## §1812. SUBSTANTIAL RELATIONSHIP CRITERIA

(a) For purposes of denial, suspension, or revocation of a license or registration pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapters 13, 13.5, 14, and 16 of Division 2 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by ~~his or her~~the license in a manner consistent with the public health, safety or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

1. The nature and gravity of the offense;

2. The number of years that have elapsed since the date of the offense;

3. How the offense relates to the nature and duties of a marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

1. Any violation of Article 6, Chapter 1, Division 2 of the Code.

2. Any violation of the provisions of Chapter 13, 13.5, 13.7, 14, or 16 of Division 2 of the Code.

Note: Authority cited: Sections 481, 493, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 4982, 4989.54, 4992.3 and 4999.90, Business and Professions Code.

## §1813. CRITERIA FOR REHABILITATION - DENIAL OF LICENSURE

(a) When considering the denial of a license or registration under Section 480 of the ~~Code,~~ Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria: ~~the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:~~

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

~~(a)~~(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

~~(b)~~(2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial ~~which also could be considered as grounds for denial under Section 480 of the Code.~~under Section 480 of the Business and Professions Code.

~~(c)~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in ~~Section 480 of the Code.~~subdivision (1) or (2).

~~(d)~~(4) ~~The extent to which~~Whether the applicant has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against the applicant.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

~~(e)~~(6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, ~~and~~ 482, 488 and 493, Business and Professions Code.

## § 1814. CRITERIA FOR REHABILITIATION - SUSPENSIONS OR REVOCATIONS

(a) When considering the suspension or revocation of a license~~, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:~~ on the ground that the holder of the license has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If subdivision (a) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation if, after considering the following criteria, the board finds that the licensee is rehabilitated:

(1) The nature~~Nature~~ and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any act(s) or crimes committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) ~~giving rise to the suspension or revocation.~~referred to in subdivision (1) or (2).

(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

~~(5)~~(6) If applicable, evidence of ~~expungement~~dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

~~(6)~~(7) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.

~~(7)~~(8) 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)~~(9) Evidence, if any, of rehabilitation submitted by the licensee.

~~(b)~~(c) When considering a petition for reinstatement of a license or registration under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1813 of this article.

Note: Authority cited: Sections 482, 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 141, 480, 481, 482, 488, ~~and~~ 490, and 493, Business and Professions Code.

## §1888. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [Rev. ~~October 2015~~(*OAL TO INSERT EFFECTIVE DATE)*] which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform

Standards Related to Substance Abuse apply to cases of substance abuse. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), if the conduct found to be a violation involves drugs and/or alcohol, the violation is a substance abuse violation for purposes of Section 315 of the Code. If the licensee or registrant does not rebut that the violation is a substance abuse violation, then the Uniform Standards Related to Substance Abuse shall apply without deviation.

(c) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, 4980.60 and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 4982, 4989.54, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

## §1888.1 REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS

(a) Except as otherwise provided by law, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure and registration, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, <u>if the crime meets the conditions for denial specified in Section 480 of the Business and Professions Code</u>.

(2) Revoke the license or registration of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or registration on probation.

(3) Deny any petition to reinstate or reissue the individual's license or registration.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a license or registration under any other provision of state law based upon the licensee's or registrant's conviction under Section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license or registration shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license or registration shall govern.

Note: Authority cited: Section 4990.20, Business and Professions Code. Reference: Sections 480, 4980.40, 4989.24, 4990.30, 4996.2, 4999.42, and 4999.51, Business and Professions Code.

*State of California*

**Department of Consumer Affairs**

**Board of Behavioral Sciences**

# UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

**Revised:** ~~October 2015~~ ***(OAL TO INSERT EFFECTIVE DATE)***

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California, or from its web site at www.bbs.ca.gov.

# 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 uniform standards related to substance abuse and 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 four parts:

I. Uniform Standards Related to Substance Abuse – for those licensees and registrants with a violation related to alcohol and/or a controlled substance, or whose license or registration is on probation due to a substance abuse violation;

II. Penalty Guidelines - an identification of the types of violations and range of penalties for which discipline may be imposed;

III. Model Disciplinary Orders - language for proposed terms and conditions of probation; and

IV. Board Policies and Guidelines – for various enforcement actions.

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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# I. Uniform Standards Related to Substance Abuse

## Uniform Standards For Licensees Or Registrants Whose License Or Registration Is On Probation Due To A Substance Abuse Violation

The following standards shall apply in all cases in which a license or registration is placed on probation due, in part, to a substance abuse violation, unless the licensee or registrant rebuts that the violation is a substance abuse violation.

### Clinical Diagnostic Evaluations

Whenever a licensee or registrant is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.

2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

### Clinical Diagnostic Evaluation Report

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee or registrant has a substance abuse problem, whether the licensee or registrant is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice, restrictions, or other recommendations related to the licensee or registrant's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, business or professional relationship with the licensee or registrant. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee or registrant is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 calendar days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant's history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

When determining if the licensee or registrant should be required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license or registration type, licensee or registrant's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee or registrant is a threat to himself or herself or others.

**Supervisor Requirements**

If the Board determines that a supervisor is necessary for a particular licensee or registrant, the supervisor must meet the following requirements to be considered for approval by the Board:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee or registrant's supervisor be an employee or supervisee of the licensee or registrant.

2. The supervisor's license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no supervisor with like scope of practice is available.

3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant's disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.

2. Interview other staff in the office regarding the licensee or registrant's behavior, if applicable.

3. Review the licensee or registrant's work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:

    a. the licensee or registrant's name;

    b. license or registration number;

    c. supervisor's name and signature;

    d. supervisor's license number;

    e. worksite location(s);

    f. dates licensee or registrant had face-to-face contact with supervisor;

    g. worksite staff interviewed, if applicable;

    h. attendance report;

    i. any change in behavior and/or personal habits; and

j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

**Chemical Dependency Support or Recovery Group Meetings**

If the Board requires a licensee or registrant to participate in chemical dependency support or recovery group meetings, the Board shall take the following into consideration when determining the frequency of required group meeting attendance:

1. the licensee or registrant's history;

2. the documented length of sobriety;

3. the recommendation of the clinical diagnostic evaluator;

4. the scope and pattern of substance abuse;

5. the licensee or registrant's treatment history; and

6. the nature, duration, and severity of substance abuse.

The group meeting facilitator of a chemical dependency support or recovery group that a Board licensee or registrant is required to participate in must meet the following requirements:

1. Have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;

2. Be licensed or certified by the state or other nationally certified organizations to provide substance abuse recovery services;

3. Does not have a financial, personal, business or professional relationship with the licensee or registrant within the last year;

4. Must provide the Board a signed document showing the licensee or registrant's name, the group name, the date and location of the meeting, the licensee or registrant's attendance, and the licensee or registrant's level of participation and progress.

5. Must report to the Board any unexcused absence of a Board licensee or registrant being required to participate within 24 hours.

**Major and Minor Violations**

Major violations include, but are not limited to, the following:

1. Failure to complete any Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing more than one minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;

5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to report for drug and alcohol testing when ordered;
7. Testing positive for alcohol and/or a controlled substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a supervisor and/or monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or registrant or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate. The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

**Positive Test for Alcohol and/or a Controlled Substance**

If a licensee or registrant tests positive for alcohol and/or a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;

- Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and

- Immediately notify the licensee or registrant's employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for alcohol and/or a controlled substance is evidence of prohibited use:

- Consult the specimen collector and the laboratory;
- Communicate with the licensee or registrant and/or treating physician; and
- Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

**Drug Testing Standards**

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.

2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.

4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.

5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

8. Collection of specimens shall be observed.

9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

**Drug Testing Frequency Schedule**

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

| Level | Year of Probation | Minimum Range Number of Random Tests |
|---|---|---|
| I | Year 1 | 52-104 per year |
| II | Years 2 through 5 | 36-104 per year |
| III | After Year 5 | Once per month* |

*If no positive drug tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

**Drug Testing Frequency Schedule Exceptions**

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. Licensee or Registrant Demonstrates Previous Testing and Sobriety

   The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.

2. Violations Outside of Employment

   A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. Not Employed in Health Care Field

   The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. Tolling

   The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. Substance Use Disorder Not Diagnosed

   If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.

**Criteria to Petition to Return to Practice**

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;

2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;

3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and

4. Complete compliance with the other terms and conditions of his or her program.

**Criteria to Petition for Reinstatement to Unrestricted License or Registration**

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);

2. Demonstrated successful completion of a rehabilitation program (if required);

3. Demonstration of a consistent and sustained participation in activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;

4. Demonstrated ability to practice safely; and

5. Continuous sobriety for at least three (3) to five (5) years.

# II. 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. Except as provided in the Uniform Standards Related to Substance abuse, the Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

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

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4982.26(k)<br>LCSW: B&P § 4992.33<br>LEP: B&P § 4989.58<br>LPCC: B&P § 4999.90(k)<br>GP: B&P § 729 | Engaging in Sexual Contact with Client / Former Client | • Revocation / Denial of license or registration<br>• Cost recovery. | • Revocation / Denial of license or registration<br>• Cost recovery.<br>The law requires revocation/denial of license or registration. |
| MFT: B&P § 4982(aa)(1)<br>LCSW: B&P § 4992.3(y)(1)<br>LEP: B&P § 4989.54(y)(1)<br>LPCC: B&P § 4999.90(z)(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. **or**<br>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. | • Revocation / Denial of license or registration<br>• Cost recovery.<br>The Board considers this reprehensible offense to warrant revocation/denial. | • Revocation / Denial of license or registration<br>• Cost recovery.<br>The Board considers this reprehensible offense to warrant revocation/denial. |
| MFT: B&P § 4982(k), 4982.26<br>LCSW: B&P § 4992.3(l), 4992.33<br>CCR § 1881(f)<br>LEP B&P § 4989.58<br>B&P § 4989.54(n)<br>LPCC: B&P § 4999.90(k)<br>GP: B&P § 480, 726 | Sexual Misconduct<br>(Anything other than as defined in B&P Section 729) | • Revocation stayed<br>• 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<br>• Take and pass licensure examinations as a condition precedent to resumption of practice<br>• 7 years probation<br>• Standard terms and conditions<br>• Psychological/psychiatric evaluation as a condition precedent to resumption of practice<br>• Supervised practice | • Revocation / Denial of license or registration<br>• Cost recovery.<br>(See B&P 4982.26, 4989.58, 4992.33)<br>The Board considers this reprehensible offense to warrant revocation/denial. |

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|---|---|---|---|
| | | • Psychotherapy<br>• Education<br>• Take and pass licensure examination<br>• Reimbursement of probation program<br>And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice, reimbursement of probation program costs. | |
| MFT: B&P § 4982(k)<br>LCSW: B&P § 4992.3(l)<br>CCR § 1881(f)<br>LEP: B&P § 4989.54(n)<br>LPCC: B&P § 4999.90(k)<br>GP: B&P § 480 | Commission of an Act Punishable as a Sexually Related Crime | • Revocation stayed<br>• 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<br>• Psychotherapy<br>• 5 years probation; standard terms and conditions<br>• Psychological/psychiatric evaluation as a condition precedent to the resumption of practice<br>• Supervised practice<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted, restricted practice. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4982(c), 4982.1<br>LCSW: B&P § 4992.3(c), 4992.35<br>LEP: , 4989.54(c)<br>LPCC: B&P § 4999.90(c)<br>GP: B&P § 480, 820 | Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency | • Revocation stayed<br>• 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<br>• 5 years probation; standard terms and conditions<br>• Supervised practice<br>• Cost recovery<br>• Reimbursement of probation program costs.<br>In addition:<br>• MENTAL ILLNESS: Psychological/psychiatric evaluation; psychotherapy. | • Revocation / Denial of license or registration<br>• Cost recovery. |

| | | | |
|---|---|---|---|
| | | • PHYSICAL ILLNESS: Physical evaluation; and if warranted: restricted practice<br>• CHEMICAL DEPENDENCY Random drug and alcohol testing, psychological/psychiatric /clinical diagnostic evaluation; supervised practice; therapy; rehabilitation program; abstain from controlled substances/use of alcohol; and if warranted: restricted practice. | |
| MFT: B&P § 4982(c), 4982.1<br>LCSW: B&P § 4992.3(c), 4992.35<br>LEP: B&P § 4989.54(c), 4989.56<br>LPCC: B&P § 4999.90(c)<br>GP: B&P § 480 | Chemical Dependency / Use of Drugs With Client While Performing Services | • Revocation stayed<br>• 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric clinical diagnostic evaluation and to implement any recommendations from that evaluation<br>• Random drug and alcohol testing<br>• 5 years probation<br>• Standard terms and conditions<br>• Psychological/psychiatric/clinical diagnostic evaluation<br>• Supervised practice<br>• Education<br>• Supervised practice<br>• Education<br>• Rehabilitation program<br>• Abstain from controlled substances/use of alcohol<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted, psychotherapy; restricted practice | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4982(i)<br>LCSW: B&P § 4992.3(j)<br>CCR § 1881(d)<br>LEP: B&P § 4989.54(m)<br>LPCC: B&P § 4999.90(i)<br>GP: B&P § 480 | Intentionally / Recklessly Causing Physical or Emotional Harm to Client | • Revocation stayed<br>• 90-120 days actual suspension<br>• 5 years probation<br>• Standard terms and conditions<br>• Supervised practice<br>• Education<br>• Take and pass licensure examinations<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice. | • Revocation / Denial of license or registration application<br>• Cost recovery |

| **Statutes and Regulations**<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | **Violation Category** | **Minimum Penalty** | **Maximum Penalty** |
|---|---|---|---|
| MFT: B&P § 4982(d)<br>LCSW: B&P § 4992.3(d)<br>CCR § 1881(m)<br>LEP: B&P § 4989.54(k)<br>LPCC: B&P § 4999.90(d)<br>GP: B&P § 480 | Gross Negligence / Incompetence | • Revocation stayed<br>• 60-90 days actual suspension; 5 years probation<br>• Standard terms and conditions; supervised practice<br>• Education<br>• Take and pass licensure examinations<br>• Cost recovery<br>• Reimbursement of probation program costs;<br>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4982<br>CCR § 1845<br>LCSW: B&P § 4992.3<br>CCR § 1881<br>LEP: B&P § 4989.54<br>CCR § 1858<br>LPCC: B&P § 4999.90<br>GP: B&P § 125.6<br>480, 821 | General Unprofessional Conduct | • Revocation stayed<br>• 60-90 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Supervised practice<br>• Education<br>• Cost recovery; reimbursement of probation program<br>And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to drug and alcohol testing; restricted practice, law and ethics course. | • Revocation / Denial of license or registration<br>• Cost recovery. |

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4980.40(e), 4982(a)<br>LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(b)<br>LEP: B&P § 4989.20(a)(3), 4989.54(a)<br>LPCC: B&P § 4999.90(a)<br>GP: B&P § 480, 490, 493 | Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant | • Revocation stayed<br>• 60 days actual suspension<br>• 5 years probation<br>• Standard terms and conditions<br>• Supervised practice<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>(Costs and conditions of probation depend on the nature of the criminal offense).<br><br>CRIMES AGAINST PEOPLE: Add: Psychological/psychiatric evaluation; psychotherapy; restitution; and if warranted: rehabilitation program; restricted practice.<br><br>DRUGS AND ALCOHOL:<br>Add: Random drug and alcohol testing, psychological/psychiatric/clinical diagnostic evaluation; psychotherapy; supervised practice, rehabilitation program; abstain from controlled substances/use of alcohol, and if warranted: restricted practice.<br><br>FISCAL AND PROPERTY CRIMES:<br>Add: Restitution, and if warranted: psychotherapy; take and pass licensure exams; rehabilitation program; restricted practice. | • Revocation / Denial of license or registration<br>• Cost recovery. |

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4982(j)<br>LCSW: B&P § 4992.3(k)<br>CCR § 1881(e)<br>LEP: B&P § 4989.54(g)<br>LPCC: B&P § 4999.90(j)<br>GP: B&P § 480, 650, 810 | Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License | • Revocation stayed<br>• 30-60 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Law and ethics course<br>• Reimbursement of probation program costs<br>And if warranted. psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4980.02,<br>4982(l), 4982(s),<br>4982(t)<br>CCR § 1845(a), 1845(b)<br>LCSW: B&P § 4992.3(m)<br>4996.9<br>CCR § 1881(g),<br>1881(h)<br>LEP: B&P § 4989.14<br>4989.54(r)<br>CCR § 1858(b)<br><br>LPCC: B&P § 4999.90(l), 4999.90(s)<br>4999.90(t)<br>GP: B&P § 480 | Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence | • Revocation stayed<br>• 30-60 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy, take and pass licensure exams; restricted practice. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4982.25<br>LCSW: B&P § 4992.36<br>LEP: B&P § 4989.54(h), 4989.54(i)<br>LPCC: B&P § 4990.38<br>GP: B&P § 141, 480 | Discipline by Another State or Governmental Agency | • Determine the appropriate penalty by comparing the violation under the other state with California law.<br>And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs. | • Revocation / Denial of license or registration<br>• Cost recovery. |

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4982(b)<br>LCSW: B&P § 4992.3(b),<br>B&P §4992.7<br>LEP: B&P § 4989.54(b)<br>LPCC: B&P § 4999.90 (b)<br>GP: B&P § 480, 498, 499 | Securing or Attempting to Secure a License by Fraud | • Revocation / Denial of license or registration application;<br>• Cost recovery. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4980, 4982(f)<br>CCR § 1845(a),<br>1845(b)<br>LCSW: B&P § 4992.3(f),<br>4996<br>CCR § 1881(a)<br>LEP: B&P § 4989.54(l)<br>LPCC: B&P § 4999.90(f)<br>GP: B&P § 480 | Misrepresentation of License / Qualifications | • Revocation stayed<br>• 60 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted: take and pass licensure examinations. | • Revocation / Denial of license or registration<br>• Cost recovery. |
| MFT: B&P § 4982(q)<br>LCSW: B&P § 4992.3(r)<br>CCR § 1881(l)<br>LEP: B&P § 4989.54(s)<br>LPCC: B&P § 4999.90(q)<br>GP: B&P § 123, 480, 496 | Violates Exam Security / Subversion of Licensing Exam | • Revocation stayed<br>• 5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 4982(g)<br>LCSW: B&P § 4992.3(h),<br>4992.7<br>CCR § 1881(b)<br>LEP: CCR § 1858(a)<br>LPCC: B&P § 4999.90(g)<br>GP: B&P § 119, 480 | Impersonating Licensee / Allowing Impersonation | • Revocation stayed<br>• 60-90 days actual suspension<br>• 5 years probation<br>• Supervised practice<br>• Standard terms and conditions<br>• Psychological/psychiatric evaluation<br>• Psychotherapy<br>• Cost recovery<br>• Reimbursement of probation costs | • Revocation / Denial of license or registration<br>• Cost recovery |

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4982(h)<br>LCSW: B&P § 4992.3(i)<br>CCR § 1881(c)<br>LEP: B&P § 4989.54 (t)<br>LPCC: B&P § 4999.90(h)<br>GP: B&P § 125, 480 | Aiding and Abetting Unlicensed / Unregistered Activity | • Revocation stayed<br>• 30-90 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted: supervised practice. | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 4982(m)<br>LCSW: B&P § 4992.3(n)<br>CCR § 1881(i)<br>LEP: B&P § 4989.54 (q)<br>LPCC: B&P § 4999.90(m)<br>GP: B&P § 480 | Failure to Maintain Confidentiality | • Revocation stayed<br>• 60-90 days actual suspension<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Take and pass licensure exams<br>• Cost recovery<br>• Reimbursement of probation program costs | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 728<br>LCSW: B&P § 728<br>LPCC: B&P § 728<br>GP: B&P § 480 | Failure to Provide Sexual Misconduct Brochure | • Revocation stayed<br>• 1-3 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs. | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 4982(r), 4982(t), 4982(u)<br>CCR § 1833.1, 1845(b)<br>LCSW: B&P § 4992.3(s)<br>LEP: B&P § 4989.54(ab), CCR § 1858(b)<br>LPCC: B&P § 4999.90(r) 4999.90(t), 4999.90(u) | Improper Supervision of Trainee / Intern / Associate / Supervisee | • Revocation stayed<br>• 30-90 days actual suspension<br>• 2 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>And if warranted: supervised practice. | • Revocation / Denial of license or registration<br>• Cost recovery |

| Statutes and Regulations<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | Violation Category | Minimum Penalty | Maximum Penalty |
|---|---|---|---|
| MFT: B&P § 4982(e), 4982(u)<br>LCSW: B&P § 4992.3(f), 4992.3(s)<br>LEP: B&P § 4989.54(f)<br>LPCC: B&P § 4999.90(e)<br>4999.90(u)<br>GP: B&P § 480 | Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience | • Revocation stayed<br>• Registration on probation until exams are passed and license issued<br>• License issued on probation for one year<br>• Rejection of all illegally acquired hours<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs. | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 4982(o)<br>LCSW: B&P § 4992.3(p)<br>CCR § 1881(n)<br>LEP: B&P § 4989.54(p)<br>LPCC: B&P § 4999.90 (o)<br>GP: B&P § 650 | Pay, Accept, Solicit Fee for Referrals | • Revocation stayed<br>• 3-5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs<br>• Law and Ethics course | • Revocation / Denial of license or registration<br>• Cost recovery |
| MFT: B&P § 4982(n)<br>LCSW: B&P § 4992.3(o) CCR § 1881(j)<br>LEP: B&P § 4989.54(o)<br>LPCC: B&P § 4999.90 (n) | Failure to Disclose Fees in Advance | • Revocation stayed<br>• 1 year probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program | • Revocation stayed<br>• 30 days actual suspension<br>• 2 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program |
| MFT: B&P § 4980.46,<br>4982(p)<br>LCSW: B&P § 4992.3(q)<br>CCR § 1881(k)<br>LEP: B&P § 4989.54(e)<br>LPCC: B&P § 4999.90(p)<br><br>GP: B&P § 480, 651, 17500 | False / Misleading / Deceptive / Improper Advertising | • Revocation stayed<br>• 1 year probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program | • Revocation stayed<br>• 30-60 days actual suspension<br>• 5 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs |

| **Statutes and Regulations**<br>Business and Professions Code: (B&P)<br>Title 16, California Code of Regulations: (CCR)<br>General Provisions: (GP)<br>Penal Code: (PC)<br>Welfare and Institutions Code: (WI) | **Violation Category** | **Minimum Penalty** | **Maximum Penalty** |
|---|---|---|---|
| MFT: B&P § 4982(v)<br>LCSW: B&P § 4992.3(t)<br>LEP: B&P § 4989.54(j)<br>LPCC: B&P § 4999.90(v) | Failure to Keep Records Consistent with Sound Clinical Judgment | • Revocation stayed<br>• 1 year probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program | • Revocation stayed<br>• 30 days actual suspension<br>• 1-3 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs |
| MFT: B&P § 4982(y)<br>LCSW: B&P § 4992.3(w)<br>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 | • Revocation stayed<br>• 1 year probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs | • Revocation stayed<br>• 30 days actual suspension<br>• 1-3 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs |
| MFT: B&P § 4982(z)<br>LCSW: B&P § 4992.3(x)<br>LEP: B&P § 4989.54(d)<br>LPCC: B&P § 4999.90(ac) | Failure To Comply With Section 2290.5 ( Telehealth) | • Revocation stayed<br>• 1 year probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery;<br>• Reimbursement of probation program costs. | • Revocation stayed<br>• 30 days actual suspension<br>• 1-3 years probation<br>• Standard terms and conditions<br>• Education<br>• Cost recovery<br>• Reimbursement of probation program costs |

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# III. 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. Clinical Diagnostic Evaluation
5. Supervised Practice
6. Education
7. Take and Pass licensure examinations
8. Rehabilitation Program
9. Abstain from Controlled Substances/Submit to Random Drug and Alcohol Testing
10. Abstain from Use of Alcohol /Submit to Random Drug and Alcohol Testing
11. Restricted Practice
12. Restitution
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 the clinical diagnostic, 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).

Respondent shall be responsible for informing his or her employer of the Board's decision, and the reasons for the length of suspension. Respondent shall submit documentation and/or evidence demonstrating satisfactory compliance with this condition. Prior to the lifting of the actual suspension of the license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

**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 15 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. Clinical Diagnostic Evaluation**

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license or registration shall be automatically suspended for a minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent's license or registration shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

**5. 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.

Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities. 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.]

**6. 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, educational psychologist, or professional clinical counselor 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*.)

**7. 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.

**8. 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. The respondent shall take all necessary steps to ensure that the rehabilitation program submits quarterly written reports to the Board addressing the respondent's treatment and progress in the program.

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 drug and alcohol 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.

**9. Abstain from Controlled Substances / Submit to Drug and Alcohol Testing**

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 random and directed drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

**10. Abstain from Use of Alcohol / Submit to Drug and Alcohol Testing**

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

Respondent shall immediately submit to random and directed drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse listed herein. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and to the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for alcohol and/or a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

**11. 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.

**12. 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 _____.

**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 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 independent billing systems which monitor and document the dates and times of client visits. Respondent shall obtain the services of the independent billing system monitoring program within fifteen (15) days after notification of the board's approval of such program. 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, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 4996.18, 4999.32 or 4999.33 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. Failure to Practice
22. Change of Place of Employment or Place of Residence
23. Supervision of Unlicensed Persons
24. Notification to Clients
25. Notification to Employer
26. Violation of Probation
27. Maintain Valid License
28. License Surrender
29. Instruction of Coursework Qualifying for Continuing Education
30. Notification to Referral Services
31. Reimbursement of Probation Program
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. Failure to Practice**

In the event 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. 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, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and 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; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent's license/registration shall be automatically cancelled if respondent's period of non-practice total two years.

**22. 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.

**23. 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 supervisorial relationship in existence on the effective date of this Decision.

**24. 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).*

**25. 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.

The Respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors, and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor regarding the licensee or registrant's work status, performance, and monitoring.

**26. 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.

**27. 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.

**28. 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 and experience requirements, and taking and passing any and all examinations required of new applicants.

**29. 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.

**30. 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.

**31. Reimbursement of Probation Program**

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

**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.

# IV. 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 and experience 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 granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board 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 granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

**Recommended Language for Licensees**

IT IS HEREBY ORDERED THAT_____ License 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 granted another registration or license regulated by the Board.

***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 (17-32) 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 the criteria outlined in Section 1814. ~~, 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~~Modification of Penalty under Business and Professions Code Section ~~4982.2~~4990.30, 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, educational psychology, or professional clinical counselor 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.