

BOARD OF BEHAVIORAL SCIENCES
Regulation Changes Effective July 3, 2009

Amendments are to Title 16, California Code of Regulations Section 1888
Disciplinary Guidelines

Changes to the original language are shown by underline for new text and strikethrough for deleted text.

Disciplinary Guidelines

Amendments to 16 CCR Section 1888 do the following:

→ *Penalty Guidelines*

- Replace errant references to BPC sections 4986.10, 4986.20, 4986.50, 4986.70, 4986.71 and 4986.75. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections to BPC Sections 4989.14, 4989.20, 4989.26, 4989.54, 4989.56, and 4989.58.
- Add a reference to BPC section 4992.3(r) in addition to 4989.54(f) to include the violation of unprofessional conduct statutes by a registrant related to the acquisition of experience hours.
- Delete references to subsections (a)-(e), (g)-(k) and (n) of Section 1858 of Title 16, CCR. An approved regulatory change operative December 30, 2007, repealed these subsections in accordance with changes implemented by SB 1475, Chapter 659, Statutes of 2006.
- Add reference to 16 CCR section 1845((b) related to unprofessional conduct. This reference was inadvertently omitted in the current version of the Guidelines.
- Add reference to BPC sections 4982(aa)(1), 4992.3(x)(1) and 4989.54(y)(1) that were created by SB 797, Chapter 33, Statutes of 2008. The purpose of this change is to make Section 1888 consistent with current statute. These code sections now specify that it is unprofessional conduct for a licensee or registrant to do any of the following:
 - engaging in an act with a minor punishable as a sexually related crime regardless of whether the act occurred prior to or after registration or licensure; and,
 - engaging in an act described in section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in sections 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time registration or license was issued by the board.
- Add references to BPC sections 4982(y), 4992.3(v) and 4989.54(x). SB 1048, Chapter 588, Statutes of 2007 added willful violation of Chapter 1 of part 1 of division 106 of the

Health and Safety Code to the unprofessional conduct statutes of Board licensing law.

- Add reference to BPC sections 4982(z) and 4992.3(w). SB 1048, Chapter 588, Statutes of 2007 added failure to comply with telemedicine law (BPC section 2290.5) to the unprofessional conduct statutes for board licensees.
- Makes a conforming change to provide consistency for penalties within the same violation related to fiscal and property crimes.

→ **Optional Terms and Conditions of Probation**

- *(Psychotherapy Terms)* Allow a respondent, with the permission of the Board, to secure mandated personal psychotherapy services via videoconferencing. Currently this section is silent on the method by which services may be received.
- *(Psychotherapy Terms)* Allow a respondent, with permission of the Board, to receive mandated supervised practice via videoconferencing or with a supervisor not in the respondent's field of practice. Currently a supervisor providing services pursuant to this section of the Guidelines must be licensed in the same field of practice as the respondent. This section does not currently allow supervision via video conferencing. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult or impossible, this regulatory change will allow a respondent alternatives to meeting the conditions of the order, if approved by the board.
- *(Psychotherapy Terms)* Clarify that supervision obtained from a probation supervisor may not be used as experience gained toward licensure. The purpose of this change is to clarify that supervision gained as a condition of probation may only count towards one supervision requirement, meeting the conditions of the disciplinary order, and may not be counted towards the licensure requirements.
- *(Law and Ethics/Education Terms)* Allow a respondent to take mandated educational courses from an approved educational institution, in addition to accredited institutions or through a course approved by the Board. This is consistent with required coursework for licensure eligibility which allows that education to be gained at a Bureau for Private and Postsecondary Vocational *Education* approved institution that offer qualifying degrees for Board licensees (BPC 4980.40(a)).
- *(Law and Ethics/Education Terms)* Delete the prohibition against attending workshops to meet educational requirements and allow a respondent to receive mandated educational courses through a workshop.
- *(Law and Ethics/Education Terms)* Require that mandated coursework must be completed one year from the effective date of the decision. Currently the guidelines allow a date to be determined by the entity making the order.
- *(Reimbursement of Probation Program Terms)* Clarify the reimbursement costs to be paid by respondents by adding a reference line to allow the amount to be paid per month to be entered in the order.

→ **Standard Terms and Conditions of Probation**

- Delete obsolete references to BPC 4986.10 and 4986.70 and replace with correct references to 4989.14, 4989.54(h) and 4989.54(i). SB 1475, Chapter 659, Statutes of 2006 repealed and recast the law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections.
- (*Cost Recovery Terms*) Specify that a respondent must complete cost recovery payments six month prior to the termination of probation. The purpose of the change is to increase enforceability of cost recovery. Currently the respondent could be released from probation before the Board becomes aware that the financial requirements of the disciplinary order have not been met.

Board Policies and Guidelines

- (*Language for License Surrenders*) The addition of this proposed language would permit the Board to directly discuss a pending stipulation with the staff or advisors to the Board to determine whether to adopt a stipulation proffered by the respondent and the Board's Executive Officer.
- Allow a respondent to reapply to the Board for licensure three years from the date of surrender. Currently the disciplinary guidelines do not specify a waiting period for reapplication, allowing a respondent to reapply immediately. However, current law (BPC 4990.30) specifies that a petition for reinstatement of a license or registration that has been revoked for unprofessional conduct may be filed only after three years. Both revocation and license surrender occur as a result of unprofessional conduct and therefore should have consistent timeframes for subsequent licensure.
- Add recommended language for registration applicants and registrants that describes the conditions of revocation of registration and subsequent registrations with the Board.

Amends 16 CCR Section 1888 as follows:

§1888. DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled "Board of Behavioral Sciences Disciplinary Guidelines" [Rev. ~~May 21, 2004~~ November 2008] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

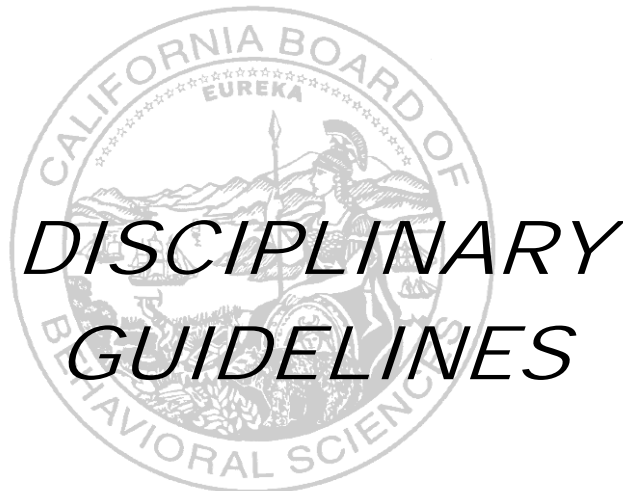
Note: Authority cited: Sections 4980.60, 4987, and 4990.14, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 4982, 4986.70, and 4992.3, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

Amends Board Disciplinary Guidelines (by reference) as follows: (next page)

State of California

Department of Consumer Affairs

Board of Behavioral Sciences



*DISCIPLINARY
GUIDELINES*

Revised: ~~May 21, 2004~~ November 2008

INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following recommended guidelines for the intended use of those involved in the disciplinary process: Administrative Law Judges, ~~licensees~~ respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

~~These guidelines consist of two parts: an identification of the types of violations and range of penalties, for which discipline may be imposed (Penalty Guidelines); and model language for proposed terms and conditions of probation (Model Disciplinary Orders).~~

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

~~These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.~~

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Penalty Guidelines

The following is an attempt to provide information regarding violations of **laws statutes and regulations** under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter "Model Disciplinary Orders." Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. The Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

Statutes and Regulations Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	Violation Category	Minimum Penalty	Maximum Penalty
MFT: B&P § 4982.26 LCSW: B&P § 4992.33 LEP: B&P § 4986.74 B&P § 4989.58 GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p><u>The law requires revocation/denial of license or registration.</u></p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(x)(1) LEP: B&P § 4989.54(y)(1)	<u>Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.</u>	<ul style="list-style-type: none"> <u>Revocation / Denial of license or registration</u> <u>Cost recovery.</u> <p><u>The Board considers this reprehensible offense to warrant revocation/denial.</u></p>	<ul style="list-style-type: none"> <u>Revocation / Denial of license or registration</u> <u>Cost recovery.</u> <p><u>The Board considers this reprehensible offense to warrant revocation/denial.</u></p>
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(k), 4992.33 CCR § 1881(f) LEP: B&P § 4986.74 CCR § 1858(h) LEP: B&P § 4989.58 B&P § 4989.54(n) GP: B&P § 480, 726	Sexual Misconduct (Anything other than as defined in B&P Section 729)	<ul style="list-style-type: none"> Revocation stayed 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation successful completion the required <u>Take and pass licensure examinations as a condition precedent to resumption of practice</u> 7 years probation Standard terms and conditions Psychological/psychiatric evaluation as a condition precedent to resumption of 	<ul style="list-style-type: none"> Revocation / Denial of license or registration Cost recovery. <p>(See B&P 4982.26, 4986.74, 4989.58 4992.33)</p> <p>The Board considers this reprehensible offense to warrant revocation/denial.</p>

		<ul style="list-style-type: none"> practice • Supervised practice • Psychotherapy • Education • Take and pass licensure examination • Reimbursement of probation program <p>And if warranted, <u>enter and complete a rehabilitation program approved by the Board</u>; abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples; restricted practice, reimbursement of probation program costs.</p>	
<p>MFT: B&P § 4982(k) LCSW: B&P § 4992.3(k) CCR § 1881(f) LEP: <u>B&P § 4989.54(n)</u> <u>CCR § 1858(h)</u> GP: B&P § 480</p>	Commission of an Act Punishable as a Sexually Related Crime	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • Psychotherapy • 5 years probation; standard terms and conditions • Psychological/psychiatric evaluation as a condition precedent to the resumption of practice • Supervised practice • Education • Cost recovery • Reimbursement of probation program costs <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: <u>B&P § 4986.70(e),</u> <u>4989.26</u> <u>4986.75</u> GP: B&P § 480, 820</p>	Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation; standard terms and conditions • Supervised practice • Cost recovery 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

		<ul style="list-style-type: none"> • Reimbursement of probation program costs. <p><u>In addition:</u></p> <ul style="list-style-type: none"> • MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy. • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice • CHEMICAL DEPENDENCY Psychological/psychiatric evaluation; therapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid tests and samples; and if warranted: restricted practice. 	
<p>MFT: B&P § 4982(c), 4982.1</p> <p>LCSW: B&P § 4992.3(c), 4992.35</p> <p>LEP: B&P § 4986.70(e), 4986.75 4989.54(c), 4989.56</p> <p>GP: B&P § 480</p>	<p>Chemical Dependency / Use of Drugs With Client While Performing Services</p>	<ul style="list-style-type: none"> • Revocation stayed • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation • 5 years probation • Standard terms and conditions • Psychological/psychiatric evaluation • Supervised practice • Education • Supervised practice • Education • Rehabilitation program • Abstain from controlled substances • Submit to biological fluid test and samples • Cost recovery • Reimbursement of probation program costs And if warranted, psychotherapy; restricted practice 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
<p>MFT: B&P § 4982(i)</p> <p>LCSW: B&P § 4992.3(i) CCR § 1881(d)</p> <p>LEP: B&P § 4989.54(m) CCR § 1858(d)</p>	<p>Intentionally / Recklessly Causing Physical or Emotional Harm to Client</p>	<ul style="list-style-type: none"> • Revocation stayed • 90-120 days actual suspension • 5 years probation • Standard terms and conditions 	<ul style="list-style-type: none"> • Revocation / Denial of license or registration application • Cost recovery

GP: B&P § 480		<ul style="list-style-type: none"> • Supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs <p>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.</p>	
<p align="center">Statutes and Regulations</p> <p>Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</p>	<p align="center">Violation Category</p>	<p align="center">Minimum Penalty</p>	<p align="center">Maximum Penalty</p>
MFT: B&P § 4982(d) LCSW: B&P § 4992.3(d) CCR § 1881(m) LEP: <u>B&P § 4989.54(k)</u> GP: B&P § 480	Gross Negligence / Incompetence	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension; 5 years probation • Standard terms and conditions; supervised practice • Education • Take and pass licensure examinations • Cost recovery • Reimbursement of probation program costs; <p>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.
MFT: B&P § 4982 CCR § 1845 LCSW: B&P § 4992.3 CCR § 1881 LEP: B&P § 4986.70 , <u>B&P § 4989.54</u> CCR § 1858 GP: B&P § 125.6 480, 821	General Unprofessional Conduct	<ul style="list-style-type: none"> • Revocation stayed • 60-90 days actual suspension • 3-5 years probation • Standard terms and conditions • Supervised practice • Education • Cost recovery; reimbursement of probation program <p>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice, law and ethics course.</p>	<ul style="list-style-type: none"> • Revocation / Denial of license or registration • Cost recovery.

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Model Disciplinary Orders

Model Disciplinary Orders are divided into two categories. The first category consists of **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-16) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (17- 32).

Optional Terms and Conditions of Probation

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. Supervised Practice
5. Education
6. Take and Pass licensure examinations
7. Rehabilitation Program
8. Abstain from Controlled Substances/Submit to Biological Fluid Testing and Samples
9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples
10. Restricted Practice
11. Restitution
12. Reimbursement of Probation Program
13. Physical Evaluation
14. Monitor Billing System
15. Monitor Billing System Audit
16. Law and Ethics Course

1. Actual Suspension

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days, and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure examinations as a condition precedent to resumption of practice as outlined in condition #____ (Take and pass licensure examinations).

2. Psychological / Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed

by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).

3. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. 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 is to be borne by respondent.

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, nor shall the psychotherapist be the respondent's supervisor.~~

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits 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. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

4. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

- (1) Permitting the respondent to receive supervision via videoconferencing; or,
- (2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The forgoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]

5. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist, or through a course approved by the Board. Classroom attendance must be specifically required; ~~workshops are not acceptable.~~ Course content shall be pertinent to the violation and all course work must be completed within _____one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing, and reporting requirements.)

6. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

7. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

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 setting, random biological fluid testing, abstinence from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

8. Abstain from Controlled Substances / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to respondent's current employer and shall be a violation of probation.

9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. The respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the respondent's current employer and shall be a violation of probation.

10. Restricted Practice

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

11. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$_____ paid to _____.

12. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$_____ per year/\$_____ per month.

13. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical

evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

14. Monitor Billing System

Within 30 days of the effective date of this decision, respondent shall obtain the services of an independent billing system to monitor and document the dates and times of client visits. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

15. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist as defined in Sections 4980.40 and 4996.18 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required; ~~workshops are not acceptable.~~ Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement.

Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)

Standard Terms and Conditions of Probation

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

17. Obey All Laws
18. File Quarterly Reports
19. Comply with Probation Program
20. Interviews with the Board
21. Residing or Practicing Out-of-State
22. Failure to Practice- California Resident
23. Change of Place of Employment or Place of Residence
24. Supervision of Unlicensed Persons
25. Notification to Clients
26. Notification to Employer
27. Violation of Probation
28. Maintain Valid License
29. License Surrender
30. Instruction of Coursework Qualifying for Continuing Education
31. Notification to Referral Services
32. Cost Recovery

Specific Language for Standard Terms and Conditions of Probation

(To be included in all Decisions)

17. Obey All Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

18. File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether he/she has been in compliance with all the conditions of probation. Notwithstanding

any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

20. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

21. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, ~~4986.10~~ 4989.14 or 4996.9 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36 or ~~4986.70~~ 4989.54(h), 4989.54(i) (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22. Failure to Practice- California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, ~~4986.10~~ 4989.14 or 4996.9 of the Business and Professions Code.

23. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

24. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision.

25. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

26. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

27. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving

respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent 's license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

29. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

30. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

31. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy

of this decision to all referral services registered with the Board that respondent seeks to join.

32. Cost Recovery

Respondent shall pay the Board \$ _____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

BOARD POLICIES AND GUIDELINES

Accusations

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

Statement of Issues

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

Recommended Language for License Surrenders

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement,

without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent 's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

~~Should respondent at any time after this surrender ever reapply~~ Respondent may reapply to the Board for licensure three years from the date of surrender, respondent and must meet all current requirements for licensure including, but not limited, to filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No. _____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

Recommended Language for Registration Applicants

IT IS HEREBY ORDERED THAT Respondent _____ be issued a Registration as a _____ . Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Recommended Language for Registrants

IT IS HEREBY ORDERED THAT _____ Registration Number _____ issued to Respondent _____ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Proposed Decisions

The Board requests that proposed decisions include the following if applicable:

- A. Names and addresses of all parties to the action.
- B. Specific Code section violated with the definition of the code in the Determination of Issues.

- C. Clear description of the acts or omissions that constitute a violation.
- D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
- E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-16) followed by the Standard Terms and Conditions (17-22) as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement / Reduction of Penalty Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

- (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
- (2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
- (3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
- (4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
- (7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
- (8) Evidence, if any, of rehabilitation submitted by the licensee.

In the Petition Decision the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, or educational psychology within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and

his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;

- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;
- F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.