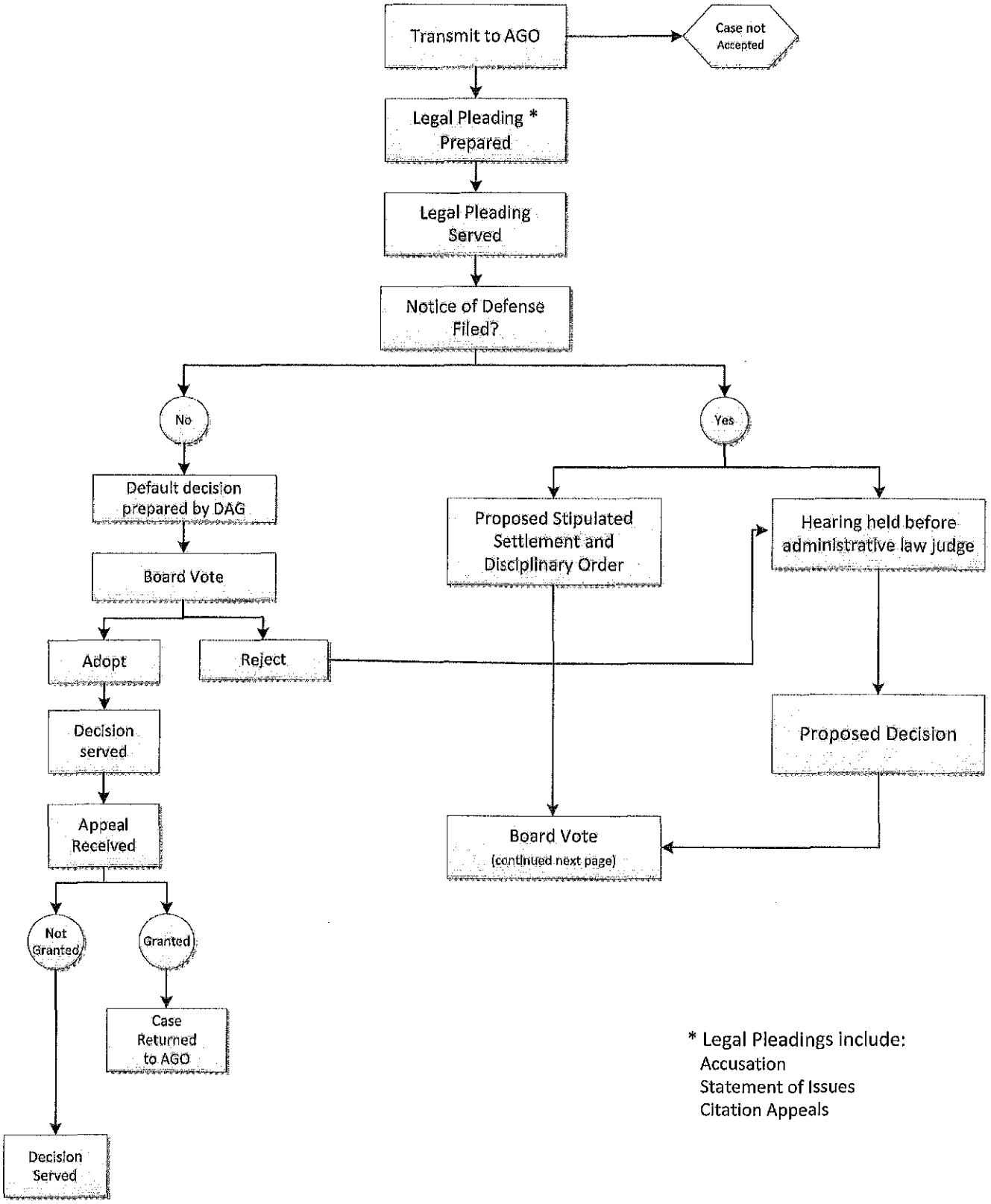
If a Notice of Defense is not received within 15 days the Board is authorized to proceed with a Default Decision. Staff and the DAG normally allow 20+ days to elapse before initiating action to draft a Default Decision. When the Default Decision is received, staff will make copies and distribute it to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

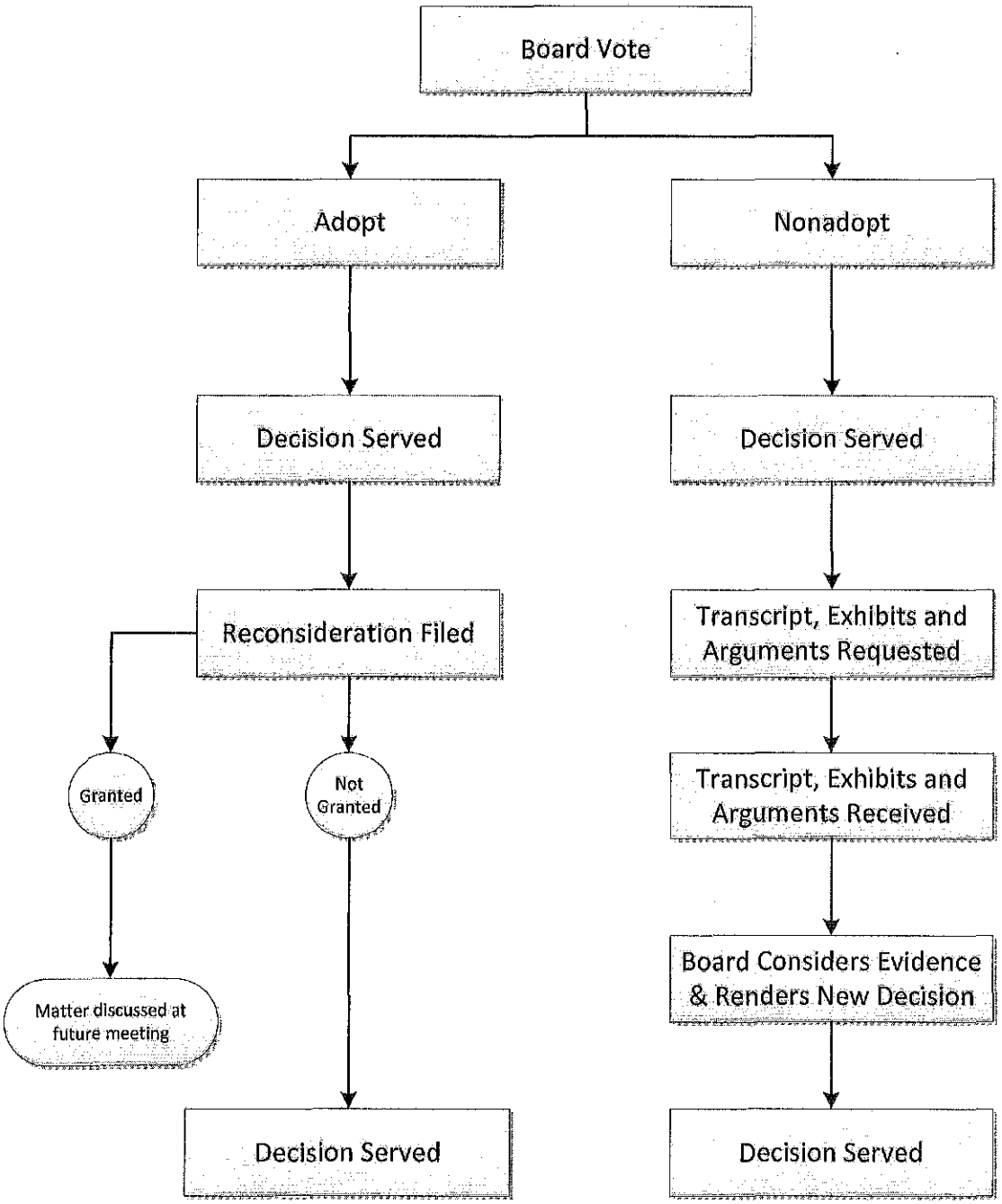
If a Stipulated Settlement is reached, the Stipulation is forwarded to the Board staff to distribute for a vote. (Please reference Stipulated Settlements.)

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.*



* Legal Pleadings include:
Accusation
Statement of Issues
Citation Appeals


Board Vote
Adopt
Nonadopt
Decision Served
Decision Served
Reconsideration Filed
Transcript, Exhibits and Arguments Requested
Granted
Not Granted
Transcript, Exhibits and Arguments Received
Board Considers Evidence & Renders New Decision
Matter discussed at future meeting
Decision Served
Decision Served

Legal Documents

Accusations

Background

An Accusation results from a complaint case having been determined by Board staff to warrant formal disciplinary action. The process is initiated by Board staff transmitting the case to the Attorney General's Office that is in closest geographical location to the subject's address of record. 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) reviews the evidence and, if the evidence supports the charging violations, prepares the Accusation outlining the complete legal basis for disciplinary action and forwards it to Board staff for review.

When the draft Accusation is received, it is reviewed for accuracy and completeness (all acts and offenses listed) and shall include a request for cost recovery (the Board's cost for investigating and prosecuting the case). Once approved and signed by the EO, the Accusation is served on the licensee at his or her address of record.

The Accusation is then posted on the license verification system on the Board's website. The deadline for the Respondent to file a Notice of Defense is 15-days from the date of service; the Notice of Defense is the licensee's opportunity to contest the charges and request a hearing and/or open a dialog to seek a potential settlement.

If no Notice of Defense is received, the DAG will be instructed by the case analyst to prepare a Default Decision.

If a Notice of Defense is received, the DAG will be instructed to schedule a hearing as soon as possible. (Depending upon the geographical location, the time may be as little as four months; as many as eight months from the date 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 reduce costs for the respondent and avoid the uncertainties of a hearing. Board staff will work with the DAG, to establish appropriate terms and conditions if the case warrants a settlement. If a settlement is not warranted, or if settlement terms cannot be reached, the Board members will receive a Proposed Decision from the Administrative Law Judge that presided over the subject's hearing.

Review Process

Board members are not notified when an Accusation is filed. The Accusation is only provided when a Stipulation or a Proposed Decision is being considered by the Board members.

No Documents Are Provided At This Point

Statement of Issues

Background

A Statement of Issues (SOI) is a charging document similar to an Accusation but specifically applies to an applicant for licensure.

When Board staff denies an applicant for licensure, the applicant has the opportunity to appeal the denial for 60-days after service. Upon receipt of the applicant's *timely* appeal, the case is transmitted to the Office of the Attorney General (AGO) that is in the closest geographical location to the applicant's address.

The transmittal memo asks the AGO to review the matter for disciplinary action, identifies the code sections that serve as basis for the denial, and contains documentation (e.g. the application for licensure, a certification of non-licensure, the Board's denial letter, the applicant's appeal, and certified arrest and court documents, etc.) that support the request. The assigned Deputy Attorney General (DAG) will conduct a review and prepare the SOI that will outline the complete legal basis for denial.

When the draft SOI is received it is reviewed for accuracy and completeness (all acts and offenses listed). Once it is approved, the SOI is signed by the EO, and returned to the DAG for service. Once the DAG serves the SOI on the applicant he/she will then contact the applicant to coordinate a hearing date. (This varies from the process associated with Accusations where a licensee must file a Notice of Defense. The appeal that the applicant submitted in response to staff's denial letter serves as the Notice of Defense and request for a hearing.)

An administrative hearing is scheduled approximately 4-6 months after the SOI is served. Similar to an Accusation, a SOI can be resolved by a Stipulated Settlement and Disciplinary Order in lieu of a hearing, if the parties can come to terms in advance of a hearing.

If the matter is not resolved through a settlement and the case is heard before an Administrative Law Judge, the Board will receive a Proposed Decision approximately 30-days after the hearing. The Proposed Decision will then be copied and distributed to the Board for a vote.

Review Process

Board members are not notified of a SOI; it is provided to the Board when a stipulated settlement agreement or a Proposed Decision is being considered.

No Documents Are Provided At This Point

Legal Processes

Proposed Decision –
Accusation or Petition to Revoke Probation

Background

When an Accusation and/or Petition to Revoke Probation is served, the respondent may file a Notice of Defense to contest the merit(s) of the charges or provide mitigating evidence for consideration at the administrative hearing. A Proposed Decision is the legal document issued by an Administrative Law Judge (ALJ) after the hearing.

When a Proposed Decision is received in the Board's Office it must be acted on within 100 days. Board staff is also required to provide the respondent and his/her legal counsel a copy of the Proposed Decision within 30 days of its receipt in the office regardless of whether the Board has acted on the Proposed Decision.

While the ALJ issues the Proposed Decision, the Board is the final decision maker. At its discretion, the Board may:

1. Adopt the Proposed Decision as the Decision (of the Board),
2. Adopt the Proposed Decision and decrease the penalty,
3. Non-adopt the Proposed Decision and increase the penalty,
4. Make technical changes,
5. Remand to the ALJ for the taking of more evidence.

Please refer to the section entitled *Factors to Consider When Deciding Whether to Hold or Non-Adopt a Proposed Decision.*

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 and exhibits from the hearing; a new 100-day deadline is established to act. Please refer to the section entitled *Non-Adopt (Proposed Decision) – Increase Penalty.*

If the Board votes to adopt the Proposed Decision and *lessen* the penalty, the Board must act on the matter within the 100-days from the date it receives the Proposed Decision. Please refer to the section entitled *Adopt (Proposed Decision) – Decrease Penalty.*

IN ANY CASE should the Board fail to act within the statutory 100-day deadline, the Proposed Decision becomes effective by operation of law and the Board loses jurisdiction to act on the matter.

Objective

Render a decision that is legally defensible and consistent with the Board's Disciplinary Guidelines and Uniforms Standards for Substance Abusing Licensees, giving the highest priority to protecting the public's health, safety, and welfare.

Review Process

Board Members should review the charging document (Accusation and/or Petition to Revoke Probation), noting the allegations and the circumstances and events surrounding the charges.

Board Members review the ALJ's Proposed Decision noting the evidence, factual findings, legal findings, and legal conclusion. The Proposed Decision should be consistent with the recommended minimum/maximum penalties and conditions of probation set forth in the Disciplinary Guidelines.

Factors to Consider Whether to Hold or Nonadopt and ALJ's Proposed Decision

Consider **nonadopting** an ALJ's Proposed Decision in these circumstances:

- The Proposed Decision does not provide sufficient public protection given the nature of violation(s). For example, important terms of probation are missing, the probationary period is too short, probation is not appropriate, or other significant unexplained deviations from the Board Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees exist.
- The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
- The ALJ made an error in interpreting the licensing law and/or regulations.

Consider **holding** a case over for closed session discussion when:

- You are unsure if the Proposed Decision protects the public and you would like to discuss the merits with other Board Members.
- You are unsure about the ALJ's reasoning and description.
- You believe a discussion of the practice issues with licensee members may make it easier for you to make a decision.
- If you are unsure if the ALJ's Proposed Decision is consistent with the Board's laws or regulations.
- After discussion with the Board's assigned attorney, you still have questions about the case.

Documents Provided

- Charging document
- Proposed Decision
- Ballot (if provided by mail or email)
- Postage Paid Envelope (if provided by mail or email)

Proposed Decision – Statement of Issues

Background

Statement of Issues are served to applicants who have filed an appeal requesting an administrative hearing in response to staff's denial. A Proposed Decision is the legal document issued by an Administrative Law Judge (ALJ) after the hearing.

When a Proposed Decision is received in the Board's Office it must be acted on within 100 days. Board staff is also required to provide the applicant and his/her legal counsel a copy of the Proposed Decision within 30 days of its receipt in the office regardless of whether the Board has acted on the Proposed Decision.

While the ALJ issues the Proposed Decision, the Board is the final decision maker. At its discretion, the Board may:

1. Adopt the ALJ's Proposed Decision as the Decision (of the Board),
2. Non-adopt the Proposed Decision and Increase the penalty, or
3. Reduce the penalty,
4. Make technical changes,
5. Remand to the ALJ for the taking of more evidence.

Please refer to the section entitled *Factors to Consider When Deciding Whether to Hold or Non-Adopt a Proposed Decision.*

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 and exhibits from the hearing; a new 100-day deadline is established to act. Please refer to the section entitled *Non-Adopt (Proposed Decision) – Increase Penalty.*

If the Board votes to adopt the Proposed Decision and *lessen* the penalty, the Board must act on the matter within the 100-days from the date it receives the Proposed Decision. Please refer to the section entitled *Adopt (Proposed Decision) – Decrease Penalty.*

IN ANY CASE should the Board fail to act within the statutory 100-day deadline, the Proposed Decision becomes effective by operation of law and the Board loses jurisdiction to act on the matter.

Objective

Render a decision that is legally defensible and consistent with the Board's Disciplinary Guidelines and Uniforms Standards for Substance Abusing Licensees, giving the highest priority to protecting the public's health, safety, and welfare.

Review Process

Board Members should review the charging document (Statement of Issues), noting the allegations and the circumstances and events surrounding the charges.

Board Members review the ALJ's Proposed Decision noting the evidence, factual findings, legal findings, and legal conclusion. The Proposed Decision should be consistent with the recommended minimum/maximum penalties and conditions of probation set forth in the Disciplinary Guidelines.

Factors to Consider Whether to Hold or Nonadopt and ALJ's Proposed Decision

Consider **nonadopting** an ALJ's Proposed Decision in these circumstances:

- The Proposed Decision does not provide sufficient public protection given the nature of violation(s). For example, important terms of probation are missing, the probationary period is too short, probation is not appropriate, or other significant unexplained deviations from the Board Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees exist.
- The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
- The ALJ made an error in interpreting the licensing law and/or regulations.

Consider **holding** a case over for closed session discussion when:

- You are unsure if the Proposed Decision protects the public and you would like to discuss the merits with other Board Members.
- You are unsure about the ALJ's reasoning and description.
- You believe a discussion of the practice issues with licensee members may make it easier for you to make a decision.
- If you are unsure if the ALJ's Proposed Decision is consistent with the Board's laws or regulations.
- After discussion with the Board's assigned attorney, you still have questions about the case.

Documents Provided

- Charging document
- Proposed Decision
- Ballot (if provided by mail or email)
- Postage Paid Envelope (if provided by mail or email)

Non- Adopt (Proposed Decision) – Increase Penalty

Background

A Proposed Decision is issued by an Administrative Law Judge (ALJ) subsequent to an administrative hearing. Please refer to the section entitled *Factors to Consider When Deciding Whether to Hold or Non-Adopt a Proposed Decision.*

If the Board votes to non-adopt a Proposed Decision and wishes to *increase* the penalty, the Board usually orders and reads the transcript of the hearing, reviews all exhibits submitted by both parties during the hearing, and reviews written argument from the parties before acting on the case. Based on a review of this information, the Board then directs legal counsel to prepare a Decision after Non-Adoption, specifying the terms and conditions that have been increased.

When 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 (if ordered) and a new 100-day deadline to act is established. If transcripts are not ordered, the original 100-day deadline applies.

Should the Board fail to act within the statutory 100-day deadline, the Proposed Decision is deemed adopted by operation of law and the Board loses jurisdiction to act on the matter.

Objective

Render a decision that is legally defensible and consistent with the Board's Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees, giving the highest priority to protecting the public's health, safety, and welfare.

Review Process

Board Members review the charging document (Accusation, Statement of Issues, Petition to Revoke Probation), noting the allegations and the circumstances and events surrounding the charges.

Board Members review the ALJ's Proposed Decision noting the evidence, factual findings, legal findings, and legal conclusion. The Board must develop their own Decision which should be consistent with the recommended minimum/maximum penalties and conditions of probation set forth in the Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees.

Documents Provided

- Charging document
- Proposed Decision
- Order Non-adopting the Proposed Decision and Briefing Order
- Transcript of hearing, if ordered
- Exhibits from hearing
- Written arguments from Deputy Attorney General and opposing counsel

Adopt (Proposed Decision) – Decrease Penalty

Background

Proposed Decisions are issued by an Administrative Law Judge (ALJ) subsequent to an administrative hearing. Please refer to the section entitled *Factors to Consider When Deciding to Hold or Non-Adopt a Proposed Decision.*

If the Board votes to adopt a Proposed Decision and *lessen* the penalty, the Board directs legal counsel to prepare a Decision after Adoption. The Decision shall specify the terms and conditions that have been reduced. (A review of the transcripts or exhibits is not required when reducing a penalty.)

When the Board votes to adopt a Proposed Decision and *lessen* the penalty, The Board must act on the matter within the 100-days from the date it receives the Proposed Decision.

Should the Board fail to act within the statutory 100-day deadline, the Proposed Decision becomes effective by operation of law and the Board loses jurisdiction to act on the matter.

Objective

Render a decision that is legally defensible and consistent with the Board's Disciplinary Guidelines and Uniforms Standards for Substance Abusing Licensees, giving the highest priority to protecting the public's health, safety, and welfare.

Review Process

Board Members review the charging document (Accusation, Statement of Issues, Petition to Revoke Probation), noting the alleged violations and the circumstances and events surrounding the charges.

Board Members review the ALJ's Proposed Decision noting the evidence, factual findings, legal findings, and legal conclusion. The Board must develop their own Decision which should be consistent with the recommended minimum/maximum penalties and conditions of probation set forth in the Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees.

Documents Provided

- Charging document
- Proposed Decision
- Transcript of hearing (optional)
- Exhibits from hearing (optional)
- Written arguments from Deputy Attorney General and opposing counsel (optional)

Default Decision

Background

A Default Decision brings finality to cases when the following occurs:

1. The respondent fails to file a Notice of Defense (request for a hearing) to contest the merits of the charging document, or
2. The respondent fails to appear for his or her scheduled administrative hearing after filing a Notice of Defense (request for a hearing).

If either of the above occurs, the Deputy Attorney General (DAG) prepares a Default Decision and Evidentiary Package, which sets forth the evidence, underlying events and/or and background in the case. The Evidentiary Package sums up the information that the DAG would have presented had an administrative hearing occurred.

Once the Default Decision and Evidentiary Package are received, 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.

Objective

Board Members render a decision to determine if cause exists to proceed with a Default Decision for the respondent's failure to file a Notice of Defense or appear at their scheduled hearing.

Review Process

Board Members review the Default Decision, Evidentiary Package, and charging document to determine if the evidence supports the action.

Documents Provided

- Charging document
- Default Decision
- Evidentiary Package
- Ballot, if by mail or email
- Postage paid return envelope, if by mail

Request to Vacate Default Decision

Background

When the Board has adopted a Default Decision (revoking the license), Respondent has the right, within 7-days of service, to file a motion requesting that the Default Decision be vacated and stating the grounds relied thereon. The Board may, in its discretion, vacate the Default Decision and grant a hearing on a showing of good cause.

Pursuant to Government Code Section 11520(c), good cause includes, but is not limited to, any of the following:

(1) Failure of the person to receive notice served pursuant to Section 11505;
(2) Mistake, inadvertence, surprise, or excusable neglect.

If the Request to Vacate Default Decision is not received in the Board's office by the deadline, the request shall be deemed denied.

If respondent submits a timely Request to Vacate the Default Decision, if necessary, a Stay of Execution (Stay) is issued by Executive Officer to allow the Board the opportunity to vote on respondent's request. The Stay must be signed prior to the effective date; if not requested timely, the request is deemed denied.

If the motion is granted by the Board, the Decision is sent to the DAG with instructions to schedule a hearing as soon as possible.

If the motion is denied, the (revocation) Decision will become effective immediately after the Stay of Execution expires, unless the Board orders a sooner effective date.

Objective

The Board Members render a decision after determining whether Respondent demonstrated good cause, pursuant to the Administrative Procedures Act section 11520(c), to have the Default Decision vacated.

Review Process

Board Members review the motion requesting the Default Decision be vacated, noting the reasons the request has been made and determining if good cause has been established. Good cause includes, but is not limited to any of the following: (1) Failure of the person to receive the Accusation/Statement of Issues, or (2) Mistake, inadvertence, surprise, or excusable neglect.

Documents Provided

- Respondent's Motion to Vacate the Default Decision ('Request')
- Rebuttal Brief (if applicable)
- Ballot and instructions
- Postage paid return envelope

NOTE: The charging document is not included with these requests.

(Petition for) Reconsideration

Background

After the Board issues a Decision, either the Respondent or the Petitioner may request reconsideration of all or part of a case.* The power of the Board to order reconsideration shall expire 30 days after service of the Decision to the Respondent, or prior to the effective date of the Decision if before 30 days.

If the Petition for Reconsideration (Petition) is not timely received in the Board's office, the Petition shall be deemed denied.

If respondent submits a timely Petition for Reconsideration, a mail vote package is prepared for Board Members to either grant or deny the motion. (This is the request for the Board to reconsider the case only; the merits of the case are not considered at this time.)

If additional time is needed for the Board to act, including receive, review and vote on the Petition, the Executive Officer may grant a Stay of the effective date of the Decision. The Stay delays the expiration date for no more than 10 {additional} days. This additional time is solely for the purpose of the Board to consider and act on the Petition.

If the motion is granted, the matter is placed on the agenda for discussion at the next Board meeting.

If the motion is denied, the Decision will become effective as originally ordered by the Board, or after the Stay expires.

If the Board fails to act (receive and review package and a quorum of votes render a decision on the Petition) within the time allowed, the Petition shall be deemed denied.

Review Process

Reconsideration, if granted, does not mean the Board is issuing a new decision; it only means the Board will take a second look at the Decision at a future meeting.

Documents Provided

- Respondent's Petition to Reconsider
- Order and Decision
- Charging document
- Evidentiary package (if applicable)
- Ballot and instructions
- Postage paid return envelope

(*Board staff may also petition the Board to reconsider all or part of a case.)

Stipulated Settlement Agreements

Background

Stipulated Settlement Agreements ('Stipulations') occur after a Statement of Issues, Accusation, or Petition to Revoke Probation has been filed. The respondent has filed an appeal or 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 (AGO) 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 (DAG). 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 and Uniform Standards for Substance Abusing Licensees.

The benefit of a settlement: the costs of holding a hearing are eliminated, the imposition of discipline is more expedient, and settlement terms coordinated in settlements are consistent with the Board's Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees; in some cases the terms may be more specific and stronger than what likely would have resulted from a hearing and Proposed Decision.

Objective

Render a decision that is consistent with the Board's Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees, giving the highest priority to protecting the public's health, safety, and welfare.

Board Member Review Process

Board Members review the Statement of Issues, Accusation, or Petition to Revoke Probation, noting the allegations and circumstances and events surrounding the charges. The proposed settlement terms should be consistent with the admitted violations and the recommended minimum/maximum penalties and conditions of probation set forth in the Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees.

In addition, the Deputy Attorney General (DAG) will prepare a recommendation that will provide background, current information, and explain any deviations (from the Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees) or considerations that were made in the proposed settlement.

If the Stipulation *is* acceptable, a vote to adopt the Stipulation should be cast.

If the Stipulation *is not* acceptable, the Board can propose a counter-offer with new or modified terms, or send the case to hearing.

The case will be returned to the DAG who will (1) take the necessary steps to obtain a hearing date in the matter or (2) attempt to renegotiate the terms of the Stipulation with respondent or respondent's counsel according to the Board's counter-offer. If those terms are accepted by the Respondent that becomes the Decision of the Board and the Stipulated Decision does not need to return to the Board for adoption.

In mail votes, if a majority of the Board members request to discuss the case in a closed session meeting of the Board, the matter will then be scheduled for discussion.

(When voting by mail ballot, it would be helpful to Board staff if Board members provide their rationale for the non-adoption decision for future reference in similar cases.)

Documents Provided for Board Vote

- Accusation or Statement of Issues
- Stipulated Decision
- Deputy Attorney General Recommendation Memo
- Ballot, if by mail or email
- Postage Paid Envelope, if by mail

Proposed Decisions – Citations

Background

When a Citation is served, the Respondent may file an appeal to contest the merit(s) of the charges, the order of abatement, the fine imposed by the citation and/or provide mitigating evidence for consideration, at an administrative hearing. A Proposed Decision is issued by an Administrative Law Judge (ALJ) after the hearing.

While the ALJ issues a Proposed Decision, the Board is the final decision maker. At its discretion, the Board may:

1. Adopt the ALJ's Proposed Decision as the Decision (of the Board), or
2. Reduce the penalty. (The Board may not increase the penalty in Citation cases.)

If adopted, the Proposed Decision becomes the Board's decision in the matter.

If a lesser penalty is decided upon by the Board, the Board's Order can reflect the adoption of the Decision but with the reduced terms. The Decision shall specify the item(s) removed, modified, and/or reduced (e.g., fine reduced; order of abatement modified, etc.)

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 adoption of the Proposed Decision by operation of law, and the Board loses jurisdiction to act.

Objective

Board members determine whether the penalty is appropriate given the nature of the violation(s).

Review Process

Board Members review the Citation noting the allegations and the circumstances/events surrounding the charges and the ALJ's Proposed Decision noting the evidence, fact findings, legal findings, and legal conclusion.

Documents Provided

- Citation
- Proposed Decision
- Ballot, if by mail or email
- Postage Paid Envelope, if by mail

Petition to Compel Physical Examination or Psychiatric Evaluation and Order to Compel Physical Examination or Psychiatric Evaluation

Background

Once information is received that a licensee may have mental health issues or physical illness affecting the ability to safely practice, the Executive Officer may choose to pursue an 820 evaluation. Business and Professions Code (BPC) 820 states:

> **§ 820. Examination of licentiate for mental illness or physical illness affecting competency**
>
> Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

A pre-820 evaluation may be necessary and performed by an expert witness. This pre-820 evaluation consists of reviewing the information that has been obtained, which could include court and arrest information, a DOI report, information submitted from the licensee, or information from another governmental agency; and rendering an opinion whether the licensee requires an in-person evaluation by a physician and surgeon or psychologist .

If the expert opinion reflects there is concern for the licensee to practice with safety to the public, staff prepares the case to be transmitted to the Attorney General's Office (AGO).

If the assigned DAG determines that there is sufficient information to pursue an 820 evaluation then he/she will prepare a Petition to Compel a Mental Health Evaluation or Petition to Compel a Physical Evaluation (Petition) and an Order (requiring an evaluation or examination). The Petition is be signed by the Enforcement Manager and the Order is signed by the Executive Officer; both documents are served by the AGO.

The Order directs the licensee to contact Board staff to coordinate an evaluation by a specified health care professional. If the licensee does not contact Board staff and undergo an evaluation or examination within 30 days after receiving the Order, then the case will move on to the Accusation process for the licensee's failure to comply with the Order (undergo an evaluation or examination).

If the licensee contacts Board staff regarding the evaluation/examination, Board staff contacts a physician and surgeon or psychologist to conduct an in-person evaluation/ examination. Once the designated health care provider accepts the case, Board staff contacts the licensee and instructs him/her to call and schedule an appointment for evaluation with the designated health care provider. The timeline to submit a written report is generally 2-4 weeks after the evaluation has been completed. (The cost of the evaluation/examination is the paid for by the Board)

If the evaluation or examination finds the licensee cannot safely practice occupational therapy or should be monitored, there is cause for disciplinary action, and an Accusation is prepared by the AGO.

If the licensee complies with the Order, and the evaluation or examination demonstrates there is no cause for disciplinary action, the case is closed without further action; the Board would have no knowledge of this action.

Review Process

(Board members do not see nor are they made aware of the Petition or the Order at this point.)

If an Accusation is filed, Board members will be made aware of the Petition and Order when they are requested to vote on a: Stipulated Settlement, Proposed Decision or a Default Decision.

The Petition and Order are only referenced in a Proposed Decision or a Default Decision; these documents are not provided as part of the documentation supporting the Decision.

No Documents Are Provided At This Point

Definitions of Common Terms

Definitions

TERM	DEFINITION
Accusation	Charges filed against a licensee alleging violation(s) of the Occupational federal, state, or local laws or regulations.
Adopt (decrease penalty)	The Board may "adopt" a Stipulated Settlement or a Proposed Decision issued by an Administrative Law Judge (ALJ) and its Order, decrease the penalty and/or terms.
Citation and Fine Order	A means of addressing relatively minor violations. A monetary fine (commensurate with the violation committed) and/or an order of abatement may be included. A Citation is *not* formal disciplinary action.
Citation Paid in Full	Fine levied paid in full, representing satisfactory resolution of the matter for purposes of public disclosure; not an admission of the allegations.
Closed Session	Deliberation on disciplinary matters that is not open to the public. Once the disciplinary decision is served on the licensee, it immediately becomes public information.
Default Decision	The Decision that results after the respondent fails to respond to an Accusation/Statement of Issues/Petition to Revoke Probation by filing a Notice of Defense or fails to appear at an administrative hearing.
Initial Probationary License	A probationary license imposing terms and conditions of practice, issued to an applicant in lieu of the denial of the application.
Interim Suspension Order (ISO)	An order issued by an ALJ upon petition by the Board, immediately suspending a licensee from all or a specified part of the practice of occupational therapy, pending further action by the Board. An Accusation must be filed; if a Notice of Defense is filed by the licensee, a hearing must be held within 30-days. ISOs are only pursued in cases where permitting the licensee to continue unrestricted practice would endanger the health, safety, and welfare of the public.
Mail Vote	A disciplinary matter that is conducted by mail or email, not in-person, at a Board Meeting.

Modification, Petition for	Modification of the Terms/Conditions of Probation may be granted by the Board only after the licensee has petitioned (submitted a request to) the Board, and at a hearing before the Board with an ALJ presiding, provides clear and convincing proof of rehabilitation.
Non-adopt (increase penalty)	The Board may "non-adopt" a Proposed Decision issued by an ALJ, to increase the penalty. The Board would then issue a non-adopt order and identify the issues that it wishes the respondent and Deputy Attorney General (DAG) to address. Transcripts of the hearing, documents entered into evidence in the case, and arguments from the parties would be provided to the Board. After consideration of this material, the Board then issues its own Order with revised penalty and/or terms, or it may still adopt the Proposed Decision. When considering a Stipulation, the Board may offer additional terms or conditions, or the Board could send the case to hearing.
Notice of Defense	A form completed by the licensee indicating they want to contest the allegations in an Accusation and request a hearing be scheduled.
Order Staying Decision	An Order Staying the Effective Date of the Decision can be issued by the Executive Officer to allow time for the Board to evaluate a Petition for Reconsideration. Typically an Order Staying the Decision is needed when a Petition is received on or just before the filing deadline. In the event that the Board is unable to render a timely Decision, the Petition is deemed denied.
PC 23 Appearance	Under Penal Code section 23, in a criminal proceeding involving a licensee, the State agency that issued the license may voluntarily appear to furnish pertinent information, make specific recommendations regarding conditions of probation, or provide any other assistance to promote the interests of justice and protect the public. The DAG appears at the licensee's criminal proceeding to request, as part of conditions of probation, bail, or sentencing, that the (criminal court) judge impose practice restrictions or order the licensee to completely refrain from engaging in any activities requiring a license, pending further action (typically, disciplinary action by the Board.)

PC 23 Order	If the (criminal) Court imposes restrictions, the Order is issued to the person, and does not legally affect the status of the license.
PC 1203.4 (Expungement)	An order issued pursuant to Penal Code Section 1203.4, removes a criminal conviction from an individual's record for the purpose of employment background check. However, this removal does not apply in cases where an individual is applying for a license. Thus, applicants and licensees are required to disclose any conviction, even those that have been expunged.
Petition to Revoke Probation	Legal document charging violation(s) of a probationary order and seeking revocation of probation and the license.
Probation Term Completed	Licensee completed the probationary period successfully.
Probation Tolled	The licensee is not currently working as required in his/her probationary terms. The probationary period does not resume or begin until the probationer commences or resumes practice in California as required by the order.
Public Reproval	A formal reprimand issued by the Board as a result of a disciplinary proceeding.
Proposed Decision	A document which contains the determination of issues, findings of fact and the proposed order of an ALJ after the conclusion of an administrative hearing.
Reconsideration, Petition for	After receiving notice of a disciplinary decision, the respondent or complainant (Board staff) may request that the Board reconsider all or a part of the Board's Decision. The Petition for Reconsideration must be received and considered by the Board before the effective date of the decision.
Reinstatement, Petition for	Reinstatement of the license is granted only after the former licensee has petitioned the Board, and at a formal hearing before the Board with an ALJ presiding, provides clear and convincing proof of rehabilitation.
Remand	Send a case back to an ALJ for consideration or action; or a case from a Superior Court sent to the Board after a Writ of Mandate is issued.
Revoked/Revocation	The license and right to practice is terminated.

Request to Vacate a Decision	Such requests pertain to Default Decisions and must be received by Board staff within 7 days of service of the Default Decision on the respondent, if not yet effective. The Board may vacate the decision and grant a hearing upon a showing of 'good cause.' Government Code Section 11520(c) defines Good Cause as (1) Failure of the person to receive notice served pursuant to Section 11505; (2) Mistake, inadvertence, surprise, or excusable neglect.
Revoked, Stayed, Probation	"Stayed" means the revocation has been put off or suspended so that the licensees may practice so long as they comply with specific probationary terms and conditions. Violation of probation may result in termination of the probation and the revocation that was stayed may be ordered re-imposed.
Service/Served	Requires that notices or legal documents be mailed by certified mail to the respondent's address of record and his/her legal counsel.
Statement of Issues	Charges filed against an applicant to deny licensure due to criminal conviction(s) or committing an act(s) in violation of federal or state laws or regulations.
Stay of Execution	The Executive Officer suspends the effective date of the action to provide additional time for the Board to consider a licensee's request.
Stipulated Settlement and Disciplinary Order	A Settlement agreed to by the parties (Board staff/DAG and licensee/counsel) in lieu of a formal hearing to resolve the Accusation or Statement of Issues and impose discipline.
Surrender of License	The licensee voluntarily turns in the license, subject to acceptance by the board, and the right to practice is terminated. A surrendered license is considered disciplinary action.
Suspension	The licensee is prohibited from practicing for a specific period.

Transcript	Transcript of an administrative hearing. When the Board non-adopts a Proposed Decision to consider increasing a penalty, the Board will review the transcript of the hearing and all evidence entered at the hearing.
Writ of Mandate	A petition filed in Superior Court by a respondent that alleges the Board abused its discretion in rendering a decision to deny a license or take disciplinary action, and requests relief from the Superior Court Judge.

Disciplinary Guidelines

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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Please note: There are formatting and page numbering differences within the Disciplinary Guidelines due to their incorporation into this document.

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.

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. 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

Maximum:	Denial of application for a license
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:"