



Board of Behavioral Sciences

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MEETING NOTICE

Compliance and Enforcement Committee June 25, 2010

Department of Consumer Affairs EI Dorado Room 1625 North Market Blvd. 2nd Floor North, Room 220 Sacramento, CA 95834

Via Teleconference 6405 S Halm Avenue Los Angeles, CA 90056 925 Harbor Plaza Long Beach, CA 90802

10:00 a.m. – 1:00 p.m.

- I. Introductions
II. Review and Approval of the March 25, 2010 Meeting Minutes
III. Update on Retroactive Fingerprinting Requirement
IV. Update on Enforcement Performance Measures and Process Improvements
V. Presentation on the Probation Process
VI. Presentation of Legal Options to Suspend a Licensee From Practice
a. Penal Code 23
b. Interim Suspension
VII. Future Meeting Dates
VIII. Suggestions for Future Agenda Items
IX. Public Comment for Items Not on the Agenda

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov

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Arnold Schwarzenegger Governor State of California State and Consumer Services Agency Department of Consumer Affairs

## MEETING MINUTES

### Compliance and Enforcement Committee

March 25, 2010

**DRAFT**

Department of Consumer Affairs  
El Dorado Room  
1625 North Market Blvd.  
2<sup>nd</sup> Floor North, Room 220  
Sacramento, CA 95834

**Committee Members Present:**

Patricia Lock-Dawson, Public Member,  
Chair  
Harry Douglas, Public Member

**Staff Present:**

Kim Madsen, Executive Officer  
Tracy Rhine, Assistant Executive Officer  
Gena Beaver, Enforcement Analyst  
Cynthi Burnett, Enforcement Analyst  
Marsha Gove, Examination Analyst  
Cassandra Kearney, Enforcement Analyst  
Julie McAuliffe, Enforcement Analyst  
Sean O'Connor, Outreach Coordinator  
Elina Taylor, Administrative Analyst  
Pearl Yu, Enforcement Manager

**Committee Members Not Present**

Victor Perez, Public Member

**Guest List:**

Guest list on file

Patricia Lock-Dawson, Committee Chair, called the meeting to order at 9:03 a.m. Elina Taylor called roll, and a quorum was established.

#### I. Introductions

Committee members, staff, and audience members introduced themselves.

#### II. Presentation of the Enforcement Process

Kim Madsen, Executive Officer, Board of Behavioral Sciences, noted that the day's meeting was the first for the Compliance and Enforcement Committee. She acknowledged the presence of many of the Board's Enforcement staff.

Ms. Madsen provided a general overview of the Enforcement process. She stated that complaints can be filed by anyone who believes a licensee or registrant has engaged in conduct which violates the Board's laws and regulations. All such grievances are reviewed and if it is determined that the individual in question is a licensee or registrant of the Board, a case file is opened and the matter assigned to an Enforcement Analyst. Ms. Madsen provided information regarding the number of complaints received in the current fiscal year through February.

Ms. Madsen indicated that the assigned analyst assesses the complaint to determine if the allegations are within the Board's jurisdiction to address. If the alleged misconduct violates the Board's laws and regulations, steps are taken to obtain facts and evidence sufficient to prove or disprove the allegations in the complaint. Those steps might involve contacting the complainant for additional information, such as releases or other documentation relative to the complaint. In the event the information received by the Board pertains to an arrest or conviction, the appropriate law enforcement agency and, if applicable, court will be contacted for documentation pertaining to the incident.

Ms. Madsen emphasized that due to issues of confidentiality associated with a therapeutic relationship, an investigation generally will not proceed without a signed release from all involved in the therapeutic relationship.

Ms. Madsen described the role of the Enforcement Analyst as a fact finder. Upon review of the documentation obtained by the analyst in a case, a decision is made whether sufficient evidence exists to support that a violation of law has occurred. If no additional information is required, a report is prepared. The case may be referred to a Subject Matter Expert for review and issuance of an opinion. If additional evidence or interviews are needed, the matter might be referred to an Investigative Analyst or, in situations requiring the services of a peace officer, the Department of Consumer Affairs Division of Investigation (DOI). Ms. Madsen reported that in 2009 the Board hired two Investigative Analysts to look into cases that require field work such as face-to-face contact with parties to the complaint, but do not require the expertise of a licensed peace officer.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), asked how it is distinguished which complaints are investigated by an Investigative Analyst versus being referred to the Division of Investigation. Ms. Madsen responded that while a majority of complaints are handled by the Board's investigators, the Division of Investigation is used for more serious or volatile situations that could present safety issues. Cases might also be sent to DOI if under-cover investigation is needed, or if peace officer status is required in order to obtain records that would otherwise not be accessible to the Board, such as documents from the Department of Motor Vehicles. Pearl Yu, Enforcement Manager, confirmed that DOI services are often requested in cases where there is or could be a problem obtaining records.

Ms. Riemersma asked how much information the subject of a complaint is provided prior to being interviewed. Ms. Madsen indicated that the individual is typically contacted by the investigator, informed that a complaint has been received, and provided a summary of the complaint. She emphasized that the subject of the complaint is not provided with a copy of the complaint, but rather a synopsis of the grievance. In response to a question from Ms. Riemersma, Ms. Madsen stated that the summary is generally provided to the licensee or registrant in question prior to the interview. A summary may also be provided upon request from the subject of the complaint. A brief discussion followed. Ms.

Riemersma noted that the complaint and investigation process can be unsettling for the licensee or registrant, leaving the individual unsure how to respond or what is expected of them. Ms. Madsen indicated that the Board's intent is to gather sufficient information to make an informed decision whether or not a violation of law has occurred. The interview process affords the individual the opportunity to provide input and be otherwise involved in the investigation of the allegations. Ms. Riemersma asked about the presence of or need for legal counsel at the interview. Ms. Madsen indicated that such a decision would lie with the licensee or registrant being interviewed.

Ms. Madsen next spoke about various possible results of an investigation. She indicated that when an investigation is completed, a decision is made whether sufficient evidence exists to proceed with action against the licensee or registrant. In cases where the evidence is insufficient to prove a violation of law has occurred, or if the investigation reveals that the allegations do not constitute a violation of law, the case is closed and no action is taken.

If the investigation substantiates that a violation of law has occurred, the decision is then made about the action that is warranted. Ms. Madsen noted that issues considered when making this determination include the nature of the violation, prior enforcement actions, and threat to public safety. She then reviewed the two levels of disciplinary action available to the Board.

Ms. Madsen reported that Citation and Fine is used in cases where the investigation substantiates a violation has occurred, but the violation does not warrant revocation of the license in order to ensure public safety. This level of discipline is generally used in cases involving violations of the continuing education requirements; advertising violations; or practicing with a delinquent license. She indicated that fines are assessed commensurate with the violation. Ms. Madsen provided a general outline of the contents of a citation, which includes instructions for compliance and the options available to the individual being cited.

Ms. Madsen reported that formal administrative action is pursued in cases involving serious violations of law. Such cases are referred to the Office of the Attorney General for initiation of action to deny an application for licensure or revoke an existing license. Ms. Madsen provided an overview of the formal administrative process, from initiation of the action through final disposition of the matter. She indicated that the formal disciplinary process can be very lengthy. She noted that unless the nature of the violation warrants immediate suspension of the license or registration in order to ensure public safety, the licensee or registrant is allowed by law to continue practicing while facing possible discipline. Ms. Madsen also spoke about steps the Board can take in situations where the alleged misconduct is so egregious that immediate action is warranted.

Ms. Lock-Dawson opened the item for discussion by meeting participants.

Mary Riemersma, CAMFT, commented about the use of Penal Code 23 (PC 23) pertaining to interim suspension orders. She and Ms. Madsen discussed the wording in the statute, with Ms. Riemersma expressing concern that the Board's interpretation of the provisions of PC 23 might be inaccurate. Ms. Madsen touched on her knowledge of PC 23, and her experience with the use of the statute. She agreed to review the statute to ensure correct understanding and use of the provisions. Ms. Lock-Dawson suggested making discussion of PC 23 an agenda item for a future meeting. She asked Ms. Madsen

to research the statute and provide clarification for future committee review and discussion.

An unidentified audience member asked if one conviction for driving while under the influence (DUI) constitutes grounds for denial of licensure. Ms. Madsen responded that while conviction for DUI could be the basis to deny an application for licensure, it does not always result in that action. The Board thoroughly reviews the circumstances of the arrest and conviction, and other related factors, prior to making the decision to grant or deny an application.

The same unidentified individual asked the percentage of complaints received that pertain to unlicensed activity. Ms. Madsen deferred to Pearl Yu, Enforcement Manager, who responded that approximately five to ten percent of complaints alleged unlicensed practice. Ms. Lock-Dawson asked Ms. Yu for clarification. Ms. Yu indicated that unlicensed activity could involve registrants practicing without supervision, or individuals who are neither licensed nor registered by the Board advertising and/or engaging in the practice of therapy.

Mr. Douglas asked about the function of the Compliance and Enforcement Committee, and how it was anticipated the group would impact the established process. Ms. Madsen explained that with the increased direction and guidance from the Department of Consumer Affairs (DCA) and State and Consumer Services Agency, enforcement is a priority. The committee was intended to evaluate the performance of the enforcement process by Board staff, as well as compliance with established performance measures, which she noted would be discussed later in the meeting. Ms. Madsen noted other areas in which the committee could anticipate involvement, such as review and possible revision of the Board's Disciplinary Guidelines. She indicated that her presentation was intended to give a clear overview of the enforcement process at the Board.

Mr. Douglas commented about the importance of establishing a neutral, cooperative relationship with individuals who are the subject of a complaint. Ms. Madsen deferred to Enforcement Unit staff to speak about their experiences in this area. Cassandra Kearney, Enforcement Analyst, noted that upon being contacted by the Board about a complaint, the individual generally seems more concerned that a complaint has been filed than they are about being contacted by the Board. The Board is not generally seen as punitive; rather, it is generally understood that upon receipt of a complaint, it is the Board's responsibility to investigate the allegations.

Discussion continued among Committee members and Board staff. Ms. Lock-Dawson suggested that a periodic agenda item could be a report from the Board's investigators about their experiences conducting investigations.

Ms. Riemersma made note of a conversation she had recently with an individual who had been notified of a complaint filed against him. When asked, he was unable to provide her with information about the nature of the complaint or who filed the grievance. Ms. Riemersma commented that often licensees are unnerved by the idea that a complaint has been filed and are not sure the questions to ask or how to proceed. Ms. Lock-Dawson asked if the licensee is informed initially about the nature of the complaint. Ms. Kearney stated that the identity of the complainant is provided unless he or she requests to remain anonymous. She added that given the confidentiality issues inherent in therapy, complaints filed anonymously generally cannot be pursued. Ms. Kearney reported that initial contact with the subject of a complaint is usually in writing. The correspondence

includes a summary of the complaint. Ms. Yu indicated that the process is different when investigators are involved. She explained that when investigators contact the subject to schedule an interview, the nature of the complaint is not disclosed at that time.

Discussion continued. Ms. Lock-Dawson asked about the percentage of cases that go to hearing before an administrative law judge, and if there is anything the committee can do to impact those numbers. Ms. Yu indicated only a small percentage of cases go to administrative hearing. Ms. Madsen explained the Board's role in the enforcement process is the timely turnaround of disciplinary decisions or stipulations that are presented for review and action. Ms. Lock-Dawson also asked about the Disciplinary Guidelines used by the Board, specifically about the basis for that document. She asked who has the ability to change the guidelines. Ms. Madsen responded that it is the Board's responsibility to make changes to the Disciplinary Guidelines when needed. She noted that the guidelines are incorporated in the Board's regulations. She confirmed for Ms. Lock-Dawson that the committee would be involved in making any future changes to those guidelines.

Mr. Douglas asked what becomes of case files when the investigation has uncovered no violation, or when the evidence is insufficient to substantiate the allegations in the complaint. Ms. Madsen responded that such files are destroyed after a designated period of time. She explained that information regarding unsubstantiated complaints is not available to the public. Ms. Yu stated that the length of time a closed case file is retained is contingent upon the basis for closure of the case. She also noted that information about a complaint becomes public only if an accusation is filed or if a citation is issued and the matter resolved.

### **III. Presentation of Enforcement Performance Measures**

Ms. Madsen provided information about implementation by the DCA of the Consumer Protection Enforcement Initiative (CPEI). She indicated the effort was undertaken to improve the enforcement process and provide boards within the department with resources needed for timely investigation and prosecution of cases. She noted that while enforcement has historically been a high priority for healing arts boards within DCA, a series of recent news articles reported an average time frame of three years to investigate and prosecute cases of licensee misconduct. Upon review of the existing enforcement process, DCA identified systemic problems which limited a board's ability to resolve the cases in a timely manner.

The goal of the CPEI is to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months. Proposed changes to the existing enforcement process include requesting additional staffing resources, improved IT resources and systems, and legislative changes.

Ms. Madsen reported on the Board's progress in meeting the goal set by CPEI. She stated that the Board and many other licensing boards within DCA use the services of the DOI. She noted that an increase in the number of complaints received by the boards understandably has resulted in an increased number of cases sent to DOI for investigation. She reported that the Board had previously identified a problem with the length of time required for DOI to complete an investigation. As a result, the Board requested and, in January 2009, was able to hire two investigative analysts to gather evidence and otherwise investigate cases not requiring the services of the peace officers

employed by DOI. Ms. Madsen reported that in 2009, a drastic reduction was noted in the length of time required for completion of most investigations, from 497 days for DOI cases to 119 days for cases assigned to the Board's investigative analysts.

Ms. Madsen spoke briefly about the Board's statute of limitations. This law requires the Board to initiate disciplinary action against a licensee within three years from the date the alleged misconduct becomes known to the Board, or within seven years from the date the alleged violation occurred, whichever occurs first.

Ms. Madsen noted that staff is conducting a full review of the enforcement process. The goal is to ensure investigations are conducted thoroughly and efficiently, and meet the performance measure established by CPEI. Numerous duplicative and obsolete steps and procedures have been identified and eliminated. Ms. Madsen also noted that staff has made changes in other enforcement-related areas, such as the method of reporting enforcement statistics to DCA, a change made to align with the performance measures established by CPEI.

Next, Ms. Madsen referred the committee to various documents related to her presentation. She reviewed in some detail the monthly enforcement report submitted to DCA, providing clarification regarding the information captured in the report. Ms. Madsen noted the performance of the Board's enforcement staff in meeting the standards set by CPEI.

Mr. Douglas asked about the noted difference in time required for investigation between board investigators and the DOI. Ms. Madsen explained that DOI conducts investigations for many boards within DCA, and is the sole provider of investigative services for a few of those boards. She touched on circumstances, other than volume, that could impact the length of time required for DOI to complete an investigation, including furlough days and budgetary constraints.

Mr. Douglas asked if the staff review of the enforcement process is on target for completion by June 30, 2010, as indicated in Ms. Madsen's report. Ms. Madsen confirmed that it is.

Ms. Lock-Dawson noted that it appears the Board has taken steps and put mechanisms in place to ensure complaints are processed quickly. Ms. Yu reported that staffing in the enforcement unit has increased, with the number of analysts who process complaints increasing from two to five; the addition of the two investigative analysts was again noted. She and Ms. Madsen both confirmed that the number of cases referred to DOI has decreased significantly.

Discussion about various aspects of the enforcement process continued briefly.

Gil DeLuna, DCA Board/Bureau Relations, asked if the Board was seeking approval for additional enforcement positions. Ms. Madsen confirmed that additional positions had been authorized.

The committee recessed for a break and reconvened at approximately 10:30 a.m.

#### **IV. Review and Discussion of Uniform Standards Regarding Substance Abusing Healing Arts Licensees, Senate Bill 1441**

Ms. Madsen reported that the Governor signed Senate Bill 1441 into law in September 2008, thereby establishing the Substance Abuse Coordination Committee (SACC) within the DCA. Committee membership included Executive Officers from healing arts boards within DCA, a representative from the state Department of Alcohol and Drug Programs, and other interested parties. The committee was charged with developing standards to be followed by the healing arts boards when addressing the issue of substance abuse with a licensee.

Ms. Madsen reported that the committee first met to determine the most effective way to proceed. Standards were drafted that could be applied to licensees in diversion programs and licensees on probation. The proposed standards were presented at a public meeting to solicit public comment.

In December 2009, the group submitted the uniform standards to DCA Director Brian Stiger. Since that time the boards have been charged with implementing those standards. Ms. Madsen spoke about the implementation process. She reported having met with legal counsel and determined that changes to the disciplinary guidelines will be necessary. She cited, as an example, minor changes that will be made to the guidelines pertaining to biological fluid testing. Ms. Madsen commented that DCA is taking necessary steps to implement the new standards.

Ms. Madsen repeated that revisions to the Board's Disciplinary Guidelines will be required to fully implement the uniform standards. She reported that the Board is currently in the process of revising the Disciplinary Guidelines to incorporate the new profession of Licensed Professional Clinical Counselor (LPCC). No additional changes to the guidelines are allowed pending completion and approval of the current regulatory action. She confirmed that the Board will implement the uniform standards to the extent possible at the present time.

Ms. Madsen noted that one issue of concern is the required increase in testing for licensees on probation for substance abuse. She noted that currently the Board has approximately fifty individuals on probation, with nearly two-thirds of those individuals subject to biological fluid testing. She briefly described the work required by Board staff to ensure those licensees test as mandated. Ms. Madsen indicated that the requirement for increased fluid testing would result in a prohibitive workload for the Board's probation monitor. She reported that DCA is pursuing a department-wide contract to use a computerized testing system, however until such a system is in place, implementation of the increased testing requirement cannot be accomplished.

Ms. Madsen stated that although the Board does not currently have a diversion program in place, licensees found to be abusing drugs or alcohol can be addressed through the administrative process. A licensee can be placed on probation. Ms. Madsen reported that currently the Board has authority to imposed probationary terms that require psychological counseling, biological fluid testing, supervised practice, and other terms intended to ensure consumer protection. If a probationer violates any term of probation, the Board has the authority to pursue revocation of the license. She provided additional information about the current probation program. Ms. Madsen then asked Julie McAuliffe, Probation Monitor, to speak about the Board's probation program.

Ms. McAuliffe provided an overview of the process involved when a licensee is placed on probation. She spoke about the steps taken to initiate probation, and working with the licensee to ensure compliance with the terms of probation. She touched briefly on the time frames required for adherence to requirements such as initiating therapy or finding a practice supervisor.

Ms. Madsen stated that the Board's goal in working with a probationer is to assist the individual to practice safely. Ms. McAuliffe confirmed that she relays the same message to all probationers, and makes herself available to assist the individual through the period of probation. Ms. Madsen noted that the Board generally does not seek to revoke an individual's probation unless the individual has exhibited significant non-compliance with the terms of probation.

Ms. Riemersma asked about the amount of fluid testing currently required by the Board. Ms. McAuliffe stated the current requirement is for random monthly testing. Ms. Riemersma asked about the costs involved if testing is increased to twice weekly. Ms. McAuliffe indicated that the cost of testing depends on factors like the testing site and the type of test that is ordered. Ms. Riemersma expressed concern that costs could be prohibitive to the licensee if twice weekly testing was mandated.

Mr. DeLuna reported hearing concern from many boards about the new testing standard. He asked how the decision was reached to require such frequent testing. Ms. Madsen responded that the testing requirement was different from the SACC's original recommendation. She was unclear as to the reasons behind the change.

Ms. Riemersma expressed CAMFT's support of the Board maintaining discretion regarding the frequency of testing. She asked about the Board's obligation to adopt the guidelines proposed by DCA. Ms. Madsen responded that the guidelines would be adopted to the extent possible given the available resources.

Mr. Douglas asked the distinction between a diversion program and a probation program. Ms. Madsen clarified that a diversion program is a mechanism available with various licensing boards. It allows an impaired licensee to engage in monitored practice while receiving treatment for substance abuse. No disciplinary action or other court action has been taken. Entry into diversion is voluntary and confidential. If a licensee tests positive for alcohol or drug use while in diversion, he or she would be subject to revocation of licensure.

Ms. Madsen explained that individuals who are placed on probation have had their license to practice revoked; however, the revocation is stayed contingent upon the licensee's compliance with certain terms of probation. Notice of the disciplinary action, including terms of probation, is made available to the public.

Mr. Douglas asked if the Board had a diversion program in place. Ms. Madsen indicated there is not.

A brief discussion followed regarding related issues, such as possible changes to the disciplinary guidelines. Ms. Madsen provided clarification as requested.

The meeting adjourned and was reconvened at 1:05 p.m.

## **V. Review and Discussion of the Consumer Health Protection Enforcement Act, Senate Bill 1111**

Ms. Rhine explained that SB 1111 is the legislation establishing the Consumer Health Protection Enforcement Act. She indicated the bill is extensive. Ms. Rhine reviewed with the committee the various provisions in the legislation that directly impact the Board.

Ms. Riemersma expressed CAMFT's concern with the legislation, largely with respect to due process issues. She offered to provide the Board with a copy of correspondence submitted to the bill's author, detailing CAMFT's position regarding the legislation.

Mr. Douglas asked if the Board has information regarding entities that are in support of or opposition to the bill. Ms. Rhine responded that such information generally did not become available until the proposed legislation was heard in the appropriate legislative committee. She noted that SB 1111 was scheduled to be heard April 12, 2010.

**Harry Douglas moved to recommend to the full Board to discuss SB 1111, with no recommended position presented by the committee. Patricia Lock-Dawson seconded. The committee voted unanimously (2-0) to pass the motion.**

Ms. Madsen clarified that the item would be presented to the full Board at its next meeting, scheduled May 6-7, 2010. She anticipated that at that time the legislation will have moved forward and information should be available regarding the parties in support or opposition of the bill.

Ms. Riemersma provided, in addition to the correspondence from CAMFT, a letter from various agencies expressing their position on SB 1111.

Ms. Lock-Dawson asked if the committee had the option to defer making a recommendation to the full board until more information is available to the committee. Ms. Rhine responded that the committee does have that option, but that it is also appropriate to move forward with no recommendation.

Ms. Madsen added that the input sought by the committee would not be available until after the legislative hearings. She confirmed the Board's participation in round table discussions pertaining to SB 1111. Ms. Madsen expressed the understanding that revisions to the legislation were forthcoming, and would include input received during the round table meetings.

A brief discussion ensued.

## **VI. Future Meeting Dates**

- June 25, 2010 – Sacramento
- September 24, 2010 -- Sacramento

## **VII. Suggestions for Future Agenda Items**

- Discussion of Penal Code 23
- Review of Enforcement Activity (for July Board Meeting)
- Possible policy changes related to streamlining of the enforcement process

## **VIII. Public Comments for Items not on the Agenda**

There were no public comments for items not on the agenda.

The meeting was adjourned at approximately 1:30 p.m.

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**To:** Compliance and Enforcement Committee      **Date:** June 15, 2010  
**From:** Sean O'Connor      **Telephone:** (916) 574-7863  
 Board of Behavioral Sciences  
**Subject:** Update on Fingerprinting Requirement for Licensees and Registrants

## Background

As a result of the adopted regulations in 2009, all licensees and registrants who have previously not submitted fingerprints as a condition of licensure or registration for the Board of Behavioral Sciences (BBS), or for whom fingerprints do not exist in the California Department of Justice's (DOJ) criminal offender record identification database, must do so prior to their next renewal date occurring on or after October 31, 2009. Failure to comply with this requirement can result in disciplinary action or the issuance of a citation, which may include a fine of up to \$5,000.

Using data from the DOJ and the BBS, staff identified 34,685 individuals in the BBS licensing population affected by this requirement. BBS staff began the process of notifying and processing fingerprint results for those individuals required to comply in July 2009.

## Progress

The process for notifying a licensee or registrant of the necessity to comply involves sending a notification at least 90 days in advance of the licensee or registrant's fingerprint submission deadline. If a licensee or registrant has not complied within 30 days of the deadline, BBS staff sends a follow up letter. Thus far, BBS staff notified approximately 17,635 licensees and registrants of the necessity to fingerprint. Licensees and registrants can also obtain the necessary forms and information from the BBS Web site ([http://www.bbs.ca.gov/licensees/licensee\\_fingerprint\\_requirements.html](http://www.bbs.ca.gov/licensees/licensee_fingerprint_requirements.html)). As of May 28 2010, 12,076 licensees and registrants have complied with the fingerprinting requirement.

BBS staff has compiled a list identifying individuals with deadlines to comply ranging from October 31, 2009 to May 31, 2010 who failed to submit fingerprints. The number of individuals out-of-compliance and the compliance percentage for the month are provided in the table below.

Month*	Number of Non-Compliers**	Percent of Month Non-Compliant
October 2009	83	6%
November 2009	73	5%
December 2009	102	8%
January 2010	132	11%
February 2010	122	10%
March 2010	134	10%
April 2010	168	13%
May 2010	253	21%

\*Compliance dates are always the last day of the month.

\*\*Statistics accurate as of June 10, 2010.



## **Process Improvements**

### **BBS Procedure Review**

Board enforcement staff is nearing the completion of its review of the current procedures. To date several duplicative steps have been eliminated; several forms were consolidated or eliminated; procedures were revised for efficiency; and a review of all pending cases at the Attorney General was completed. Ongoing the enforcement staff will review the changes to its procedures to identify further areas for efficiency or revision.

### **Cooperative Efforts with DCA**

Enforcement Manager Pearl Yu is participating in the Process Action Team Committee (PAT). This committee is comprised of representatives from each Board, Bureau, and the Division of Investigation (DOI). This cooperative effort is representative of DCA's efforts to resolve the procedural challenges identified during its review of the entire enforcement process. The committee initially was tasked with establishing criteria to refer cases to DOI.

Recently, DOI Chief Jack Hagan and DCA Director Brian Stiger expanded the committee's role to conduct an analysis of DCA's complaint process in order to improve the effectiveness and efficiency of the intake, investigation, and resolution phases of the process. The committee anticipates submitting a draft proposal to Director Stiger within 60-90 days.

### **DCA Enforcement Academy**

Several members of the Enforcement Staff have attended DCA's Enforcement Academy. This eight day training academy is designed to share best practices from various enforcement programs. Representatives from the program and the DCA Executive Management team present the information facilitate the discussion, and workshops. The reviews for this training are positive and the content is valuable.

## **Attachments**

- a. Enforcement Measures Report May 2010
- b. YTD including 09

# Monthly Enforcement Report to DCA

FY 09/10 YTD

**Program Name:** Board of Behavioral Sciences

## Complaint Intake

Complaints Received by the Program.

Measured from date received to assignment for investigation or closure without action.

Complaints	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09				Total Jan - May 10	YTD
Received	155	151	150	138	136	132				425	1287
Closed without Assignment for Investigation	N/A	N/A	N/A	N/A	N/A	N/A					0
Assigned for Investigation	N/A	N/A	N/A	N/A	N/A	N/A				424	424
Average Days to Close or Assigned for Investigation	N/A	N/A	N/A	N/A	N/A	N/A					
Pending	N/A	N/A	N/A	N/A	N/A	N/A					

Convictions/Arrest Reports	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09				Total Jan - May 10	YTD
Received	73	70	64	49	67	65				477	865
Closed / Assigned for Investigation	73	70	64	49	67	65				477	865
Average Days to Close	N/A	N/A	N/A	N/A	N/A	N/A					
Pending	N/A	N/A	N/A	N/A	N/A	N/A					

Complaints investigated by the program whether by desk investigation or by field investigation.

## Investigation

Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action.

If a complaint is never referred for Field Investigation, it will be counted as 'Closed' under Desk Investigation.

If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.

Desk Investigation	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09				Total Jan - May 10	YTD
Initial Assignment for Desk Investigation	77	75	75	80	67	66				901	1341
Closed	N/A	N/A	N/A	N/A	N/A	N/A				720	720
Average Days to Close	N/A	N/A	N/A	N/A	N/A	N/A				100	100
Pending	N/A	N/A	N/A	N/A	N/A	N/A				677	677

Field Investigation (Non-Sworn)	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09				Total Jan - May 10	YTD
Assignment for Non-Sworn Field Investigation	5	5	3	13	2	6				18	52
Closed	9	4	8	4	2	6				16	49
Average Days to Close	N/A	N/A	N/A	N/A	N/A	N/A				400	400
Pending	N/A	N/A	N/A	N/A	N/A	N/A					50

<b>Field Investigation (Sworn)</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>	<b>Nov-09</b>	<b>Dec-09</b>				<b>Total Jan - May 10</b>	<b>YTD</b>
Assignment for Sworn Field Investigation	0	0	0	0	3	3				4	10
Closed	N/A	N/A	N/A	N/A	N/A	N/A				9	9
Average Days to Close	N/A	N/A	N/A	N/A	N/A	N/A				731	731
Pending	N/A	N/A	N/A	N/A	N/A	N/A				21	21

<b>All Investigations</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>	<b>Nov-09</b>	<b>Dec-09</b>				<b>Total Jan - May 10</b>	<b>YTD</b>
Closed	153	138	166	180	136	113				745	1631
Average Days to Close	N/A	N/A	N/A	N/A	N/A	N/A				113	113
Pending	N/A	N/A	N/A	N/A	N/A	N/A				748	748

### **Enforcement Actions**

This section DOES NOT include subsequent discipline on a license. Data from complaint records combined/consolidated into a single case will not appear in this section.

	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>	<b>Nov-09</b>	<b>Dec-09</b>				<b>Total Jan - May 10</b>	<b>YTD</b>
AG Cases Initiated	15	16	14	20	7	5				38	115
AG Cases Pending	N/A	N/A	N/A	N/A	N/A	N/A				147	147
SOIs Filed	0	3	2	3	3	5				10	26
Accusations Filed	6	6	10	15	9	9				30	85
Proposed/Default Decisions	0	0	1	0	2	0				6	9
Stipulations	3	0	8	2	2	5				19	39
<b>Disciplinary Orders</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>	<b>Nov-09</b>	<b>Dec-09</b>					<b>YTD</b>
Final Orders (Proposed Decisions, Default Decisions, Stipulations)	3	0	1	0	2	0				25	31
Average Days to Complete*	N/A	N/A	N/A	N/A	N/A	N/A				783	783

<b>Citations</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>	<b>Nov-09</b>	<b>Dec-09</b>					<b>YTD</b>
Final Citations	1	4	2	21	8	2				53	91
Average Days to Complete*	N/A	N/A	N/A	N/A	N/A	N/A				107	107



<b>Field Investigation (Sworn)</b>	<b>Jan-10</b>	<b>Feb-10</b>	<b>Mar-10</b>	<b>Apr-10</b>	<b>May-10</b>	<b>Jun-10</b>	<b>Jul-10</b>	<b>Aug-10</b>	<b>Sep-10</b>	<b>Oct-10</b>	<b>Nov-10</b>	<b>Dec-10</b>	<b>YTD</b>
Assignment for Sworn Field Investigation	1	0	0	0	3								4
Closed	1	3	3	2	0								9
Average Days to Close	315	1150	741	565	0								731
Pending	23	22	20	18	21								21

<b>All Investigations</b>	<b>Jan-10</b>	<b>Feb-10</b>	<b>Mar-10</b>	<b>Apr-10</b>	<b>May-10</b>	<b>Jun-10</b>	<b>Jul-10</b>	<b>Aug-10</b>	<b>Sep-10</b>	<b>Oct-10</b>	<b>Nov-10</b>	<b>Dec-10</b>	<b>YTD</b>
Closed	88	156	196	158	147								745
Average Days to Close	104	123	128	110	98								113
Pending	639	668	671	683	748								748

### **Enforcement Actions**

This section DOES NOT include subsequent discipline on a license. Data from complaint records combined/consolidated into a single case will not appear in this section.

	<b>Jan-10</b>	<b>Feb-10</b>	<b>Mar-10</b>	<b>Apr-10</b>	<b>May-10</b>	<b>Jun-10</b>	<b>Jul-10</b>	<b>Aug-10</b>	<b>Sep-10</b>	<b>Oct-10</b>	<b>Nov-10</b>	<b>Dec-10</b>	<b>YTD</b>
AG Cases Initiated	7	9	4	13	5								38
AG Cases Pending	140	144	147	150	147								147
<b>SOIs Filed</b>													
SOIs Filed	1	1	5	3	0								10
<b>Accusations Filed</b>													
Accusations Filed	4	2	6	9	9								30
<b>Proposed/Default Decisions Adopted</b>													
Proposed/Default Decisions Adopted	0	3	0	2	1 *								5
Stipulations Adopted	3	1	2	6	7								19
<b>Disciplinary Orders</b>													
Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)	3	4	2	8	8								25
Average Days to Complete*	939	703	643	762	775								783

<b>Citations</b>	<b>Jan-10</b>	<b>Feb-10</b>	<b>Mar-10</b>	<b>Apr-10</b>	<b>May-10</b>	<b>Jun-10</b>	<b>Jul-10</b>	<b>Aug-10</b>	<b>Sep-10</b>	<b>Oct-10</b>	<b>Nov-10</b>	<b>Dec-10</b>	<b>YTD</b>
Final Citations	3	21	17	6	6								53
Average Days to Complete*	12	84	111	144	215								107

\* - license denied by proposed decision adopted

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**To:** Compliance and Enforcement Committee

**Date:** June 17, 2010

**From:** Julie McAuliffe, Probation Analyst  
Board of Behavioral Sciences

**Telephone:** (916) 574-7830

**Subject: Overview of Probation Program**

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Probation monitoring is a module within the Enforcement Unit created to ensure that licensees and registrants who are disciplined by the Board comply with the identified terms and conditions as outlined in each disciplinary order. The Board's probation monitor performs a multitude of functions including coordinating and reviewing the disciplinary document, setting up the probationary file, mailing probation packets to probationers, holding initial telephone conferences to discuss probation terms and conditions, securing psychological evaluators and reviewing psychological evaluations, approving and monitoring supervisors, therapists, billing monitors, remedial education, rehabilitation programs, biological fluid test sites, and probation costs. A file review is done on a quarterly basis to ensure compliance and document any requirement completed.

If a probationer violates any term of his or her probation, the probationer is given notice and the opportunity to clear the violation(s). If the probationer continues to be non-compliant, the Board forwards the case back to the Attorney General to impose the previously stayed discipline of revocation.

As of May 31, 2010, the Board monitors 67 probationers. Of those, 39 are in compliance, 6 are in violation of their terms and conditions, 8 have been referred back to the Attorney General to revoke their probation for failure to comply, and 14 are tolled. Tolling of probation is a condition that allows a probationer to put the probation on hold during a period of time in which he or she is out of state or not currently practicing in California. Once he or she returns to California and begins to practice or resumes practice in state, the probation becomes active and the period of tolled probation is added to the probation term thereby extending the probation expiration date. During a tolling period, the probationer must obey all laws, maintain a current registration/license and continue to submit Quarterly Reports. The average length of probation is five years and upon successful completion, the license is fully restored.

The statute allows a probationer to petition for modification of a condition after one year and petition for early termination of probation after at least two years for those whose probation period is three years or more. Petitions are held at Board meetings and may include an Administrative Law Judge. After a probationer presents their case, the Board meets in closed session to decide whether to grant or deny the request.

**Attachments:**

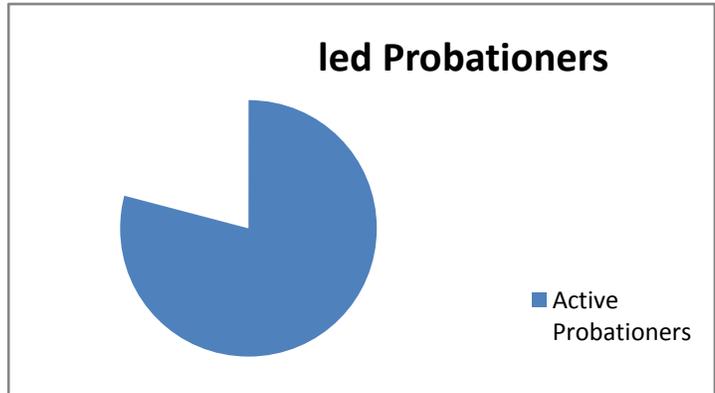
Probation Program Overview; Disciplinary Guidelines

## Probation Program Overview May 2010

Active Probationers	53
Tolled Probationers	14
<b>Total</b>	<b>67</b>

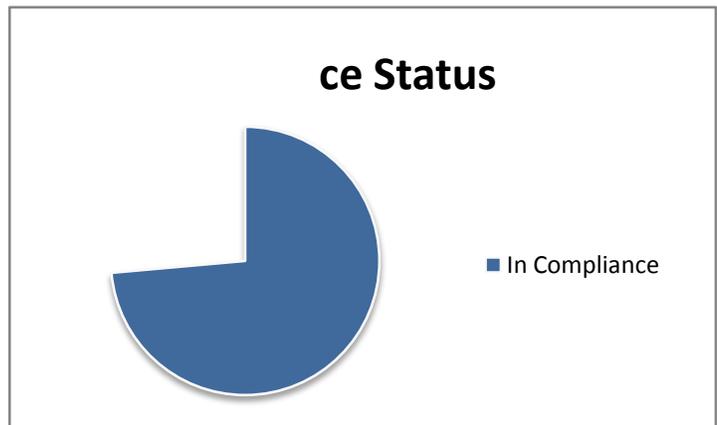
New Probationers this month 4

	(yr/mos)
Avg. Time Completed	1.51
Avg. Time Remaining	2.63
Total Avg. Time on Probation	4.14



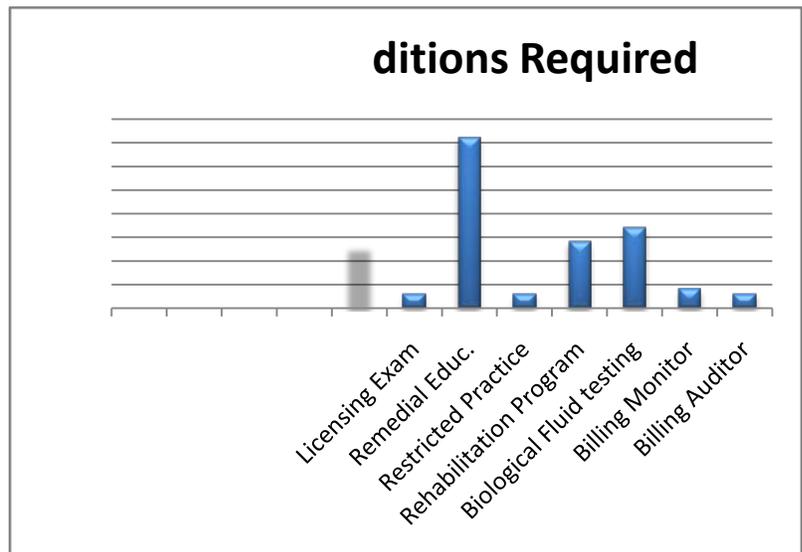
### Compliance Status

In Compliance	39
Out of Compliance - Violation Notice Sent	6
Referred to AG for Viol. of Prob.	8
<b>Total Out of Compliance</b>	<b>14</b>



### Optional Conditions Required (Active Probationers)

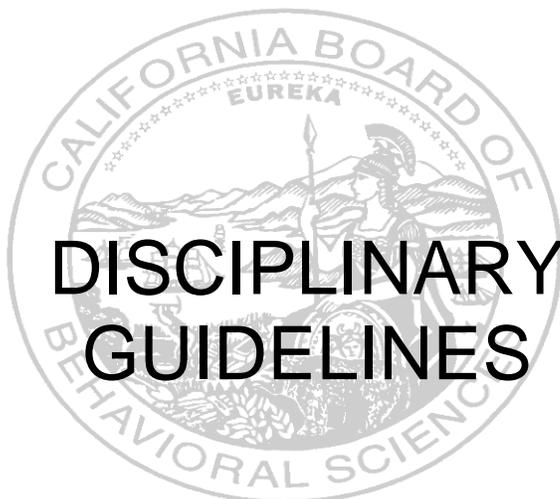
Active w/BOP Requirement	3
Supervision	34
Psychological Evaluation	22
Psychotherapy	30
Suspension	13
Licensing Exam	3
Remedial Educ.	36
Restricted Practice	3
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***State of California***

**Department of Consumer Affairs**

**Board of Behavioral Sciences**



**Revised: 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, 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 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.

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982.26 LCSW: B&P § 4992.33 LEP: B&P § 4989.58 GP: B&P § 729	Engaging in Sexual Contact with Client / Former Client	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul> The law requires revocation/denial of license or registration.
MFT: B&P § 4982(aa)(1) LCSW: B&P § 4992.3(x)(1) LEP: B&P § 4989.54(y)(1)	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. <b>or</b> 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.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul> The Board considers this reprehensible offense to warrant revocation/denial.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul> The Board considers this reprehensible offense to warrant revocation/denial.
MFT: B&P § 4982(k), 4982.26 LCSW: B&P § 4992.3(k), 4992.33 CCR § 1881(f) 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"> <li>• Revocation stayed</li> <li>• 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</li> <li>• Take and pass licensure examinations as a condition precedent to resumption of practice</li> <li>• 7 years probation</li> <li>• Standard terms and conditions</li> <li>• Psychological/psychiatric evaluation as a condition precedent to resumption of practice</li> <li>• Supervised practice</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul> (See B&P 4982.26, 4989.58, 4992.33) The Board considers this reprehensible offense to warrant revocation/denial.

		<ul style="list-style-type: none"> <li>• Psychotherapy</li> <li>• Education</li> <li>• Take and pass licensure examination</li> <li>• Reimbursement of probation program</li> </ul> <p>And if warranted, enter and complete a rehabilitation program approved by the Board; 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&amp;P § 4982(k)  LCSW: B&amp;P § 4992.3(k)  CCR § 1881(f)  LEP: B&amp;P § 4989.54(n)  GP: B&amp;P § 480</p>	<p>Commission of an Act Punishable as a Sexually Related Crime</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• Psychotherapy</li> <li>• 5 years probation; standard terms and conditions</li> <li>• Psychological/psychiatric evaluation as a condition precedent to the resumption of practice</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
<p>MFT: B&amp;P § 4982(c),  4982.1  LCSW: B&amp;P § 4992.3(c),  4992.35  LEP: B&amp;P § 4989.26  GP: B&amp;P § 480, 820</p>	<p>Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• 5 years probation; standard terms and conditions</li> <li>• Supervised practice</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul> <p><u>In addition:</u></p> <ul style="list-style-type: none"> <li>• MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

		<ul style="list-style-type: none"> <li>• PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice</li> <li>• 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.</li> </ul>	
MFT: B&P § 4982(c), 4982.1 LCSW: B&P § 4992.3(c), 4992.35 LEP: B&P § 4989.54(c), 4989.56 GP: B&P § 480	Chemical Dependency / Use of Drugs With Client While Performing Services	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 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</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Psychological/psychiatric evaluation</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Rehabilitation program</li> <li>• Abstain from controlled substances</li> <li>• Submit to biological fluid test and samples</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, psychotherapy; restricted practice</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4982(i) LCSW: B&P § 4992.3(i) CCR § 1881(d) LEP: B&P § 4989.54(m) GP: B&P § 480	Intentionally / Recklessly Causing Physical or Emotional Harm to Client	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 90-120 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Take and pass licensure examinations</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> <p>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration application</li> <li>• Cost recovery</li> </ul>

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

<p align="center"><b>Statutes and Regulations</b></p> <p>Business and Professions Code: (B&amp;P)  Title 16, California Code of Regulations: (CCR)  General Provisions: (GP)  Penal Code: (PC)  Welfare and Institutions Code: (WI)</p>	<p align="center"><b>Violation Category</b></p>	<p align="center"><b>Minimum Penalty</b></p>	<p align="center"><b>Maximum Penalty</b></p>
<p>MFT: B&amp;P § 4980.40(h), 4982(a)  LCSW: B&amp;P § 4992.3(a), 4996.2(d), 4996.18(a)  LEP: B&amp;P § 4989.20(a)(3), 4989.54(a)  GP: B&amp;P § 480, 490, 493</p>	<p>Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant</p>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Supervised practice</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense).</li> </ul> <p>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.</p> <p>DRUGS AND ALCOHOL: Add: Psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; and if warranted: restricted practice.</p> <p>FISCAL AND PROPERTY CRIMES: Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice.</p>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(j) LCSW: B&P § 4992.3(j) CCR § 1881(e) LEP: B&P § 4989.54(g) GP: B&P § 480, 650, 810	Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Law and ethics course</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4980.02, 4982(l), 4982(s), 4982(t) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(l) 4996.9 CCR § 1881(g), 1881(h) LEP: B&P § 4989.14 4989.54(r) CCR § 1858(b) 1858(j) GP: B&P § 480	Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4982.25 LCSW: B&P § 4992.36 LEP: B&P § 4989.54(h), 4989.54(i) GP: B&P § 141, 480	Discipline by Another State or Governmental Agency	<ul style="list-style-type: none"> <li>• Determine the appropriate penalty by comparing the violation under the other state with California law.</li> </ul> And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4982(b) LCSW: B&P § 4992.3(b), B&P §4992.7 LEP: B&P § 4989.54(b) GP: B&P § 480, 498, 499	Securing or Attempting to Secure a License by Fraud	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration application;</li> <li>• Cost recovery.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4980, 4982(f) CCR § 1845(a), 1845(b) LCSW: B&P § 4992.3(f), 4996 CCR § 1881(a) LEP: B&P § 4989.54(l) GP: B&P § 480	Misrepresentation of License / Qualifications	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: take and pass licensure examinations.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery.</li> </ul>
MFT: B&P § 4982(q) LCSW: B&P § 4992.3(q) - CCR § 1881(l) LEP: B&P § 4989.54(s) GP: B&P § 123, 480, 496	Violates Exam Security / Subversion of Licensing Exam	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(g) LCSW: B&P § 4992.3(g), 4992.7 CCR § 1881(b) LEP: CCR § 1858(a) GP: B&P § 119, 480	Impersonating Licensee / Allowing Impersonation	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension</li> <li>• 5 years probation</li> <li>• Supervised practice</li> <li>• Standard terms and conditions</li> <li>• Psychological/psychiatric evaluation</li> <li>• Psychotherapy</li> <li>• Cost recovery</li> <li>• Reimbursement of probation costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(h) LCSW: B&P § 4992.3(h) CCR § 1881(c) LEP: B&P § 4989.54 (t) GP: B&P § 125, 480	Aiding and Abetting Unlicensed / Unregistered Activity	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-90 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: supervised practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(m) LCSW: B&P § 4992.3(m) CCR § 1881(i) LEP: B&P § 4989.54 (q) GP: B&P § 480	Failure to Maintain Confidentiality	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 60-90 days actual suspension</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Take and pass licensure exams</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 728 LCSW: B&P § 728 GP: B&P § 480	Failure to Provide Sexual Misconduct Brochure	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(r), 4982(t), 4982(u) CCR § 1833.1, 1845(b) LCSW: B&P § 4992.3(r) LEP: CCR § 1881(h)	Improper Supervision of Trainee / Intern / Associate / Supervisee	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-90 days actual suspension</li> <li>• 2 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul> And if warranted: supervised practice.	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(e), 4982(u) LCSW: B&P § 4992.3(e), 4992.3(r) LEP: B&P § 4989.54(f) GP: B&P § 480	Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• Registration on probation until exams are passed and license issued</li> <li>• License issued on probation for one year</li> <li>• Rejection of all illegally acquired hours</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(o) LCSW: B&P § 4992.3(o) CCR § 1881(n) LEP: B&P § 4989.54(p) GP: B&P § 650	Pay, Accept, Solicit Fee for Referrals	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 3-5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> <li>• Law and Ethics course</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation / Denial of license or registration</li> <li>• Cost recovery</li> </ul>
MFT: B&P § 4982(n) LCSW: B&P § 4992.3(n) CCR § 1881(j) LEP: B&P § 4989.54(0)	Failure to Disclose Fees in Advance	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 2 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>
MFT: B&P § 4980.46, 4982(p) LCSW: B&P § 4992.3(p) CCR § 1881(k) LEP: B&P § 4989.54(e) ALL: CCR § 1811 GP: B&P § 480, 651, 17500	False / Misleading / Deceptive / Improper Advertising	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30-60 days actual suspension</li> <li>• 5 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>
MFT: B&P § 4982(v) LCSW: B&P § 4992.3(s) LEP: B&P § 4989.54(i)	Failure to Keep Records Consistent with Sound Clinical Judgment	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>

<b>Statutes and Regulations</b> Business and Professions Code: (B&P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)	<b>Violation Category</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
MFT: B&P § 4982(y) LCSW: B&P § 4992.3(v) LEP: B&P § 4989.54(x)	Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>
MFT: B&P § 4982(z) LCSW: B&P § 4992.3(w)	Failure To Comply With Section 2290.5 (Telemedicine)	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 1 year probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery;</li> <li>• Reimbursement of probation program costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Revocation stayed</li> <li>• 30 days actual suspension</li> <li>• 1-3 years probation</li> <li>• Standard terms and conditions</li> <li>• Education</li> <li>• Cost recovery</li> <li>• Reimbursement of probation program costs</li> </ul>

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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.

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. 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, abstention 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. 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, 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 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, 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.

Respondent may reapply to the Board for licensure three years from the date of surrender 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.

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**To:** Compliance and Enforcement Committee Members **Date:** June 16, 2010

**From:** Kim Madsen  
Executive Officer

**Telephone:** (916) 574-7841

**Subject:** Legal Options to Suspend a License

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Consumer protection is vital as those seeking professional services from our licensees are often the most vulnerable. The Board has the responsibility to ensure that licensees behave in a competent and ethical manner in the delivery of their services to the public. This mandate is set forth in Business and Professions Code Section 4990.16 which states that "*protection of the public shall be the highest priority for the Board of Behavioral Sciences in exercising its licensing, regulatory, and disciplinary functions.....*"

Moreover, Business and Professions Code Section 4980.34 states in part, that it is the intent of the Legislature "*...that the Board employs its resources for the enforcement of laws designated to protect the public from incompetent, unethical, or unprofessional practitioners.*"

Once the Board becomes aware of a licensee's conduct that presents an immediate threat to public safety, the Board must act immediately to remove the licensee from practice. Two legal options exist to immediately remove a licensee from practice.

### **Penal Code Section 23**

Penal Code Section 23 (PC 23) provides the Board a procedure to immediately remove a licensee from practice. Following notification of a licensee or registrant's arrest, the Board reviews the arresting charges to determine if the licensee or registrant presents an immediate threat to the public. Examples of such charges include sexual crimes (e.g. rape, molestation, lewd/lascivious acts with a child). If the Board determines the charges warrant immediate removal of a licensee from practice, the Attorney General is contacted to discuss and initiate the PC 23 process.

Penal Code Section 23, allows a state agency to voluntarily appear and provide information related to the protection of the public at any criminal proceeding. These proceedings are conducted in Superior Courts throughout the state.

Business and Professions Code section 320 allows a state agency to voluntarily appear at any proceeding, (state commission, regulatory agency, department, other state agency, any state or federal court or agency) to present evidence and arguments for the effective protection of consumers.

During the proceeding, the Deputy Attorney General provides the court information regarding the qualifications, duties, and functions of a Board licensee, the relationship to the charges, and the Board's mandate to protect the public. The presiding judge determines if the licensee will be suspended from practice and for what time period. The suspension may be a condition of bail, probation, or release on one's own recognizance.

Since July 1, 2006, six (6) licensees were suspended from practice utilizing the provisions of Penal Code Section 23.

### **Interim Suspension Order**

Business and Professions Code Sections 4982, 4989.54, 4992.3, and 4999.90 provide the Board the authority to suspend any license or registration if the licensee or registrant is guilty of unprofessional conduct.

Business and Professions Code Section 494, provides the Board authority to file a petition for an interim order to suspend the license if:

- The licensee has engaged in acts or omissions which violate the Board's law or has been convicted of a crime substantially related to the licensed activity
- And the licensee presents a threat to the public's health, safety, and welfare.

The Board works with the Deputy Attorney General to initiate the Interim Suspension process.

The Interim Suspension process is an administrative action conducted before an Administrative Law Judge and has specific time lines that must be followed. Except in cases in which from the supporting documentation it appears that serious injury to the public would occur, the licensee must be given at least 15 days notice of the hearing on the petition for the Interim Suspension. In cases where notice is not provided, the licensee is entitled to a hearing within 20 days of the issuance of the order.

The licensee has the right to receive copies of the documents in support of the Board's petition, legal representation and present oral arguments and evidence. The evidentiary standard in a petition for an interim suspension hearing is a preponderance of the evidence. The Administrative Law Judge must issue the decision on the petition within five (5) days.

If an Interim Suspension Order is issued, the Board has 15 days to file an accusation. If the licensee files a Notice of Defense (response to the accusation), an administrative hearing must be held within 30 days of the receipt of the licensee's response. During this hearing, the evidentiary standard is clear and convincing. A decision on the accusation must be rendered within 30 days.

Due to the specified time lines, required documentation, and subsequent filing of an accusation, the decision to pursue this action is determined in consultation with the Attorney General.

Since 2004, three licensees were issued and Interim Suspension Order. Two of the licensees surrendered their license. The matter is still pending for the third.

### **Attachments:**

- a. Penal Code section 23
- b. Business and Professions Code Section 320
- c. Business and Professions Code Section 494
- d. Penal Code 23 cases and outcomes
- e. ISO issued

CALIFORNIA CODES  
PENAL CODE SECTION

23. In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee. For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency. For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions.

Source: <http://www.leginfo.ca.gov/calaw.html>

CALIFORNIA CODES  
BUSINESS AND PROFESSIONS CODE  
SECTION 320-321

320. Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court or agency, any matter or proceeding which the director finds may affect substantially the interests of consumers within California, the director, or the Attorney General, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary, for the effective protection of the interests of consumers.

321. Whenever it appears to the director that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal proceedings in the appropriate forum to enjoin such acts or practices and may seek other appropriate relief on behalf of such consumers.

CALIFORNIA CODES  
BUSINESS AND PROFESSIONS CODE

494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in

the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of non compliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

**Board of Behavioral Sciences  
PC 23 Orders Issued  
July 1, 2006 to June 15, 2010**

<b>Case</b>	<b>Date PC 23 Order Issued</b>	<b>Reason for PC 23 Order</b>	<b>Outcome of Case</b>
1	November 15, 2007	Intern was arrested for lewd/lascivious acts with a child	Intern was convicted. An accusation was filed and intern surrendered the registration.
2	January 7, 2008	Licensee was arrested for raping a patient	Licensee was convicted. Accusation pending.
3	March 3, 2009	Licensee was arrested for filing false claims with a county agency in the amount of \$223,000	Licensee was convicted and was sentenced to 16 months in prison. An accusation was filed June 1, 2010.
4	May 8, 2009	Licensee was arrested for molesting children	Licensee was convicted and sentenced to 30 years in prison. An accusation was filed on December 30, 2009.
5	September 28, 2009	Licensee was arrested on multiple times for assault and battery	Licensee was convicted. An accusation was filed and the licensee surrendered license.
6	September 30, 2009	Licensee was arrested for attempted kidnapping of a child and battery on a police officer	Licensee convicted. Accusation is pending.



**Board of Behavioral Sciences  
Interim Suspension Order (ISO) Issued  
January 1, 2004 to June 15, 2010**

<b>Case</b>	<b>Date ISO Issued</b>	<b>Reason for ISO</b>	<b>Outcome of Case</b>
1	January 23, 2004	Alcohol Dependency/Mental Illness	An accusation was filed and licensee surrendered license.
2	August 12, 2005	Mental Illness	An accusation was filed and licensee surrendered license.
3	May 19, 2010	Conviction for Criminal Threat and Use of Firearm in the Commission of a Felony.	An accusation was filed. Case pending.