

**TITLE 16, BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS**

**INITIAL STATEMENT OF REASONS**

**Hearing Date:** No Hearing Date Scheduled

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines

**Section(s) Affected:** Sections 2524 and 2579.10 of Division 25 of Title 16 of the California Code of Regulations.

**Introduction and Problem Statement**

The Board of Vocational Nursing and Psychiatric Technicians (Board) licenses, regulates, and investigates complaints against licensed vocational nurses and psychiatric technicians in California, totaling approximately 132,199 vocational nurses and 10,922 psychiatric technician licensees pursuant to the provisions of the Vocational Nursing Practice Act (“VN Act” -- Bus. & Prof. Code, §§ 2840 et seq.) and the Psychiatric Technicians Law (“PT Act” -- Bus. & Prof. Code, §§ 4500 et seq.). Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions as specified in Business and Professions Code (BPC) sections 2841.1 and 4501.1.

The Board is authorized to establish reasonably necessary rules and regulations to carry out the provisions of the VN and PT Acts in accordance with the Administrative Procedure Act (APA). (Bus. & Prof. Code, §§ 2854 and 4504.)

The document entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. 6/20/11 – “Disciplinary Guidelines” or “Guidelines”) is used to provide guidance to the Board, Administrative Law Judges (ALJs), and other interested parties in determining the terms and conditions of discipline for licensees found to have committed actions warranting administrative discipline. Existing regulations require (at Title 16, Code of California Regulations (CCR), Sections 2524 and 2579.10) the Board to utilize these disciplinary guidelines “In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.).” The disciplinary guidelines are incorporated by reference as a regulation, and therefore any update to the disciplinary guidelines will require an update in regulations as required by law in the APA. The Disciplinary Guidelines were last modified in 2011, and this rulemaking would update the disciplinary guidelines to better protect California consumers and ensure consistency in the Board’s enforcement actions.

The current Disciplinary Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law, Board

regulations, and other changes that have occurred in the probationary environment since the last update in 2011. As a result, the Board, as part of its strategic plan, proposes to update its Disciplinary Guidelines document. If the Disciplinary guidelines are amended, the corresponding regulations, CCR sections 2524 and 2579.10, must also be amended to incorporate by reference the revised disciplinary guidelines as approved and revised by the Board on August 25, 2023. Since the regulations are identical, all proposed edits referenced below refer to proposed changes in both CCR section 2524 and 2579.10.

The specific changes to the Disciplinary Guidelines and the reasons therefor are provided in detail below. Those changes include numerous non-substantive changes including correcting grammar, punctuation, changing gendered pronouns to the gender-neutral word “Respondent” in line with the State’s policy objectives set forth in Assembly Concurrent Resolution No. 260 of 2018 (intended to encourage state bodies to engage in a coordinated effort to revise existing laws and regulations with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns), and adding the word “calendar” in front of the word “days” to give greater notice to Respondents whether a business day or calendar day applies.

### **Anticipated Benefits of the Regulations**

The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders, and strengthen consumer protection. The Board anticipates that the updated Disciplinary Guidelines will provide a more useful tool for the Board, applicants and licensees, ALJs, legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the VN and PT Acts and their accompanying regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline by clarifying the conditions under which licensees shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable.

### **Specific Purpose, and Rationale for each proposed amendment, adoption or repeal**

The Board proposes to:

- **Amend Sections 2524 and 2579.10, Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.**

Purpose: The text would be amended to revise the title and first paragraph of the text as specified below and revise the effective date for the disciplinary guidelines document from 6/20/11 to the effective date approved for adoption by OAL. Disciplinary Guidelines (Guidelines) for the Board were last updated on June 10, 2011. Since June 2011, there

have been changes to the Board’s laws and regulations, and changes in the administration of various penalties for violations requiring the Guidelines to be updated. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection. This proposal would also amend the title and first paragraph of the text to include the changes of striking “Related to” and add the words “Regarding” and “Licensees” and to otherwise revise the title so it reflects “disciplinary guidelines and uniform standards regarding substance abusing licensees”.

**Rationale:** CCR Sections 2524 and 2579.10 were last amended in 2011 and incorporate by reference the Disciplinary Guidelines, which are out of date, inconsistent with recent changes to statutory law and the probationary environment and require clarification. In the last 13 years, there have been statutory and probationary changes that must be reflected in the Guidelines. This regulatory proposal would update the Guidelines, which are incorporated by reference in CCR sections 2524 and 2579.10 with a new revision date that reflects the Board’s proposed amendments to this policy document as further specified below. The proposed amendments to the title and date of the Disciplinary Guidelines document are necessary so that licensees and other stakeholders are aware of the date when the Board’s policy in this area was last revised. Other non-substantive changes to the title and first paragraph of the text were made to replace “related to” with “regarding” to track the title of the Uniform Standards document discussed more fully below.

**Amend Disciplinary Guidelines document incorporated by reference and title in proposed text and incorporated document**

**Purpose:** The purpose is to amend the title to include the changes of striking “Related to” and add the words “Regarding” and “Licensees” and to otherwise revise the title so it reflects “Disciplinary Guidelines and Uniform Standards Regarding Substance Abusing Licensees”. This title would reflect the most recent revisions dates and effective dates in the Uniform Standards for Substance Abusing Licensees document, which the *Guidelines* cite, in full. The Board also proposes to change the existing font in this document from Calibri to Century Gothic and add the Department within which the Board operates.

**Rationale:** The proposal is necessary to provide clear and transparent identification of the document that the *Guidelines* are citing to and give advance notice to affected stakeholders of the purposes of this document and the effective dates of the most recent policy changes. The change of font to Century Gothic from Calibri throughout the Guidelines will enable the reader to find and review the standards in this policy document more easily. The addition of the reference to the “Department of Consumer Affairs” provides notice and information regarding the Department within which this Board is statutorily placed in accordance with Business and Professions Code section 101(s).

## Update Table of Contents

Purpose: The purpose is to amend the *Guidelines* table of contents is to provide accurate organization of the *Guidelines*. The table of contents would be updated to include new section titles with corresponding page numbers that have been added in this proposal (which would be updated in final form once the rulemaking is approved) including:

- (1) Uniform standards regarding substance-abusing healing arts licensees,
- (2) “Criteria” would be added to update the title to read “Criteria and Factors to be Considered”
- (3) Remove the term “summary Lists” and replace with “Quick Reference”
- (4) Evidence in Aggravation of Penalty,
- (5) Evidence in Mitigation of Penalty,
- (6) Rehabilitation Evidence, and,
- (7) Model orders.

Within the Standard, Optional and Uniform Standards titles, the cross-references to probationary terms that would be renumbered as part of this proposal have also been renumbered for accuracy and to avoid user confusion.

Rationale: The proposal is necessary to make the *Guidelines* more user-friendly and provide transparency and clarity as to the disciplinary policies of the Board and give advance notice of the potential disciplinary outcomes for licensees and applicants.

## Amend Introduction

### Changes to second paragraph of introduction

Purpose: The purpose is to amend the title to include the changes that were completed in the Uniform Standards for Substance Abusing Licensees document, which the *Guidelines* cite, in full.

Rationale: The proposal is necessary to provide clear and transparent identification of the document that the *Guidelines* are citing. The Board anticipate this change will allow licensees and consumers to have a better understanding of the document that the *Guidelines* are citing.

### Addition of new paragraph regarding reimbursement of investigative costs policy

Purpose: The proposal adds a new section regarding reimbursement of the Board’s investigative and prosecution costs and includes all of the following information:

- (1) Notice that the Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a violation;
- (2) Define what the Board’s reimbursable costs would include (i.e., charges from the

Office of the Attorney General, the Division of Investigation, Board services including expert consultant opinions and services); and,

(3) Include the reasons why the Board seeks reimbursement of investigative and enforcement costs (i.e., because the burden of costs should fall upon those whose proven conduct required investigation and prosecution and not on the profession as a whole and cost recovery serves an important rehabilitative function).

Rationale: For the purposes of clarity and transparency and notice to affected licensees, the proposed new language is necessary to include cost reimbursement information in the Guidelines. In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. BPC section 125.3 permits the Board to recover “reasonable costs of the investigation and enforcement of the case.” Since BPC 125.3’s authority is discretionary (cost recovery “may” be ordered by an ALJ “upon request” from the Board) and to address questions from stakeholders regarding the Board’s position, the Board has adopted a policy to make it clear that it expects such cost reimbursement to be requested in every case and to explain the Board’s rationale for taking such a policy position.

In the Board’s view, those who have been found to have committed a violation should pay cost reimbursement (recovery) where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole. In the Board’s experience, such costs include those listed in the proposal, including charges for enforcement prosecution by the AG’s office, investigation by the department’s Division of Investigation and expert witness fees for expert witnesses that are necessary for the Board to meet its burden of proof in a disciplinary enforcement action. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost reimbursement in all cases where it is determined to be appropriate. The Board includes the justification and the Board’s reasoning in the Guidelines to help licensees and other users understand why the Board believes pursuit of cost recovery is an important public policy objective. The Board also anticipates this will ensure more uniform application of cost recovery within proposed decisions and stipulated settlements.

### **Amend Uniform Standards Related to Substance Abusing Licensees Section**

Purpose: The purpose is to amend the title to include the changes that were completed in the Uniform Standards for Substance Abusing Licensees document created by the Substance Abuse Coordination Committee (“Coordination Committee” -- as discussed more fully below), which the *Guidelines* cite, in full. The changes would include the revision date of “March 2019” to be consistent with the most recent Uniform Standards document produced by the Coordination Committee, and other non-substantive changes to correct gendered pronouns and change “term” to “condition.”

Rationale: The proposal is necessary to provide clear and transparent identification of the Uniform Standards document that the *Guidelines* are citing. The Board anticipate this

change will allow licensees and consumers to have a better understanding of the document that the *Guidelines* are citing to, i.e., the Uniform Standards document published by the Coordination Committee. The non-substantive changes are being proposed for better understanding of the subjects and subject matter being addressed in this proposal.

### **Amend Regulatory Authority Section**

Purpose: The purpose is add a complete copy of CCR sections 2524 (related to Vocational Nurse licensees) and 2579.10 to the *Guidelines* with amendments designed to mirror what the Board has adopted in these sections in Title 16 of Division 25 of the California Code of Regulations.

Rationale: The proposal is necessary to update the regulations reproduced in this section consistent with changes proposed in CCR sections 2524 and 2579.10. These changes would provide better notice and understanding of the regulations applicable to the Disciplinary Guidelines and would make the Guidelines regulations for each type of licensee the Board regulates readily available to the public. The Board proposes to strike the words “& Section 2579.10(PT)” as redundant since a complete copy of the Guidelines text at CCR section 2579.10 is being added to this proposal. The acronym “VN” would be struck and replaced with “Vocational Nurse” for ease of reference and greater comprehension.

### **Amend Factors to Be Considered**

Purpose: The purpose is to amend the title to add the words “Criteria And” and to include new criteria to this section that the Board and ALJs can use to evaluate whether revocation, suspension or probation should be imposed in a given disciplinary action.

Rationale: The proposal is necessary to provide clear and transparent information on what factors and criteria the Board will consider. The Board anticipate this change will allow licensees and consumers to have a better understanding of when a licensee should be placed on probation, have their license revoked or suspended in any given case. In determining whether a license should be revoked, suspended or placed on probation on the basis of a criminal conviction or act, the Board is required to determine whether the crime or act is substantially related to the qualifications, functions, or duties of a vocational nurse (VN) or psychiatric technician (PT). (BPC, §§ 141, 490, 2878, and 4521.) To make that determination, the Board is required to develop criteria. (BPC, § 481.) The Board also is required to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. (BPC, § 482.) The Board’s substantial relation and rehabilitation criteria are set forth for VNs in CCR sections 2521 and 2522, and for PTs in sections 2578 and 2579 and those lists are replicated in this section. To maintain consistency with the terminology used in the BPC and supporting regulations, this proposal is necessary to add “criteria” to be considered by the Board when determining whether a crime or act is substantially related to the qualifications, functions, or duties of a VN or PT licensee and whether a licensee has

made a showing of rehabilitation.

While the rehabilitation criteria from CCR sections 2522 and 2579 are currently listed in the Guidelines here, the substantial relationship criteria and other specific factors that the Board may consider for setting the penalty of revocation, suspension or probation that the Board, in its experience, believes are important factors that should be considered in setting the penalty are not similarly listed. This lack of information can lead to confusion from affected stakeholders regarding the Board's jurisdiction and what issues might weigh in favor of one penalty or another. The Board, therefore, proposes to add a statement directing readers to the Board's substantial relationship criteria in CCR sections 2521 and 2578.

In addition, the Board proposes to add new factors to include the following for the reasons specified here:

- (1) Add "Overall length of licensure". This is being proposed to be added as a factor considered because the length of time that an individual is licensed can either militate towards less restriction on the license or greater restriction or removal from practice (e.g., a short amount of time with numerous violations cited versus a long history of uninterrupted licensure).
- (2) Add further detail explaining that "overall disciplinary record" includes "level of compliance with disciplinary orders(s)." This would help affected stakeholders understand that the Board will consider "level of compliance with disciplinary orders" to include compliance with the Board's disciplinary orders. Degrees of compliance shows whether a licensee has a consistent track record of complying or not with orders as it relates to the level of risk or a recurring violation. Also, the level of compliance can assist the Board with determining whether the licensee could function with safety to the public with restriction (probation, suspension) or whether removal from practice is necessary (revocation).
- (3) Add "Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the Respondent is being held to account for conduct committed by another, the Respondent had knowledge of or knowingly participated in such conduct." This factor is important for determining level and degree of culpability in the violations involved and can inform the Board regarding whether a less restrictive or more restrictive approach is warranted as intentional or willful acts are often harder to remediate and can warrant the harshest discipline versus acts that may be remediated through further training, education or therapy that were not intentional.
- (4) Add: "Financial benefit to the Respondent from the misconduct," as a factor as this type of conduct can often indicate complete disregard for patient welfare and safety in the provision of healthcare and often calls for a stricter penalty assessment.
- (5) Add as a factor: "Other licenses held by the Respondent and license history of those licenses." The addition of this factor is necessary to inform the Board about a respondent's pattern and track record of complying with laws enacted for public protection to aid it in determining whether a less restrictive or more restrictive

approach to discipline is warranted.

- (6) Add as a factor: “Uniform Standards Regarding Substance-Abusing Healing Arts Respondents (see Business and Professions Code Section 315). This added notice to the *Guidelines* is necessary to remind staff and other users of the *Guidelines* that the Uniform Standards must be used in these types of cases when formulating the penalty. This will help ensure more consistent application of the Uniform Standards when the case involves a substance-abusing licensee as the Board is required by law to use the Uniform Standards in accordance with BPC section 315 (see also Underlying Data and the opinion of the California Attorney General’s office).
- (7) Add the following statement: “No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.” This notice is necessary to help ensure that no single factor or combination of factors dictate the outcome of every case, and that all options for penalty assessment should be considered in light of these factors. This is important to further convey that these factors should be considered in formulating the penalty to ensure the Board’s goal of public protection, including licensee remediation or restriction, are implemented in a consistent and fair manner.

**Amend Summary Lists Section Title to “Quick Reference” section for Standard and Optional Conditions of Probation and Update Title Names and Condition Numbering Within Each List; Update Numbering for “Summary of Lists of Uniform Standards – Conditions of Probation”**

Purpose: The purpose is to amend the sections to be a quick reference list for ALJs, DAGs, licensee, applicants and the consumer. The lists have been updated to match the changes proposed for naming conventions for the specific standard and optional conditions of probation, and to fix numerical issues (renumber term titles) created by the combining of two conditions throughout the “Quick Reference” and “Summary Lists of Uniform Standards – Conditions of Probation” to avoid confusion in application of these standards.

The Board also proposes to strike the words “which will generally” and replace them with the words “that should appear” to emphasize that these are conditions that the Board expects to appear in every probationary order unless otherwise determined to not be relevant or necessary as explained in the probationary order (see Introduction – ALJs are requested to explain any departures from the standard terms in their orders).

Rationale: The proposal is necessary to allow clear and transparent information on the possible conditions of probation and provide greater notice to the users of the Guidelines regarding where in the Guidelines they can get a “checklist” or “Quick Reference” to all of the Board’s standard and optional conditions of probation. The Board anticipates this change will allow ALJs, DAGs, licensees, applicants and the consumer to be able to review all of the terms and conditions, in a list, as they appear in the document for better organizational structure and notice.



## **Amend Disciplinary Guidelines Standard Conditions 1 “Obey All Laws”**

Purpose: The purpose is to amend the section to clarify the number of days required for compliance to “calendar” days, to ensure that everyone has a common understanding of how many days the applicable action would take. The proposal would also make changes to gendered pronouns in this section as specified above.

Rationale: The proposal is necessary to allow clear and transparent information on the timelines imposed by the condition. The Board anticipates this change will allow ALJs, DAGs, licensee, applicants and the consumer to be able to definitively answer how many days a licensee or applicant would have to comply with the condition of probation.

## **Amend Disciplinary Guidelines Standard Conditions 2 title and term to “Cooperation and Compliance with Probation Program”**

Purpose: The purpose is to amend the title to add the word “Cooperation” to the title and set other requirements for responding to and providing information to the Board. The Board also proposes to add the following requirements:

- (1) a requirement that a respondent respond immediately unless otherwise specified by another term or condition of probation in this decision, to all requests for information or inquiries by the Board or its designee regarding respondent’s compliance.
- (2) Failure to timely respond shall be considered a violation of probation.
- (3) If on criminal probation or parole this term would specify that Respondent has to respond within 15 calendar days of the effective date of the Board’s decision and provide their probation or parole officer with notice of the Board’s decision in the case (Accusation or Statement of Issues and Disciplinary Decision).
- (4) The notice to respondent’s parole or probation officer shall also include providing the name, title, telephone number and e-mail address for the Respondent’s probation officer at the Board.
- (5) Respondent would also be required to provide the contact information (name, telephone number and physical address) for their assigned probation or parole officer to the Board within 15 calendar days of the effective date of the Board’s decision.

Rationale: The proposal is necessary to allow clear and transparent information on what specific information the Probation Monitors will be requesting to allow the Board to effectively monitor the Respondent’s progress on probation and whether any violations of the law (since all respondents have to “obey all laws” as a condition of probation). An immediate response to Board inquiries is necessary to ensure that the Board may promptly investigate and take action if necessary unless otherwise specified in the probationary order (there are different reporting obligations for some types of information, including providing parole or probation officer contact information as further provided in this term).

In the Board’s experience, probationers often mistakenly believe that an untimely submission will not be considered significant. To avoid confusion about whether failure to comply with this condition in a timely manner would be considered a violation, the Board adds the following: “Failure to timely respond shall be considered a violation of probation.”

In the Board’s experience, these timeframes and reporting requirements are also necessary to provide fair and reasonable notice of the number of days a licensee or applicant has to comply, who the licensee or applicant must notify or provide information to, and what specific information the licensee or applicant must provide to be considered compliant. Fifteen calendar days is typically sufficient time to provide this basic information to both the Board and parole or probation officer. The information required to be provided to the Board and the parole or probation officer is the minimum necessary in the Board’s experience for the Board and a parole or probation officer to be on sufficient notice as to the Respondent’s status, allow for follow-up investigation by either official, and to allow coordination of effort in ensuring public protection and rehabilitation of the licensee. The Board anticipates these changes will allow the Board’s Probation Monitors to more effectively monitor the licensees and applicants and ensure consumer safety.

### **Amend Disciplinary Guidelines Standard Conditions 3 “Submission of Written Reports”**

Purpose: The purpose is to amend the title from “submit” to state “submission” to describe the process more accurately for complying with this condition of probation. This section would also be amended to specify the contents of the written quarterly reports required to be filed by the respondent that includes:

(A) written disclosures regarding whether Respondent has complied with each term and condition of probation contained in this Decision (“complete report”); and, if applicable,

(B) if Respondent discloses that they are not in compliance with any term or condition, a written statement regarding why Respondent is not in compliance with any term or condition of probation.

This section would also specify when the reporting periods are and the dates the reports are due for those reporting periods, and that incomplete or reports submitted after the reporting dates will be late and not in compliance with this condition.

Rationale: The following changes are necessary to more accurately and effectively monitor compliance with terms and conditions of the Board’s probationary orders.

#### **Quarterly reports disclosure requirements**

In the Board’s experience, this quarterly reporting information is relevant and necessary to adequately investigate and monitor a licensee’s compliance with the Board’s

probationary orders, for the following reasons:

Item (A): written disclosures regarding whether Respondent has complied with each term and condition of probation contained in this Decision (“complete report”). This information is needed to ensure that the Board is aware of and can investigate all aspects of the respondent’s probation being monitored under their current terms and conditions of probation. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the “Obey All Laws” term of probation (including compliance with the standards contained in the Board’s Practice Acts). The Board includes a short form reference to what a “complete report” means for the purposes of submission to help ensure more complete and accurate reporting by probationers in compliance with this condition of probation.

Item (B): if Respondent discloses that they are not in compliance with any term or condition, a written statement regarding why Respondent is not in compliance with any term or condition of probation. This requirement is needed to ensure that the Board is aware of and can fully investigate activity related to VN or PT practice. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the “Obey All Laws” term of probation (including any “substantially related” crime or act related to the practices of either profession per BPC sections 141, 490, 2878, and 4521).

The proposal is also necessary to allow clear and transparent information on what specific information the Probation Monitors will be requesting. The Board anticipate this change will allow the Probation Monitors to more effectively monitor the licensees and applicants, and to help ensure consumer safety.

#### *Requirements for Complete Reports, Filing, Reporting Periods and Due Dates*

Existing law and regulation do not specify the content of a complete report, methods of delivery, reporting periods or due dates for these quarterly compliance reports. This proposal is necessary to set forth those requirements to facilitate compliance and avoid inadvertent mistakes in compliance by the probationers. This would be achieved through specific direction to submit “complete reports” (as defined above) quarterly and submitted by mail, email, fax or in-person at the Board’s offices (to make it as simple as possible to submit a report in a timely manner) in accordance with the prescribed schedule. Setting these reporting periods and compliance dates (as set forth in A.-D. of this section) facilitates compliance with these existing reporting obligations by setting clear expectations for reporting and filing in advance, and the timeframes allow the Board sufficient time to evaluate and investigate any issues that may be uncovered in these reports.

To help ensure that probationers understand the effect of submitting an incomplete or “late” report (defined here as submitted or postmarked after the reporting dates listed above), the Board adds the following advisement: “Incomplete written reports or reports

submitted or postmarked after the reporting dates listed above shall be considered late and not in compliance with this condition.”

### **Amend Disciplinary Guidelines Standard Conditions 4 Title to “Notification of Current and Changes to Name, Address(es) and Telephone Number” and Add New Reporting Obligations**

Purpose: The purpose is to amend the section to clarify what information is due within 5 calendar days of the effective date of the decision or 5 calendar days of any change to such information, which includes the current mailing address, physical address, email address and phone number(s) (and “name” if a change occurs after the initial disciplinary order issues).

Rationale: This information is needed for identification purposes and to ensure that the Board has the most accurate contact information. Accurate information is important to ensure timely and accurate communications, investigation of compliance with the terms of probation and service of legal process on the probationer, if necessary. The proposal is also necessary to allow clear and transparent information on what specific information the Board’s Probation Monitors will be requesting. The Board anticipates this change will allow the Board’s Probation Monitors to more effectively monitor the licensees and applicants and ensure consumer safety. It also offers the Board’s Probation Monitors more ways to contact the licensee or applicant.

In the Board’s experience, five days is typically sufficient and reasonable amount of time to provide the Board with basic identifying and contact information and any changes to such information, which may be delivered to the Board in a variety of ways (mail, email, facsimile or in-person) to facilitate compliance with this term. The Board adds the term “designee” to allow delegation of this ministerial monitoring function to staff who are typically assigned to perform these duties.

The title of this term is being changed to more accurately reflect the content of this newly revised term as described above.

### **Amend Disciplinary Guidelines Standard Conditions 5 “Notification of Residency, Practice, or Licensure Outside of State (Tolling)”**

Purpose: The purpose is to amend the title to add the words “or Licensure” and “Tolling” to reflect the revisions more accurately being proposed to this section. This proposal would further specify that reporting begins within 5 days “of the date of departure” if a respondent leaves California to reside or practice in another state.

This proposal also adds a sentence that specifies that a respondent’s probation is tolled when they leave California to reside or practice in another state. This proposal would also clarify that they are not relieved of the obligation to maintain a current and active license and it will be a probation violation for a probationer’s license to remain tolled due to this condition for a period exceeding a total of two years. This section also would

specify reporting obligations for those who “toll” and what information is due if the licensee or applicant resides or practices outside the State of California and needs to be placed on “tolling” status. Finally, the Board proposes to add a requirement to this term that “periods of residency or practice outside of California do not relieve Respondent of the responsibility to comply with the terms and conditions of probation.”

Rationale: To avoid confusion about when this reporting obligation under this term begins, the Board proposes to add the words “of the date of departure” to specify when a respondent must notify the Board when they leave California to reside in another state or practice in another state.

Tolling is a difficult legal concept for many probationers to understand, so the Board is adding an additional sentence to help probationers understand that their probation is tolled when they leave California to reside or practice in another state. This will provide better guidance on the factual “trigger” for when probation is tolled. This information will also assist the Board in accurately tolling probation for periods of what it considers to be non-practice within the State of California.

This condition restates the requirements that a probationer maintain an active and current license with the Board and that periods of residency or practice outside of California do not relieve respondent of the responsibility of complying with probation, so that it is clear that tolling does not relieve the probationer of those obligations. In the Board’s experience, some probationers believe that nonpractice or moving to another state somehow eliminates the need to keep an active license or to comply with probation. These sentences would help resolve that possible confusion.

Existing regulation does not explain the consequences of allowing tolling to continue with the possible implication that a licensee could remain tolled indefinitely. This proposal would eliminate that uncertainty and confusion by stating that it is a violation of probation to allow probation to remain tolled for a period exceeding a total of two years. This would allow the Board to effectively monitor the probationer by limiting the amount of time probation may be tolled to no longer than a total of two years. In the Board’s experience, two years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation or request voluntary surrender of the license (all possible methods for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within 2 years and would help the regulated community understand how such nonpractice violations would be managed. As a result, this change is necessary to implement how the Board would possibly respond to a licensee who fails to resume practice in California for a total of two years (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing).

To avoid confusion about when to report the end periods of nonpractice, the Board would

add clarifying language that notice “of their return to California to reside or practice” must be provided to the Board “or its designee” within 5 calendar days “of the date of respondent’s return to California. This will help ensure that the Board can accurately monitor a probationer’s status and return to practice in California.

This proposal would add a new annual reporting requirement, to be submitted within 30 calendar days of the date requested by the Board or its designee, for those licensees who are in a tolling status. Such report would include a written document verifying respondent’s full legal name, California license number, out-of-state license number (if applicable), physical address, telephone number, email address and beginning or ending dates of residency or practice outside of California, as applicable. These requirements are needed to ensure that the Board receives documentation of, and can fully investigate activity related to, VN or PT practice occurring while the VN or PT is still on active probation with the Board. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the “Obey All Laws” term of probation (including any “substantially related” crime or act related to the practices of either profession as well as disciplinary actions taken by any other state board per BPC section 141). Thirty days is sufficient time in the Board’s experience for a probationer to provide the relatively short amount of information requested in this report. List. The Board anticipates this change will allow the Board’s Probation Monitors to more effectively monitor the licensees and applicants and ensure consumer safety. It also offers the Monitors more ways to contact the licensee or applicant.

### **Amend Disciplinary Guidelines Standard Conditions 6 “Meetings with Board Representatives”**

Purpose: The purpose is to amend the section to clarify how the licensee or applicant is able to appear as directed by the Board to include “by telephone or video conference”. In addition, the Board would add a requirement that a respondent provide proof of identity that includes a current state or federal-government issued photo identification as specified to the Board or its designee for examination upon request at any meeting.

Rationale: The Board anticipate this change will allow the licensee and applicants who do not live in close vicinity of the Board’s physical location to save money and travel time by being able to appear via phone or video conference. The proposal is also necessary to allow the Board to make reasonable accommodations for licensees and applicants, while still allowing the Board to evaluate a probationer’s demeanor and their progress in meeting standards while on probation.

Adding a requirement for identification allows the Board to verify the probationers and ensures that there is no fraud or attempted evasion in complying with the Board’s probationary orders. To provide notice of and provide a reasonably simple method of meeting this requirement, the Board lists 3 different types of commonly accepted government-issued documents as examples. These examples would be accepted as establishing proof of identity with photographic identification (driver license, passport, or military identification). This identification would need to be provided “upon request at any

meeting” with the Board or its designee to ensure accurate and timely reporting to the Board is maintained. This ensures that the Board is able to act quickly to validate identity and obtain compliance reports from a probationer as needed for possible investigation of violations of the Board’s probationary orders, which are established for the protection of the public.

### **Amend Disciplinary Guidelines Standard Conditions 7 “Notification to Employer(s)”**

Purpose: The Board proposes to add the words “respondents current or prospective health care” before the word “employer” to more specifically describe the type of employer who is required to be notified under this term. The board would also add the terms “notification” and the Board’s before the word “decision” to this section to more specifically describe the types of decisions and which documents are required to be provided to an employer under the section. The Board would strike the words “his/her probationary status with the board” and revise the sentence to include the words “shall occur” to avoid confusion regarding when the notification to respondents employer is required to be provided (i.e., the notification shall occur prior to accepting such employment).

The Board would also replace the words “accusation or statement of issues and disciplinary decision” with the words “accusation or statement of issues” to more accurately describe the types of documents that must be provided to the current or prospective employer since not all probationary orders are the result of a disciplinary action. This proposal would also require notification to respondent’s employer that includes the name, title, telephone number and e-mail address for the Board staff person who is respondent’s probation monitor.

Rationale: The Board anticipate this change will allow the licensee and applicants to have a better understanding of what documents to provide their current or prospective employer. The proposal is necessary to allow the Board to ensure that current and prospective employers have an understanding of the circumstances that lead to the licensee or applicant being placed on probation, and how they can be safety monitored while practicing. Providing notice to the employer and the Board’s probation monitor staff’s contact information ensures that employers understand the limitations under which their employee can work and still retain an active license with the Board. VNs and PTs work in a variety of practice settings and may face a variety of enforcement actions for violations of the Act or Board regulations including Accusations, and Statements of Issues. Specifying the provision of these documents along with the related Board “decision” to the required notifications will provide the employer or prospective employer additional context and greater understanding about the Respondent’s potential work restrictions and their possible attendant responsibilities to monitor Respondent.

Adding that the aforementioned enforcement documents must be provided before accepting employment ensures potential or current employer advance notice and understanding of Respondent’s history and limitations and avoids a situation where

employment may be cancelled after the licensee has begun employment. To avoid this situation and the potential adverse impact to patient continuity of care, the Board proposes to clarify this advance notice requirement.

### **Amend Disciplinary Guidelines Standard Conditions 8 “Employment Requirements and Limitations”**

Purpose: The purpose is to amend the section to amend how much time the licensee or applicant must work while being on probation, in order to be considered to have met the terms of the condition from no less than 20 hours per week to no less than “160 hours” per “month”. The Board adds further clarifying language that approval of this function may be delegated to staff designated to perform this function.

Rationale: The proposal is necessary to allow the Board to ensure that the licensee or applicant is being monitored while practicing a sufficient amount for monitoring safe practice and to ensure they have the skills needed to be a licensee, while also balancing that the probationer may need time away from work or may not be getting hours on a weekly basis (which is common among the professions regulated by this Board). The Board anticipates that changing from a weekly requirement to a monthly one, will allow the probationer to be able to take vacations, remain compliant during an extended illness, or a life event.

### **Amend Disciplinary Guidelines Standard Conditions 9 “Supervision Requirements”**

Purpose: The purpose is to amend the section to include that the Board or “it’s designee” may approve the supervision requirements

Rationale: The proposal is necessary to ensure that the Guidelines match what occurs in practice. The Board anticipate that changing to allow a designee will clarify that Board staff are authorized as part of their work for the Board to make these decisions.

### **Amend Disciplinary Guidelines Standard Conditions 10 “Completion of Educational Course(s)”**

Purpose: The purpose is to amend the section to include that the licensee or applicant will enroll, attend and successfully complete Board approved coursework, as specified, “no later than the end of the first year of probation.” This coursework is to be no less than 30 hours and should specifically address the violations noted in the decision and order placing respondent on probation. Additional language is proposed to include language to specify how the Respondent is to submit their request for approval of courses and how the Board would notify the Respondent that their coursework is approved. Language was also added to include the requirements for the description of the course and which courses the Board will approve.

The Board would add a requirement that Board approval would be a “condition



precedent” to Respondent’s enrollment in any course of study, and that “[a]ny coursework taken by Respondent for which Respondent did not receive prior Board approval in accordance with this section shall not be counted towards fulfillment of this condition.”

Rationale: The proposal is necessary to ensure that the Board is able to ensure consumer safety and assist the licensees or applicant during their rehabilitative efforts. The Board anticipates that changing this will provide licensees and applicants with notice and clarity when it comes to selecting educational courses as this proposal would detail the process the Board uses to approve and accept coursework as meeting this condition of probation, thereby making it easier to understand how to meet the Board’s standards and encourage greater compliance with probation.

### General Clean-Up

Existing regulations do not specify at what point in time the Board expects a probationer to complete Board-approved coursework in compliance with this section. This proposal would resolve that ambiguity by indicating that courses must be completed “no later than the end of the first year of probation period.” This timeframe helps ensure the greatest opportunity for completion of coursework and remediation by giving the probationer a year to complete the education but also requiring it to be in the first year of probation to obtain the most benefit from the educational experience. To ensure there is no confusion about attendance being a component of successful completion the Board adds the word “attend” so that the sentence now reads "Respondent, at respondent’s own expense, shall enroll in, attend and successfully complete Board-approved coursework.” The requirement that the course work be completed as set forth in this section ensures that all the Board’s policy objectives for remediation and training are met. The requirement that the course would be “Board-approved” is included to ensure that the coursework is substantially related to the Respondent’s violation. The Board would also make other non-substantive changes to add the words “calendar” before “days” and submission to the Board “or its designee” to provide greater notice to the regulated community of when to comply and who at the Board is responsible for responding to these approval requests.

### Coursework Content and Approval Process

Existing regulations do not specify how and when approval of course work may be obtained by a probationer. This proposal would specify those standards to ensure that probationers understand the minimum standards required to receive Board approval and how and when such approval will be issued. This proposal would clarify those standards by specifying that coursework is determined by the Board consistent with the requirements of this section and that they consist of not less than 30 hours of coursework (defined here for ease of reference as “Board-approved coursework”) and provided by a course provider as meeting the Board’s existing minimum for providing education but provide another option that would facilitate permitting the probationer to demonstrate other providers are eligible for approval on a “case-by-case basis.” In the Board’s

experience, remedial education coursework is effectively only offered in at least 30-hour increments, but under this proposal the probationer would be permitted to take more than the minimum in compliance with these requirements.

This proposal would help probationers understand how to begin the process and establish in regulations the minimum requirements to effectively evaluate whether the course(s) proposed will meet the Board's objective of remediating the conduct at issue. The process outlined here, which is essential to the Board's evaluation of the efficacy of the course, would begin when the Board sends the Respondent probationer notice of the following:

- (a) A description of the specific subject matter of the course(s) that must be completed in compliance with this condition of probation,
- (b) Specify that 30 coursework hours, at a minimum, must be completed,
- (c) Specify that the coursework must be taken from a Board-approved provider as provided in Title 16, California Code of Regulations sections 2540.2(b), 2592.2(b), 2540.3 and 2592.3, or other any provider deemed equivalent by the Board or its designee on a case-by-case basis; and,
- (d) Advise Respondent that they have 30 days from the date of this written notice to submit by mail, email or facsimile or in-person to the Board or its designee a written request for approval of proposed coursework that includes the following:
  - (1) Name of the educational course provider;
  - (2) Course outline, syllabus, or other document describing the proposed educational course(s);
  - (3) A short, descriptive title of the educational course(s);
  - (4) A statement of educational objectives;
  - (5) Length of the educational course(s);
  - (6) Sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured; and,
  - (7) Instructional mode or methods.

In the Board's experience, 30 calendar days is sufficient time for a probationer to locate a course meeting the requirements set forth in this section and submit their plan for compliance by mail, email, fax or hand delivery to the Board for review. This information is necessary to give the Board the time and information needed to effectively evaluate this information and whether it meets the Board's minimum standards established by this section.

To ensure consistency of application of the Board's policy for approval and fairness in the evaluation process, this proposal would set the following minimum standards for a probationer to receive Board approval for their coursework plan:

- (a) Respondent has submitted to the Board or its designee all information required by this section;

- (b) The course content is directly relevant to the subject matter of the violation(s) alleged in the Board's decision placing Respondent on probation and includes a law and ethics component; and,
- (c) The course is offered by an approved provider (as specified above). The Board or its designee may approve other course providers determined equivalent on a case-by-case basis.

These standards ensure that submissions are accurate, complete and meet minimum standards of Board approval established to meet the goal of rehabilitation of the licensee through remedial education or training.

To ensure that minimum standards are met, the Board adds a requirement that Board approval is a "condition precedent" to a respondent's enrollment in any course of study. The Board would also add that any coursework taken for which respondent did not receive prior Board approval in accordance with this section shall not be counted towards fulfillment of this condition; this ensures that only qualifying education is counted towards meeting this condition of probation.

To provide greater notice to the regulated community, the Board would adopt a requirement in this section that the board immediately send notice of board approval containing specified disclosures upon meeting the board's requirements for approval. These would include notice of approval of the coursework plan, the number of contact hours required to be completed, and the required completion date. All of these requirements help ensure that a probationer has adequate notice and opportunity to comply with this condition.

Finally, in addition to other non-substantive changes to this section noted above, the Board would repeal the existing requirement that respondent submit an "original" completion certificate to the Board. In the Board's experience a copy is sufficient evidence for the Board to use to verify compliance with this requirement.

### **Amend Disciplinary Guidelines Standard Conditions 11 "Maintenance of Current and Active License" (Revised to Strike "Valid" and Replace with "Current and Active")**

Purpose: The proposal would amend the title to strike a vague reference to "valid" and replace it with a more accurate description of the license status required to be maintained in compliance with this section: "current and active." The proposal would also repeal a reference to licensing requirements for an initial license including completion of the licensure process within 2 years from the effective date of the Board's decision to remain consistent with other changes in this section that a current and valid license be maintained "at all times". The Board would also add a grammatical change to add the word "and" between "active" and "current."

The purpose is to further amend the section to include that the licensee or applicant maintains a current and active license, which includes the payment of renewal fees. It

would add that failure to pay all renewal fees prior to respondent's license expiration date shall constitute a violation of probation. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

Rationale: The repeal of existing language related to an initial license is necessary to resolve an apparent ambiguity and inconsistency between that term and the general requirement to maintain an active and current license with the Board at all times. In addition, existing regulations for this condition specify that respondents must maintain a current and active license at all times, including any period of suspension. However, some probationers believe that failure to pay license renewal fees prior to the expiration of the license does not affect the status of their license or compliance with this term and condition of probation. To resolve that apparent confusion, the Board proposes to specify that failure to pay all renewal fees prior to respondent's license expiration date shall constitute a violation of probation.

For those licensees who allowed their license to lapse to potentially avoid Board prosecution, the Board proposes to add a directive that if the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision (to avoid a violation of probation). Thirty days is typically a sufficient amount of time for a probationer to resolve all outstanding delinquency issues including payment of outstanding fees and meeting continuing education requirements prior to reinstatement to active status.

The Board anticipates that changing this will provide licensees and applicants with notice regarding how they must maintain their license with the goal of having fewer compliance violations.

### **Amend Disciplinary Guidelines Standard Conditions 12 “Cost Recovery Requirements”**

Purpose: The purpose is to amend the section to include specificity that the licensee or applicant pays their ordered cost recovery, including “during any period of tolling or suspension.” The Board also proposes to add a cross-reference to compliance with “payment plans” consistent with the existing terms of this condition and that all costs must be paid according to this condition “unless probation is extended pursuant to this term.” The Board would repeal references to filing of bankruptcy not relieving respondent of responsibility to reimburse the Board its costs as inconsistent with current U.S. Bankruptcy law.

The proposal would also authorize discipline for failure to make payments in accordance with any payment plan consistent with existing requirements of this section. To provide greater notice to probationers regarding the scope of their cost recovery obligations, the Board adds that when probation is tolled or responded is suspended, cost recovery shall be paid in full by the date that the probation would have been completed if their probation had not been tolled or suspended.

Finally, the existing regulations do not specify when a respondent may qualify to request extension of the compliance due date for paying all costs to the Board. This proposal would clear up any confusion regarding when filing should occur by specifying that a respondent may request such extension “three months prior to the end of the probationary period.”

Rationale: The proposal is necessary to ensure that the Board is able to ensure that the licensees and applicants on probation pay the required cost recovery, whether practicing or not, as authorized by BPC section 125.3, unless otherwise permitted by the Board under the extension provisions specified in this condition section. BPC section 125.3 does not limit the Board’s ability to impose cost recovery only upon licensees when they are in active practice. However, probationers are sometimes under the mistaken impression that periods of non-practice or suspension will relieve them of the obligation to pay costs. This proposal is therefore necessary to add “including during any period of tolling or suspension” and “unless probation is extended pursuant to this term” to clear up any confusion regarding the Board’s authority to enforce cost recovery, consistent with the tolling provisions proposed in this rulemaking (discussed above and that requires compliance with probation at all times).

Existing regulations only specifies situations where noncompliance with cost recovery occurs pursuant to “formal agreement entered with the Board,” or “pursuant to any Decision by the Board.” However, non-compliance can also occur when a respondent enters into a payment plan approved by the Board and fails to make payments in accordance with that plan and as prescribed by this section. To clear up any confusion regarding these failures and the consequences, the Board adds the words “payment plan” to the list of failures considered a violation of probation.

As discussed above in the “Problem” statement, for greater comprehension of the respondent’s responsibilities under this section in accordance with Board legal authority, the Board further clarifying changes to remove the bankruptcy filing reference and add “3 months prior to the end of the probationary period.”

### **Amend Disciplinary Guidelines Standard Conditions 13 “License Surrender” title to “License Surrender While on Probation” and section**

Purpose: The purpose is to amend the title to provide a more accurate description of the circumstances under which the surrender would occur (a corresponding change would be made for consistent use of titles within this document on p. vii to the list of “Standard Conditions of Probation” where this condition’s title is listed). This proposal would also further amend this section to include that the licensee or applicant is allowed to surrender their license, under specific circumstances. The purpose of this proposal is to amend the Guidelines to include a condition for license surrender while on probation to provide the required procedure if a probationer decides to cease practice for either retirement, health reasons, etc. The proposal would include requirements for the probationer to submit the request in writing and include name, license number, case number, mailing address, and

an explanation of the reason(s) why the probationer seeks to surrender their license. The proposal also provides a reservation of rights clause, which would allow the Board the right to continue probation while it considers whether to grant the respondent's request to surrender their license or take other action deemed appropriate and reasonable under the circumstances for the protection of the public.

Additionally, this standard would be amended to include the following language clarifying the potential reasons as to why the Board may deny a Respondent's request to surrender their license while on probation, which is when Respondent has:

- (1) an unsatisfied cost recovery, fine, or restitution order,
- (2) an Accusation or Petition to Revoke Probation that has been served on Respondent alleging violations of this probation, or
- (3) an unresolved complaint or investigation pending with the Board.

This proposal would place respondent on notice that they are not relieved of the requirements of their probation, unless the Board or its designee notifies respondent in writing that Respondent's request to surrender their license has been accepted. The proposal further provides that, upon the "date of the Board's written notice" of the formal acceptance, respondent will no longer be subject to the conditions of probation. The Board would make more specific for notice to the probationers that such surrenders would be done "during the probationary period", and make other grammatical, nongendered, and syntax changes to delete the reference to "a licensee who surrenders his/her license" to "Respondent" and insert "of the surrendered license" after "reinstatement."

Rationale: This proposal would add a condition with requirements for acceptance of a license surrender while on probation. This will allow the probationer to request to terminate probation in the event the licensee is unable to complete probation due to various circumstances, however the probationer cannot surrender their license in order to avoid the requirements of their probation. Currently, there is no requirement specifying what is needed for the Board to process a request for surrender, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and clarifies, in accordance with Business and Professions Code section 118, that the Board does not lose jurisdiction to act on the license and that a probationer is not relieved from complying with probation until the Board acts to accept their surrender.

The Board maintains the discretion to accept the probationer's surrendered license under the authority of BPC section 118 (see discussion above "Surrender License in Lieu of Revocation"). BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee's surrender is done without the written consent of the Board. These requirements are therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board's conditions and requirements for acceptance of a surrender.

This proposal is also necessary to set forth those minimum requirements for the Board's consent to surrender the license. The additional language regarding when a request might not be granted by adding circumstances under which the Board would consider the request would "compromise public protection". This list of circumstances will assist the Board with knowing what to consider when evaluating the request for license surrender, and give probationers notice of what will be considered by the Board.

The Board further clarifies those conditions and explains the legal effect of such a surrender on the license by including the following statement: If the Board accepts the surrender of the license, they will no longer be subject to the terms and conditions of probation, the surrender will be treated by the Board as a disciplinary action, shall become a part of respondent's license history with the Board. This proposal would also include notice that the surrender would be effective as of the date of the Board's "written notice" of the formal acceptance of the tendered license to establish a clear date for the Board and licensee when they are relieved of the obligations of their probationary order. Other technical clean-up changes are added to this section as set forth in the "Problem" section above.

Under the Executive Officer's delegation of authority by the Board at its August 2023 meeting, the Executive Officer has added the words "While on Probation" to the title of for this section to more accurately describe the circumstances when these surrenders would occur (while on probation). The Board considers this change to be non-substantive in accordance with California Code of Regulations, Title 1, section 100 since it believes the title change would not alter the existing regulations' requirements, rights or responsibilities for any person affected by the proposed regulations.

### **Amend Disciplinary Guidelines Standard Conditions 14 "Violation of Probation"**

Purpose: The purpose is to amend the section to include that all the terms and conditions of probation continue to apply during a violation of probation. The proposal would also add language to clarify to specify which type of petition is referenced in this section by adding the words "against Respondent's license" and "to Revoke Probation."

Rationale: The Board anticipates that changing this condition will provide licensees and applicants with clarity that they should continue to remain compliant with the Board, even while working through the petition to revoke probation or accusation process. The proposal is necessary to ensure that the Board is able to continue to protect consumers through continued oversight of probation throughout the probationary period. Existing regulation does not explain the consequences of extending probation or directly state that a respondent probationer must continue to comply with all terms and conditions of probation when probation is extended. This has resulted in licensee confusion over the legal effect an extension of probation has on the licensee's responsibilities. This proposal would eliminate that uncertainty and confusion by stating that during the extension of the probationary period, all original terms and conditions of probation will continue to apply period.

## **Amend Disciplinary Guidelines Optional Conditions 15 “Suspension of License”**

Purpose: The purpose is to amend the section to include a technical clean-up of the condition by striking the “/” and replacing it with “or”.

Rationale: The proposal is necessary to make a grammatical correction to this sentence.

## **Amend Disciplinary Guidelines Optional Conditions 16 “Physical Examination” (Existing Title revised from “Examination by a Physician” to “Physical Examination”**

Purpose: The purpose is to amend the title of this section from “Examination by a Physician” to “Physical Examination” to describe and give notice of the contents of this condition section and the processes describe therein more accurately. This section would also include that the physician conducting a physical exam must hold a current, active and unrestricted license, and that the respondent must provide the examining physician with a copy of the Board’s “Decision with the applicable Accusation or Statement Issues (instead of the ambiguous term “Disciplinary Order”) prior to the examination. This section would also allow the Board to obtain a release from the Respondent for communication with the physician, and to obtain a current diagnosis and a written report regarding respondent’s ability to function independently as VN or PT with safety to the public.

The proposal would specify that that the respondent must cause the written medical report to be submitted to the Board “within 30 calendar days from the date of the examination”, and be submitted to the Board “or its designee” (probation monitoring staff who would be responsible for this oversight duty). The Board would add references to “designee” Throughout the proposal to make clear that submission to staff designated by the Board would be deemed compliance with this condition.

This proposal would add language that would specify that a violation of any additional conditions as determined by the examining physician would be considered a violation of probation.

Rationale: When this term of probation is ordered it is necessary to ensure that a probationer is physically fit to practice and that no further restrictions are on practice are necessary for the protection of the public. Therefore it is necessary to ensure that the examining physician is themselves competent and authorized to practice medicine for the protection of the public. As a result the board would add the requirement that the physician examining a probationer would hold a current, active and unrestricted license in California to this current condition.

To clear up the current ambiguities in the language relating to what a “Disciplinary Order” means, the Board proposes to specify that an examining physician be provided with a copy of the Boards “decision with the applicable accusation or statement of issues”



(since the licensee would either be a probationer resulting from actions taken in response to either of these charging documents). To ensure requirements for confidentiality are met and for the legal release of information authorizing the physician to communicate with the board, the board proposes to adopt a requirement in this section that respondents sign a release authorizing the physician to communicate with the Board and furnish the Board with the current diagnosis and a written report regarding the respondent's ability to function independently as a VN or PT with safety to self and to the public. Existing regulation does not specify this consent requirement or describe the purpose or content of the physician's report, which is necessary for the Board to accurately determine whether a probationer is safe to practice with or without restrictions and to comply with federal (Health Insurance Portability and Accountability Act - HIPAA) and state medical information privacy laws (Confidentiality of Medical Information Act) as applied to physicians and other healthcare providers.

To provide the Board with sufficient time and information to evaluate the results of any examination of a probationer and determine whether further action is necessary to protect the public, the Board proposes to add a requirement that within 30 calendar days from the date of the examination respondent shall cause physician to submit their written medical report specified in this section. In the Board's experience, this time frame is sufficient both for the respondent to request the physician provide a completed report and the Board to review and act on it.

To further clarify and place respondents on notice that additional restrictions recommended by the physician are required compliance conditions for this term and condition of probation, the Board proposes to specify that "a violation of these additional conditions shall be considered a violation of probation."

### **Amend Disciplinary Guidelines Optional Conditions 17 "Psychiatric/Psychological Evaluation"**

Purpose: This proposal would set forth the process for respondent to submit a written request for Board approval of a psychiatrist or psychologist to perform an evaluation of respondent's psychological condition as specified. This proposal would also set forth the criteria by which the Board would approve any evaluator submitted by the respondent in compliance with this section.

This proposal would also specify the 15-day time frame required for the Board to approve a completed written request containing all the information required by this section and notify respondent of such approval. The board would delete the current 60-day submission requirement for evaluations and replace it with 30 calendar days. The proposal would require that evaluation be performed by a psychiatrist or psychologist meeting the Board's requirements for approval specified in this section and would delete the requirements existing in this section for being "licensed in California and board certified in psychiatry, or by a clinical psychologist licensed in California," as ambiguous and superseded by the more specific requirements proposed in this section. The proposal would also specify that the evaluator be provided a copy of the Board's decision

with the applicable Accusation or Statement of Issues prior to the evaluation.

This section also allows the Board to obtain a release to communicate with the evaluator and to furnish the Board with a current diagnosis and a written report regarding respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public as a VN or PT and would create a short form reference to the meaning of what "respondent's status and progress" means as used in this section.

Finally, the Board would add requirements that if an evaluator finds "additional evaluation is required", respondent shall "submit to an additional evaluation" and that such costs shall be paid by respondent.

Rationale: Existing regulations for this section of the Optional Conditions does not include a standard process for submitting, through a variety of submission methods to facilitate compliance, a request for approval of a psychiatrist or psychologist to perform an evaluation of respondent's psychological condition to ensure that respondents are practicing safely. This proposal is therefore necessary to set forth that process to enable the Board sufficient time and information to appropriately examine and evaluate whether the proposed psychiatrist or psychologist meets the Board's minimum standards as outlined in paragraphs 1 through 4 of this proposal. The time frame for submission of the request to the Board of 60 calendar days within the effective date of the decision is necessary to ensure that the respondent appropriately examines, evaluates, and compiles the information necessary to submit a completed request to the Board as specified in this section.

To help ensure greater compliance with this condition and to establish criteria reasonably designed to ensure competency and no ethical conflicts for those psychiatrists or psychologists proposed to be used by a probationer for their evaluations consistent with current California law, the Board proposes all of the following approval criteria:

1. Holds a current, active and unrestricted psychologist license issued by the California Board of Psychology or
2. Holds a current, active and unrestricted license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of California and is certified in psychiatry by the American Board of Psychiatry and Neurology; and,
3. Possesses at least 3 years' knowledge, training, and experience in conducting psychiatric or psychological evaluations; and,
4. Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the Respondent.

In the Board's experience, 15 days is enough time for the Board to review a completed written request and notify a respondent in writing whether respondent's request has been approved. This requirement also provides notice and establishes consistent standards for the Board to notify a Respondent of their psychologist's or psychiatrist's approval.

The Board proposes to revise its current 60-day “trigger” for a respondent to submit to an evaluation to 30 days for a Respondent to submit to a psychiatric or psychological evaluation. This would balance the Board’s need to obtain the information as quickly as reasonably possible with the Board’s understanding of the ability of such healthcare providers to provide such evaluations. The Board would delete existing references to licensure requirements for these professionals as they are proposed to be superseded by the requirements that have been specified as noted above. Instead, these professionals would need to meet the more specific standards for approval specified above in this section.

To further clarify which Board decision must be provided to the evaluator the Board adds the terms “Decision with the applicable Accusation or Statement of Issues” to this section. To ensure requirements for confidentiality are met and for the legal release of information authorizing these health care providers to communicate with the Board to be established, the Board proposes to adopt a requirement in this section that respondents sign a release authorizing the provider to communicate with the Board and furnish the Board with the current diagnosis and a written report regarding the respondent’s current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public as a VN or PT (to be inserted by the user) and provides a short form definition for the use of the term “respondent’s status and progress” as further used in this section. Existing regulation does not specify this consent requirement or describe the purpose or content of the psychologist or psychiatrist’s report, which is necessary for the Board to accurately determine whether a probationer is safe to practice with or without restrictions and to comply with federal (Health Insurance Portability and Accountability Act - HIPAA) and state medical information privacy laws (Confidentiality of Medical Information Act) as applied to these healthcare providers.

Finally, the Board would add requirements that if an evaluator finds “additional evaluation is required”, respondent shall “submit to an additional evaluation” and that such costs shall be paid by respondent. These requirements are necessary to ensure that respondent continues to be evaluated if warranted and that additional evaluation is conducted to ensure that respondent is safe to practice. Existing regulation does not specify that such costs shall be paid by the respondent. This additional clarification is therefore necessary to ensure that the costs for respondent’s evaluation are borne by respondent, who is the person responsible for the conduct at issue in their case, and who bears the burden of proving they are rehabilitated in order for them to continue to retain the license issued by the Board.

The Board would change the timeframe for providing a report on respondent’s status and progress from 90 days from the effective date of the decision to 30 days. This ensures adequate time for the Board to evaluate whether respondent is safe to practice and determine whether other actions need to be taken. Thirty days are also sufficient in the Board’s experience for the report to be prepared and submitted to the Board by the evaluator.

## **Amend Disciplinary Guidelines Optional Conditions 18 “Psychotherapy or Mental Health Counseling” (Title Revised to Add “Or Mental Health Counseling”)**

Purpose: This proposal would set forth the process for respondent to submit a written request for Board approval of a mental health professional to provide psychotherapy or mental health counseling (with a short form term created for ease of reference to describe such services as “professional clinical counseling or “counseling” as used thereafter) as specified. This proposal would also set forth the criteria by which the Board would approve a mental health professional as defined.

This proposal would also specify the 15-day time frame required for the Board to approve a completed written request containing all the information required by this section and notify respondent of such approval. The proposal would establish the qualifications for a mental health professional to provide therapy or counseling in accordance with this section. The proposal would set a 30-day timeframe for a respondent to participate in ongoing psychotherapy or mental health counseling with a mental health professional approved by the Board in accordance with this section. The proposal would also specify that the mental health professional be provided a copy of the Board's decision with the applicable Accusation or Statement of Issues no later than the first therapy “or counseling session”.

The proposal would require that prior to the first counseling session, the respondent also provide the mental health professional with a copy of the psychiatric or psychological evaluation before the date of the respondent’s first therapy or counseling session. In addition, the Board currently requires counseling to be provided at least once per week once a week unless otherwise determined by the Board. The Board would add further clarification that such determination would be informed “in consultation with the mental health professional” approved by this Board in recognition of the fact that the Board relies on the expertise of the mental health professional to determine if additional therapy or counseling is necessary.

The reporting requirements would be amended throughout this proposal to include references to not only therapy but “counseling” in recognition of the diversity of psychotherapeutic methods, therapies and services authorized by the various healing arts boards in California. This change in terminology also would recognize that there are other behavioral health service options available for probationers to help remediate their mental health issues. This would also encourage greater recovery from mental health issues resulting in a healthier VN and PT licensee population for the protection of the public.

This section also allows the Board to obtain a release to communicate with the evaluator and to furnish the Board with a current diagnosis and a written report regarding respondent’s fitness to practice as a PT or VN (to be inserted by the user), and their progress in treatment and would create a short form reference to the meaning of what “respondent’s psychotherapy or counseling status and progress” means as used in this section.

Finally, the Board would make other changes to correct potential confusion over the use of the word “working” to “business” days and inform users that the notice and oversight functions of the Board may be performed by the Board “or its designee” throughout this section.

Rationale: Existing regulations for this section of the Optional Conditions does not include a standard process for submitting, through a variety of submission methods to facilitate compliance, a request for approval of a mental health professional, as defined. This proposal is therefore necessary to set forth that process to enable the Board sufficient time and information to appropriately examine and evaluate whether the proposed mental health professional meets the Board's minimum standards as outlined in paragraphs 1 through 3 of this proposal. The time frame for submission of the request to the Board is proposed as “Within 60 calendar days of the effective date of the decision,” which is necessary to ensure that the respondent appropriately examines, evaluates, and compiles the information necessary to submit a completed request to the Board as specified in this section.

To help ensure greater compliance with this condition and to establish criteria reasonably designed to ensure competency and no ethical conflicts for those proposed mental health professionals who would be providing therapy or counseling to a probationer, the Board proposes all of the following approval criteria:

1. Holds a current, active and unrestricted mental health professional license in California as a: (A) psychologist, (B) a physician and surgeon (from the Medical Board of California or the Osteopathic Medical Board of California and is certified in psychiatry by the American Board of Psychiatry and Neurology), (C) LMFT, (D) LCSW or (E) LPCC,
2. Possesses at least 3 years’ knowledge, training, and experience in providing psychotherapy or counseling, and,
3. Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the Respondent.

The full titles as prescribed by California law in the various practice acts for each type of license specified above would be spelled out in the definition provided in this section for greater comprehension and notice of the types of licensed mental health professionals that would be permitted by law to provide these types of services and that would be accepted by the Board as meeting approval standards if the other criteria are otherwise met. A current, active and unrestricted license assures the Board that these licensed professionals are minimally competent, able to actively provide the services authorized by their licenses, and unrestricted in their ability to provide therapy or counseling in accordance with their various healing arts board’s laws and regulations.

In the Board's experience, 15 days is enough time for the Board to review a completed written request and notify a respondent in writing whether respondent’s request has been approved. This requirement also provides notice and establishes consistent standards

for the Board to notify a respondent of their mental health professional's approval.

The Board proposes a 30-day "trigger" for a respondent to participate in ongoing psychotherapy or mental health counseling with a professional who has been approved by the board accordance with this section. This would balance the Board's need to obtain the information as quickly as reasonably possible with the Board's understanding of the ability of such healthcare providers to provide such therapy or counseling services.

To resolve ambiguity regarding which Board decision must be provided to the mental health professional, the Board adds the terms "Decision along with the applicable Accusation or Statement of Issues" to this section. To ensure all relevant information is provided to the mental health professional about past diagnoses and assessments with the goal of providing the most effective therapy or counseling, the Board adds a requirement for respondent to provide a copy of the psychiatric or psychological evaluation before the date of Respondent's first therapy or counseling session.

To ensure requirements for confidentiality are met and for the legal release of information authorizing these health care providers to communicate with the Board to be established, the Board proposes to adopt a requirement in this section that respondents sign a release authorizing the provider to communicate with the Board and furnish the Board with the current diagnosis and a written report regarding the respondent's fitness to practice as a VN or PT (to be inserted by the user) and provides a short form definition for the use of the term "Respondent's psychotherapy or counseling status and progress" as further used in this section. Existing regulation does not specify this consent requirement or describe the purpose or content of the mental health professional's report, which is necessary for the Board to accurately determine whether a probationer is safe to practice with or without restrictions and to comply with federal (Health Insurance Portability and Accountability Act - HIPAA) and state medical information privacy laws (Confidentiality of Medical Information Act) as applied to these healthcare providers.

### **Amend Disciplinary Guidelines Optional Conditions 19 "Rehabilitation Program"**

Purpose: The purpose is to amend the section to ensure that should a rehabilitative program be ordered that the Board's designee is able to approve it, and that the program supplies written documentation "from the rehabilitation program". The proposal would also add other components of commonly found rehabilitation programs to this section by adding the terms "in-patient or out-patient" to rehabilitation, and adding the word "recovery" to this section. The Board would also add "or its designee" to this section for to make clearer that these functions may be performed by other persons designated by the Board to perform these oversight functions. Other changes in to this section would include non-substantive technical clean-up changes for greater comprehension that would include adding the word "calendar" before "days" and making grammatical changes to add "(s)" to violation and "these" before the word "programs."

Rationale: These changes would ensure the Board receives accurate and reliable documentation of a probationers progress towards recovery in a rehabilitation program

and adds new components to its description of these types of programs to aid respondents in understanding the types of programs that would qualify as “rehabilitative” in compliance with this section.

### **Amend Disciplinary Guidelines Optional Conditions 20 “Addictive Behavior Support Groups/Recovery Groups” (Amended to Add “Recovery Groups” to the Title)**

Purpose: The purpose is to amend the title to more accurately describe the types of programs that would be qualifying under this section. This proposal would revise existing requirements for attending a support group meeting from 5 days to within 30 calendar days of the effective date of the decision. This proposal would also add requirements for continuing attendance at a support group or recovery group and provide specified types and examples of compliant recovery groups to facilitate greater compliance with this recovery group condition. The proposal would add a requirement that attendance continue “unless notified in writing by the Board or its designee that attendance is no longer needed.” This proposal would require respondent to attend support or recovery group meetings no less than one time per week unless determined otherwise by the Board or its designee in consultation with a physician surgeon or a mental health professional as defined.

Finally, the proposal would provide users with advance notice of how the Board would determine the type and frequency of required addictive behavior support group meeting attendance outside the once a week required minimum, including lower or increasing attendance prescribed by this section, which would include all of the following:

- The licensee’s history;
- The documented length of sobriety/time that has lapsed since substance use;
- The recommendation of a mental health professional;
- The scope and pattern of use;
- The licensee’s treatment history; and,
- The nature, duration, and severity of substance abuse.

Rationale: Existing requirements for this section do not set forth that recovery groups are an option for complying with support group meeting standards. This proposal would further expand the types of group meetings that would be considered acceptable options for showing progress in remediating mental health issues for the protection of the public. The five-day timeframe for beginning attendance at such meetings would be increased to thirty days in recognition of the fact that identifying qualifying support groups may be challenging for many probationers, and to further allow exploration of a variety of support group options to meet the probationer’s individual needs.

Attendance requirements are established here to ensure meaningful participation as informed through consultation with experts in the behavioral and mental health fields to

further the remediation goals of better mental health for the licensees regulated by the Board. For transparency and notice, the Board would further specify how it would determine the level and frequency of meeting attendance outside of what has been recommended by staff in its experience working with mental health professionals specified in this section and probationers with mental health challenges. Such advice has included evaluating the factors listed in this section with the goal of ensuring the most effective and meaningful use of this approach to addressing mental health issues using these criteria.

### **Amend Disciplinary Guidelines Optional Conditions 21 “Abstain from Controlled Substances and Alcohol” (Title Revised to Add “And Alcohol”)**

Purpose: The purpose is to amend the title to reflect more accurately the content of this revised term. The section would also be amended to combine optional terms no. 21 (Abstain from Controlled Substances) and no. 22 (Abstain From Use Of Alcohol In Products Containing Alcohol) into one term entitled “Abstain From Controlled Substances And Alcohol.” The Board’s existing Guidelines’ optional term for abstention from controlled substances reads as follows:

#### **21. ABSTAIN FROM CONTROLLED SUBSTANCES**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, **except when lawfully prescribed** by a licensed practitioner for a bona fide illness. (Emphasis added.)

However, the condition fails to specify, and this proposal would therefore provide, all of the following new requirements:

- (1) That the current exception to abstention includes when the drug is lawfully “ordered” for a “medical condition”,
- (2) prescribe the date when respondent must submit documentation to the board or its designee have any such prescription or drug order by mail, e-mail, facsimile or in person at the Board’s offices,
- (3) provide a definition for what “documentation” means for purposes of this section,
- (4) include additional requirements as part of documentation regarding responded safety to practice and plan for the time limited use of any such substances,
- (5) set the date when respondent must provide the Board with a signed and dated medical release covering the entire probation period authorizing the prescriber to communicate with and respond to inquiries made by the Board or its designee regarding their written report and respondents ability to practice safely while taking the medication,
- (6) the requirements for identifying a single physician, nurse practitioner or physician assistant who will coordinate respondents medications and who shall be provided a copy of the statement of issues or accusation, decision and order call our stipulated decision order,



- (7) establish requirements for the coordinating physician, nurse practitioner, or physician assistant to report to the board on a quarterly basis respondent's compliance with this condition,
- (8) that respondent shall also completely abstain from the use of alcoholic beverages and products containing alcohol, as specified,
- (9) Provide the users with an option to require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine, and,
- (10) Add a guidance note that if this term is included in the probationary order then Term No. 22 "Submit To Drug And Alcohol Testing" must also be included to ensure abstention occurs in compliance with this condition of probation.

Rationale: The Board anticipates that combining the two terms as noted above will ensure that all licensees and applicants for whom use of alcohol and controlled substances has been determined by the Board to be an issue will have to abstain from the ingestion or use of alcohol and controlled substances while on probation with the Board. If the Board has concerns about possibly addictive behavior, the Board in its experience, would require abstention from both controlled substances and alcohol, but ALJs will often fail to include abstention requirements for both in those cases where abstention was factually warranted. This would require the Board to reject the proposed decision when the only issue to be addressed was to add the abstention term for alcohol or controlled substances. This would lead to unnecessarily protracted case prosecution where neither the respondent nor the public would be assured of an outcome in a reasonable amount of time. Since this is an easy oversight, it made sense to combine the conditions to avoid recurrence of this problem.

The Board proposes to make technical corrections to the order of legal citations for better readability and make other grammatical changes in the first paragraph. In recognition that medications are given by way of prescription or may be ordered (for example when an individual is hospitalized), the Board adds the word "or ordered" to the form a prescribed medication may be received. In addition, to address the fact that medications may be prescribed for "medical conditions" other than illness, the Board adds the words "or medical condition" to its current exception language.

### Documentation Requirements

Additionally, the Board proposes requiring respondents to provide, by the effective date of this decision and thereafter within 15 days of the date of respondent being prescribed or receiving a patient specific drug order for a dangerous drug or controlled substance, that they provide documentation to the Board of any such prescription or drug order by mail, e-mail, facsimile or in person at the Board's offices. This requirement is being adopted to ensure consistency in the submission of documentation to the Board as evidence that respondent should be exempted from the general abstention provisions of this condition. This documentation requirement is a standard generally required by the healing arts boards in this Department to verify a prescribed medication and in the Board's experience, the time frames specified herein are reasonably sufficient to allow

the respondent to comply with this term and condition of probation. This paragraph would also describe the various methods of delivering the documentation and, therefore, should facilitate greater compliance with this condition.

To avoid confusion regarding what the “documentation” of a prescription drug or order must contain the Board sets forth a definition that requires a copy of the prescription or drug order and a report from the prescriber that would help verify a respondent’s claim of exception to the abstention requirement and substantiate that respondent’s use of the specified medication while in active practice would not endanger the public. These reporting requirements are designed to ensure that the Board receives evidence in the form of an expert medical opinion regarding respondent’s health and ability to practice safely and would allow the Board to further investigate the validity of respondent’s claimed exemption. These reporting requirements would include:

- (A) the prescriber’s name,
- (B) the prescriber’s license type and number,
- (C) the medication,
- (D) the dosage,
- (E) the date the medication was prescribed,
- (F) Respondent’s prognosis,
- (G) the date the medication will no longer be required, and,
- (H) the effect on Respondent’s recovery, if any.

#### Reporting by the Prescriber

To further confirm that respondent’s use of the prescribed medication while on probation would not be a danger to the public, the Board would require that if any substance considered addictive has been prescribed, the prescriber shall provide a statement regarding whether respondents safe to practice as a VN or PT (to be inserted by the user) while on or taking the substances and identify whether there is a plan for the time-limited use of any such substances. This provides the Board with some assurances that respondent is not practicing while impaired and that there will be potentially a time where the Board may continue to monitor respondent’s ability to safely practice at a future date when they are not taking the prescribed medication.

To ensure requirements for confidentiality are met and for the legal release of information authorizing the prescriber to communicate with the Board, the Board proposes to adopt a requirement in this section that respondents sign a release authorizing the prescriber to communicate with the and respond to inquiries made by the board or its designee regarding their written report and respondent’s ability to practice safely while taking the medication. Existing regulation does not specify this consent requirement or describe the purpose or content of the prescriber’s report, which is necessary for the Board to accurately determine whether a probationer is safe to practice with or without restrictions and to comply with federal (Health Insurance Portability and Accountability Act - HIPAA) and state medical information privacy laws (Confidentiality of Medical Information Act) as applied to healthcare providers.

To provide the Board with sufficient time and information to evaluate the results of any information provided by the prescriber and determine whether further action is necessary to protect the public, the Board proposes to add a requirement that by the effective date of this decision and thereafter within 15 days of the date of being prescribed or receiving a patient specific drug order for a dangerous drug or controlled substance, respondent will provide the board with this release. In the Board's experience, this time frame is sufficient both for the respondent to submit the release and the Board to review and act on it.

To ensure that the Board receives accurate and timely information regarding the status of respondent's use of medications and recovery (if applicable), respondent would be required to provide a current list of prescribed medications with the prescriber's name, license type and number, address and telephone number with each quarterly report required to be submitted as set forth in the "Submission of Written Reports" section of their probationary order. This information is necessary for the Board to review, evaluate and possibly take action on to protect the public in the event the reports reveal there is an issue with the Respondent's current ability to practice safely.

This proposal would require the respondent, by the effective date of the decision, to identify for the Board a single physician, nurse practitioner, or physician assistant (who would have within their scopes of practice authority to prescribe these medications and conduct such monitoring), who shall be aware of respondent's history and substance abuse and will coordinate and monitor any prescription or drug orders for respondent. This requirement would assure the Board that a medical professional in a position of authority vis-a-vis the respondent would be able to access and monitor respondent's use with the knowledge that respondent is actively practicing and on probation with this Board. To ensure these practitioners have all the information needed to make informed decisions about respondent's medical care, respondent would be required to provide them immediately with a copy of the Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order. To obtain the most objective information regarding respondent's status and ability to practice safely the Board would require the coordinating physician, nurse practitioner, or physician assistant to report to the Board on a quarterly basis respondent's compliance with this condition.

As discussed above the Board would move the Abstention From Alcohol term to this section to combine all abstention requirements into one condition. To provide greater notice to the regulated community, the Board proposes to specifically identify the types of beverages and products that would be prohibited by the Board including over-the-counter medications, foods containing alcohol, mouthwashes, non-alcoholic beers, and fermented beverages.

Since not every case where this term may be applied would require specialty expertise in addictive medicine the Board provides an optional term to be used in those cases where the administrative law judge or the board deems it necessary. That optional condition would require the single coordinating physician, nurse practitioner, or physician assistant

to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Finally, the Board provides a new note that gives guidance to the users that Term No. 22 “Submit to Drug and Alcohol Testing” must also be included to ensure abstention occurs in compliance with this condition of probation. The Board includes this note to remind administrative law judges and the Board to include testing if an abstention condition is included in the probationary order. This is necessary because violations of abstention terms are difficult to establish without evidence of a violation. Such evidence would be provided in the form of a positive test from an objective source (i.e., the Board’s drug and alcohol testing program). As a result, the Board directs users to add the testing condition term when this abstention term is included in the probationary order.

### **Repeal Existing Disciplinary Guidelines Optional Conditions 22 “Abstain from Use of Alcohol and Products Containing Alcohol” and Renumber Existing Condition 23 to 22**

Purpose: As explained above, the purpose is to amend the section to combine what used to be two conditions into one. Relevant text would be moved to the new revised Optional Condition No. 21 above and this section number would be re-assigned to the “Submit to Drug and Alcohol Testing” term described below.

Rationale: As explained above under the rationale to Term No. 21, this revision is necessary to resolve problems with not using both terms in probationary orders. The Board believes when one abstention term is used, the other should similarly be used to ensure that no possibly addictive behavior happens while a respondent is on probation with the Board in cases where such a ban is necessary for the protection of the public.

### **Amend Disciplinary Guidelines Optional Conditions 22 (Renumbered from 23 to 22 and Revised to State “Submit To Drug and Alcohol Testing”**

Purpose: The purpose would be to amend the title to more accurately cover the types of testing that the Board would conduct for a probationer participating in the Board's drug testing program, and to renumber this section as a result of the removal of the existing alcohol abstention term noted above. The Board proposes to add description regarding additional types of testing that a probationer may be subjected to including: random, observed, and directed drug and alcohol testing, including biological fluid or hair sample, breath alcohol, or any other mode of testing.

The Board proposes to add a requirement that prior to or within 30 days of the effective date of the decision, the Board or its designee shall provide written notice to respondent regarding the name and telephone number of the Board's designated drug and alcohol testing provider (with the short form reference here of “testing provider”) and direct respondent to test in accordance with this condition of probation. In addition, the Board would add specific requirements that respondent make daily contact, including weekends and holidays, to the Board's testing provider to determine if respondent must submit to

testing that same day. Respondent would be required to submit their specimen as specified in this proposal on the same day that respondent is notified that a test is required.

The Board would add new references to reports being provided to its designee and add an additional note that if this term is included in the probationary order, then Term Number 21 “Abstain from Controlled Substances and Alcohol” must also be included to ensure the Board can establish that the respondent ingested a prohibited substance (as specified in this proposal) if a positive test result is obtained in compliance with this condition.

Rationale: this proposal is necessary to ensure that respondents are placed on notice as to the varying types of drug testing that they shall be required to submit to beyond what is currently required in the guidelines. These additional testing protocols are required by the Board's testing provider in order to effectively monitor the respondent's compliance with the abstention term set forth in these *Guidelines*.

To ensure respondents have specific guidance regarding the exact requirements for complying with the Board's drug and alcohol testing requirements in this condition, the Board would adopt this proposal specifying the timelines for compliance, the written notice identifying the Board's testing provider, and, their requirements for making daily contact with the Board's testing provider to determine if respondent must submit to testing. The proposal would also be needed to ensure that respondents understand the exact requirements for complying with the Board's drug and alcohol testing condition to ensure greater monitoring and compliance with this condition for the protection of the public.

The Board would add new references to “its designee” as a source for reporting results consistent with the Board's current probation monitoring program and to ensure adequate notice to respondents of their reporting obligations.

Finally, as noted above the Board adds guidance regarding inclusion of this testing condition in all probationary orders where abstention is also ordered to enable the Board to collect sufficient evidence of compliance with this probationary condition and to take appropriate action if a respondent tests positive for a prohibited substance including drugs or alcohol.

### **Amend Disciplinary Guidelines Optional Conditions 23 (Renumbered from Term No. 24 to 23)**

Purpose: To ensure that licensees who have either had their license revoked for more than four years, or those applicants who are attempting to become licensed, have taken the exam within two years of the effective date of the decision, this proposal would include an explanatory note that directs the users for Statements of Issues cases:

“-- **Note:** If this condition is intended to precede issuance of the license, this language

should be used with the “MODEL ORDER” entitled “Grant Application and Place Licensee on Probation After Completion of Conditions Precedent” below.

And for Reinstatement of License Petitions:

Note: If this condition is intended to precede reinstatement of the license, this language should be used with the “MODEL ORDER” entitled “Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent” below.

The Board would also add a new requirement to this condition for a current license that respondent shall not resume practice until the date that written notice has been sent to Respondent by the Board or its designee indicating that Respondent has passed the licensure examination.

Rationale: The proposal is necessary to ensure that users combine this standard language with the applicable Model Orders (discussed in more detail below) to convey the most accurate information on the process for issuing a license or reinstating a license with conditions precedent that include taking and passing the applicable licensure examination. The Board anticipates that adding this direction to use this new model language will help ensure that all licensees and applicants understand the requirement for taking and passing the exam prior to practicing when competency is an issue in any enforcement action taken by the Board.

To ensure that a respondent demonstrates minimum competency before practicing on the public, the Board proposes to add the requirement to “Current License” section of this condition that they shall not resume practice until the date that written notice has been sent to Respondent by the Board or its designee (typically the Board’s probation monitors) indicating passage of the licensure examination. The Board would make other technical non-substantive spelling and grammatical corrections to change “exam” to “examination” and add spacing between sentences in this section.

### **Amend Disciplinary Guidelines Optional Conditions 24 “Restrictions on Licensed Practice” (Renumbered from 23 to Term No. 24)**

Purpose: This proposal would re-number this term and add a new reference to documenting compliance as required by the Board “or its designee.”

Rationale: The Board would add new references to “its designee” as an agency contact for documenting compliance consistent with the Board's current probation monitoring program and to ensure adequate notice to respondents of who would be responsible for setting their compliance obligations.

### **Amend Uniform Standards for Substance-Abusing Licensees Sections (Required and Optional Uniform Standards)**

Purpose: The provisions within this section of the *Guidelines* would be amended to

reflect changes made in the most recent version of the Substance Abuse Coordination Committee's standards set forth in the document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees", dated March 2019 (see Underlying Data). It also includes grammatical, renumbering (conditions would be renumbered to reflect revisions to the other condition sections in the guidelines from 26-28 to 25 to 27 (for Required Conditions of Probation and from 29-31 to 28-30 (for Optional Conditions of Probation), and other modifications to change gender specific language to gender-neutral language.

Rationale:

Senate Bill (SB) 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) required the Department of Consumer Affairs (Department) to establish the Substance Abuse Coordination Committee (SACC) and develop uniform standards in sixteen individual areas for healing arts boards to use when dealing with substance-abusing licensees. In 2011, the SACC developed sixteen uniform standards as required by SB 1441 (enacted into law at BPC section 315); the Board thereafter amended its *Guidelines* to include those standards.

Senate Bill 796 (Hill, Chapter 600, Statutes of 2017) required the Department to reconvene the SACC, review the existing criteria for Uniform Standard #4 and determine whether the existing criteria should be updated to reflect recent developments in testing research and technology. The SACC revised the Uniform Standards and modified Uniform Standard #4 in March 2019. Changes to this section are therefore being made to ensure that the Board is compliant with the changes that were promulgated in the Uniform Standards conditions most recently adopted by the SACC as required by BPC section 315.

**Amend Disciplinary Guidelines Uniform Standard No. 25 "Submit to Drug Testing" (Renumbered from No. 26 to No. 25)**

Purpose: This proposal would make changes to conform the Board's Uniform Standards text to the SACC's Uniform Standards #4 requirements, including:

- (1) adding the phrase "and any exceptions to testing frequency specified",
- (2) revising the April 2011 revision date to March 2019
- (3) removing references to "collection sites" and "travel outside of California"; and,
- (4) adding the words "any," "to the Respondent's drug testing requirements (including frequency)", and "absence" (in place of existing references to "travel").

The proposal would also add a short form reference to "SACC standard" for easier comprehension and to specify the meaning of that term as it is currently used in this section of the *Guidelines*.

Rationale: Existing text in this section is derived from Uniform Standards #4 of the SACC's document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised April 2011. The above-noted changes are necessary to update

the standards consistent with the revised SACC Uniform Standards document and associated revisions to Uniform Standard #4 made by the SACC in March 2019, which include:

“Prior to vacation or absence, any alternative to the licensee’s drug testing location(s)-requirements (including frequency) must be approved by the board.”

These conforming changes to this probation condition will allow the Board to continue to monitor the probationer fairly and accurately in order to ascertain if they are substance and/or chemical free and in compliance with the minimum standards required to be used by the Board in accordance with BPC section 315. The minimum number of tests provided will help to identify relapse and allow for probationers to be randomly tested.

**Amend Disciplinary Guidelines Uniform Standard No. 26 “Positive Drug Test” and “Major and Minor Violations” (Renumbered from No. 27 to No. 26 and No. 28 to No. 27)**

Purpose: This proposal would make non-substantive changes to renumber these Uniform Standards and change gendered pronouns in the “Positive Drug Test” section to “Respondent’s.”

Rationale: These changes are needed to help avoid confusion for the *Guidelines* users and meet state policy objectives for changing pronouns in regulations as discussed above in the “Background” section of this document.

**Amend Disciplinary Guidelines Uniform Standard No. 28 “Clinical Diagnostic Evaluation” (Renumbered from No. 29 to No. 28)**

Purpose: Along with making changes to gendered pronouns for the reasons discussed above, this proposal would add the following sentence to existing text for this standard in accordance with Uniform Standard #1 of the SACC Uniform Standards:

The evaluator must have a valid, unrestricted license, at least three years’ experience in providing evaluations of health professionals with substance abuse disorders, and the evaluator must be approved by the Board.

Rationale: This change is necessary to implement the Uniform Standards, all language in subsection (a) of paragraph (1), with minor modifications to the grammar for clarity. This text is taken directly from Standard #1 of the Uniform Standards, which the Attorney General’s Office recommends the Board use without substantive modification (see Underlying Data). The existing text in this section inadvertently left out this Uniform Standards’ requirement and the Board proposes to make this change to correct that oversight.

**Amend Uniform Standard No. 29 “Group Meetings with Qualified Facilitator” (Renumbered from No. 30)**



Purpose: This proposal would revise the word “with” to “within”, so that it would read “The meeting facilitator must not have a financial, personal, or business relationship with Respondent **within** the last five years.”

Rationale: The Board makes this grammatical change to reflect what was originally intended, and clear-up any confusion regarding the timeframe within which the meeting facilitator is subject to this bias and conflict of interest ban.

### **Amend Uniform Standard No. 30 “Worksite Monitor” (Renumbered from No. 31) and Uniform Standards’ Revision and Effective Dates**

Purpose: This proposal would revise the publication date for the uniform standards regarding substance abusing healing arts licensees document established by the substance abuse coordination committee from the original April 2011 date to the most recent March 2019 date. The Board also changes its revision and effective dates (to be inserted by OAL) at the end of the Uniform Standards portion of the *Guidelines*.

Rationale: As discussed above, this is required for the Board to fully implement the most current standards established by the SACC in March 2019 as required by BPC section 315. The proposed amendments to the revision dates for the Uniform Standards are necessary to inform licensees and other stakeholders of the date when the Board’s policy in this area was last revised.

### **Amend Violations and Recommended Actions Chart**

This Disciplinary Guidelines chart provides maximum and minimum penalties that may be used by an Administrative Law Judge when drafting a proposed decision or a Deputy Attorney General when drafting a stipulated settlement. The maximum and minimum penalties also inform Respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements. This chart was developed by the Board to enable users to easily identify the Board’s recommended maximum, intermediate and minimum discipline for specified disciplinary violations under the jurisdiction of the Board by program (VN or PT).

Purpose: The proposal would revise the “revision” date in the title of the chart to May 18, 2023 and the effective date (to be inserted by OAL) to more closely reflect when those policy decisions were made and approved for implementation by the Board.

In addition, as more specifically described below, this proposal would update that chart to: (A) correct disciplinary order language including the addition of the word “stayed”, (B) add new standards and conditions for specified intermediate and minimum discipline, (C) repeal duplicative disciplinary violations and conditions, and (D) update numbering and text consistent with other changes proposed to titles and conditions throughout the Disciplinary Guidelines.

Rationale: These updates are necessary to reflect the Board’s most recent policy changes in this area, and correct titles, numbering and typographical errors to avoid user confusion. Specific changes are noted as follows:

*Universal Changes to the Chart and Columns Related to “Intermediate Discipline” and “Minimum Discipline”*

(A): Change “revoc” to “revocation” to avoid user confusion as to the meaning of “revoc”

(B): Remove periods and colons and add “commas” behind the word “revocation” (as amended from “revoc”) to more accurately convey the meaning of the proposed action that would be taken (i.e., that the revocation would be “stayed” and that outright revocation was not intended by the Order).

(C) Hyphens to denote previously blank rows in a column would be deleted where the Board proposes to add new regulatory language.

(D) Add the word “stayed” to the probationary order language to more accurately reflect how the probationary order would read. The APA expressly authorizes state agencies to use such “stay” authority for probationary orders (see Government Code section 11519(b)) and the Board’s current orders contain such language. This revision would give notice to the users of the Guidelines of the specific orders used by the Board to enforce probation and the Board’s authority to maintain continuing jurisdiction over the Respondent until probation is concluded through the use of a “stay” order (see, e.g., *Goldsmith v. California State Bd. of Pharmacy* (1961) 191 Cal.App.2d 866, 873).

*Revisions to Specific Categories*

Conviction of Practicing Medicine (Intermediate Discipline Column): This column was previously blank (as denoted by the “--” ) as the Board had no policy position on an intermediate penalty. The Board proposes to add “Revocation, Stayed 5 Years Probation Standard Conditions 1-14 \*Restricted Practice 24” to this row.

In the Board’s experience, the intermediate proposed penalty is sufficient to monitor many probationers for this type of violation. The Board considers violations based upon convictions for practicing medicine without a license to be serious, in that the requirements for licensure are enacted to help ensure safe practice in an area where risk of patient harm is high. Further, unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met and provides some assurances that the provision of medical care is done competently.

However, the Board recognizes that there may be mitigating or extenuating circumstances in a particular case that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years’ probation with standard terms (Nos. 1-14) and specified optional term of

Restricted Practice (#24). The restricted practice term is proposed to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation when the facts of the case demonstrate that such term is warranted. Such term is commonly considered when the licensee demonstrates an unwillingness or inability to practice within the scope of their license as demonstrated by this violation.

The proposed penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts.

Assisting with Criminal Abortion (Intermediate Discipline Column): This column was previously blank (as denoted by the "--" ) as the Board had no policy position on an intermediate penalty. The Board proposes to add "Revocation, Stayed 5 Years Probation Standard Conditions 1-14 \*Other Conditions" to this row.

In the Board's experience, the intermediate proposed penalty is sufficient to monitor many probationers for this type of violation. The proposed penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts.

The Board considers violations based upon convictions of this nature to be serious, in that the requirements for licensure are enacted to help ensure safe practice in an area where risk of patient harm is high. Further, such criminal conduct presents a significant risk of harm to the consumer.

However, the Board recognizes that there may be mitigating or extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-14) and "Other conditions" (currently specified in existing text at the end of the chart as "\*Other Conditions of Probation may be added based upon the underlying cause of discipline"). The "Other conditions" reference is proposed to provide notice to the users of the *Guidelines* that this list of proposed conditions is not exclusive, and that other conditions that may aid in rehabilitation should be considered when the facts of the case demonstrate that such other conditions are warranted.

Violating Terms of Licensing Chapter (Intermediate Discipline Column): This column was previously blank (as denoted by the "--" ) as the Board had no policy position on an intermediate penalty. The Board proposes to add "Revocation, Stayed 5 Years Probation Standard Conditions 1-14 \*Other Conditions" to this row.

In the Board's experience, the intermediate proposed penalty is sufficient to monitor many probationers for this type of violation. The proposed penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts.

The Board considers violations of the Board's Practice Acts to be serious, in that the requirements for licensure and minimum standards of practice are enacted to help ensure safe medical care is provided consistent with minimum standards in the professions.

However, the Board recognizes that there may be mitigating or extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-14) and "Other conditions" (currently specified in existing text at the end of the chart as "\*Other Conditions of Probation may be added based upon the underlying cause of discipline"). The "Other conditions" reference is proposed to provide notice to the users of the *Guidelines* that this list of proposed conditions is not exclusive, and that other conditions that may aid in rehabilitation should be considered when the facts of the case demonstrate that such other conditions are warranted.

Making False Statement on Application for Licensure: This column was previously blank (as denoted by the "--" ) as the Board had no policy position on an intermediate penalty. The Board proposes to add "Revocation, Stayed 5 Years Probation Standard Conditions 1-14 \*Other Conditions" to this row.

In the Board's experience, the intermediate proposed penalty is sufficient to monitor many probationers for this type of violation. The proposed penalty should be sufficient in the Board's experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts.

The Board considers these types of violations serious, as these violations show a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession.

However, the Board recognizes that there may be mitigating or extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-14) and "Other conditions" (currently specified in existing text at the end of the chart as "\*Other Conditions of Probation may be added based upon the underlying cause of discipline"). The "Other conditions" reference is proposed to provide notice to the users of the *Guidelines* that this list of proposed conditions is not exclusive, and that other conditions that may aid in rehabilitation should be considered when the facts of the case demonstrate that such other conditions are warranted.

Impersonating a Licensee or Permitting Others to Use License: This column was previously blank (as denoted by the "--" ) as the Board had no policy position on an intermediate penalty. The Board proposes to add "Revocation, Stayed 5 Years Probation Standard Conditions 1-14 \*Other Conditions" to this row.

In the Board's experience, the intermediate proposed penalty is sufficient to monitor many probationers for this type of violation. The proposed penalty should be sufficient in

the Board's experience to convey the seriousness of the offense to a licensee and to monitor respondents for possible recurrence and/or rehabilitative efforts.

The Board considers these types of violations serious, as these violations show a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession and exhibits a serious ethical lapse that poses a risk to consumers since it shows a tendency towards deception.

However, the Board recognizes that there may be mitigating or extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, and 5 years' probation with standard terms (Nos. 1-14) and "Other conditions" (currently specified in existing text as "\*Other Conditions of Probation may be added based upon the underlying cause of discipline). The "Other conditions" reference is proposed to provide notice to the users of the *Guidelines* that this list of proposed conditions is not exclusive, and that other conditions that may aid in rehabilitation should be considered when the facts of the case demonstrate that such other conditions are warranted.

Sexual Misconduct Related to Practice (Amend Intermediate and Minimum Discipline Columns and Repeal Second Row referencing Sexual Misconduct that cross references to minimum standard for revocation for both VNs and PTs in CCR sections 2524(c) and 2579.10(c)):

Purpose: This proposal would increase the recommended term of probation from 3 to 5 years for proposed intermediate discipline and from 2 to 3 years for the minimum discipline recommended penalties. In addition, the proposal would add references to Optional Conditions for Mental Health Evaluation (#17), Therapeutic Sessions (#18), and "Other Conditions" (currently specified in existing text as "\*Other Conditions of Probation may be added based upon the underlying cause of discipline) for the Intermediate Discipline penalty. For the Minimum Discipline penalty column, the Board proposes to add an Optional Mental Health Condition (#17), Other Conditions reference (as discussed above), and notice (relocated here from the 2<sup>nd</sup> Sexual Misconduct Related to Practice item proposed to be repealed in this proposal) that outright revocation is required by law in sexual contact cases as noted in CCR sections 2524(c) and 2579.10(c).

Rationale: Since sexual misconduct often involves direct physical harm or significant risk of harm to a consumer, the Board recommends a significant penalty in every case. In the Board's experience remediation for this type of violation is difficult and therefore warrants an increase in the currently recommended penalty terms mentioned above. The Board believes that these proposed increases would yield greater oversight, better public protection and opportunity to monitor the Respondent's progress in rehabilitation over a longer period of time. The proposal would add additional options for adding the "Mental Health Evaluation" condition, "Therapeutic Sessions" condition, and "Other Conditions" to address possible root causes of the conduct more specifically at issue in the case. To ensure adequate notice of the legal requirements for outright revocation in

sexual contact cases, the Board would move the reference to the requirements for outright revocation in every case from the current second row related to “Sexual Misconduct Related to Practice” to the immediately preceding row to allow for greater notice to the users that this mandate is required by law “for sexual contact cases”.

Illegal Possession, Prescribing, Self-Administration of Controlled Substances or Dangerous Drugs (Amend Intermediate and Minimum Discipline Columns): This proposal would correct the current titles for “Support Groups,” “Abstain from Drugs,” “Abstain from Alcohol 22” and “Drug Screens” to reflect changes to the corresponding conditions’ titles (and numbering) in this proposal (“Addictive Behavior Support Group” and “Abstain from Controlled Substances and Alcohol 21” and “Submit to Drug Testing”). This would ensure greater comprehension and avoid confusion for the *Guidelines* users.

For the intermediate discipline penalty, the Board would add the Optional Condition No. 17 “Mental Health Evaluation” for use in those cases where the root cause of violation may involve psychiatric disabilities, psychiatric illnesses, emotional disorders, or mental disabilities. The Board finds this condition an effective remediation tool when the conduct at issue demonstrates that these issues are present. Offering this option would help the Board ensure adequate remediation of all issues contributing to the violation with the goal of having a more fully rehabilitated licensee for the protection of the public.

Illegal Use of Drugs/Alcohol Posing Danger to Public & Impairs Ability to Practice” (Amend Intermediate and Minimum Discipline Columns): This proposal would correct the current titles for “Exam by Physician”, “Support Groups,” “Abstain from Drugs,” “Abstain from Alcohol 22,” “Drug Screens” and “Positive Drug Tests” to reflect changes to the corresponding conditions’ titles (and numbering) in this proposal (“Physical Examination,” “Addictive Behavior Support Group”, “Abstain from Controlled Substances and Alcohol 21”, “Submit to Drug Testing” and “Positive Drug Test”). This would ensure greater comprehension and avoid confusion for the *Guidelines* users.

The Board proposes to repeal the recommendation for “Restricted Practice 24” for intermediate discipline as this term is rarely implemented as described in the current optional term and the Board has found the other conditions listed in this section to be more effective in addressing remediation of issues for these types of violations.

CONVICTION of Drug or Alcohol Crimes (Amend Intermediate and Minimum Discipline Columns): This proposal would correct the current titles for “Support Groups,” “Abstain from Drugs,” “Abstain from Alcohol 22” and “Drug Screens” to reflect changes to the corresponding conditions’ titles (and numbering) in this proposal (“Addictive Behavior Support Group”, “Abstain from Controlled Substances and Alcohol 21” and “Submit to Drug Testing”). This would ensure greater comprehension and avoid confusion for the *Guidelines* users.

The Board proposes to repeal the recommendation for “Restricted Practice 24” for intermediate discipline as this term is rarely implemented as described in the current optional term and the Board has found the other conditions listed in this section to be

more effective in addressing remediation of issues for these types of violations.

Confinement or Committal for Addiction (Amend Intermediate and Minimum Discipline Columns): This proposal would correct the current titles for “Exam by Physician”, “Support Groups,” “Abstain from Drugs,” “Abstain from Alcohol 22,” “Drug Screens” and “Positive Drug Tests” to reflect changes to the corresponding conditions’ titles (and numbering) in this proposal (“Physical Examination,” “Addictive Behavior Support Group”, “Abstain from Controlled Substances and Alcohol 21”, “Submit to Drug Testing” and “Positive Drug Test”). This would ensure greater comprehension and avoid confusion for the *Guidelines* users.

For the intermediate discipline penalty, this proposal would delete the following optional conditions: \*Psychiatric/Psychological Evaluation 17, \*Psychotherapy 18, \*Rehab Program 19, \*Restricted Practice 24, \*Diagnostic Evaluation 28, \*Qualified Group Meetings 29, and \*Worksite Monitor 30. This violation relates to court-ordered confinement for intemperate use of, or addiction to, controlled substances. Since court-ordered confinement typically involves referral to a treatment program that includes psychiatric or psychological evaluations, rehabilitation programs, restriction or removal from practice, diagnosis and assessment by a clinician, support meetings, and a monitor, the Board proposes to delete similar conditions in this proposal that it would deem duplicative of those already completed by the Respondent under court order.

Falsify, Make Incorrect, Inconsistent or Unintelligible Entries Pertaining to Drugs (Amend Maximum Discipline, Intermediate Discipline, and Minimum Discipline Columns): This proposal would add a new proposed penalty of “Revocation” to the maximum discipline column for this type of violation. Since the Board considers the provision of false, incorrect, or unintelligible entries pertaining to drugs to be serious because it shows a history or tendency to be careless in the provision or medical care or mislead or lie, and puts patients at risk of serious harm or even death, the Board proposes to add this maximum penalty to existing guidelines. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

For the intermediate discipline penalty, the Board proposes to correct the current titles for “Drug Testing” and “Positive Drug Tests” to reflect changes to the corresponding conditions’ titles for the reasons noted in the rationale above for similar changes. The Board proposes to add reference to the “Abstain from Controlled Substances and Alcohol 21” as a new Optional Condition for consideration in formulating the penalty for these types of violations. In the Board’s experience, drug or alcohol abuse can be the root cause of such errors in practice or judgment and therefore appropriate remediation efforts would include such abstention terms to ensure public protection and to assist in relapse prevention.

### **Add “Evidence in Aggravation of Penalty” Section**

Purpose: The purpose of this proposal is to amend the *Guidelines* to include aggravating

evidence to be considered when determining penalties in proposed decisions, particularly in determining whether to set a maximum, minimum or intermediate penalty (as provided in the chart immediately preceding this section). This proposal would specifically itemize those circumstances where the Board believes that the conduct specified would demonstrate a need to increase the penalty for the protection of the public.

Rationale: A factor in aggravation is one that would tend to increase a penalty in a given case. The Board's current Disciplinary Guidelines regulations at CCR sections 2524 and 2579.10 authorize the Board to consider "aggravating factors" when determining whether to deviate from the penalties set forth in the Guidelines. However, those regulations do not specify those circumstances that the Board, in its experience in regulating the VN and PT professions, believes are "aggravating" and therefore should be considered by ALJs in providing penalties for proposed decisions.

This proposal would specify those circumstances where the Board historically found a need for a higher penalty to be considered because such circumstances typically result in a higher risk of continuing violations or demonstrate persistent refusal to comply with minimum standards of ethical or professional practice or the laws or regulations applicable to their profession. All of these circumstances usually result in repeat violations or offenses against the public unless significant penalties are imposed for the protection of the public. Those circumstances include:

1. Respondent fails to take full responsibility for their actions.
2. Evidence that the violation was knowingly committed and/or was premeditated.
3. If the violation was committed against a vulnerable person, including, the developmentally delayed, those with cognitive impairments, elderly, children, an incarcerated person, or those whose physical limitations made the violation easier to commit.
4. If the violation was a physical or sexual assault against a vulnerable person, as specified above.
5. Respondent violated the rules and procedures of a secure detention facility, state hospital, prison, juvenile hall or jail, such as the smuggling of phones, drugs, or other prohibited items to persons in custody.
6. Respondent has a history of prior discipline, particularly where the prior discipline is for the same or similar type of conduct.
7. Respondent's actions resulted in financial damage to their patients or other consumers. The amount of loss may be an additional aggravating factor.
8. Violation of Board probation.



9. Commission of conduct constituting unlicensed activity after the surrender or revocation of the Respondent's license.
10. Evidence that the respondent has not cooperated with the Board's investigation.
11. Duration of violation(s).
12. Evidence that the Respondent knew or should have known that their actions could harm their patient or other consumers.
13. Evidence that the Respondent took advantage of their patient for personal gain, especially if the Respondent was able to take advantage due to the age, or, lack of sophistication, understanding or knowledge of the patient.

Adding this list of circumstances will help ensure a more thorough examination of options and a more thoughtful use of the Board's *Guidelines* for formulating an effective penalty to prevent public harm or risk of harm.

### **Add "Evidence in Mitigation of Penalty" and "Rehabilitation Evidence" Sections**

Purpose: The purpose of this proposal is to amend the Disciplinary Guidelines to include mitigation evidence and acceptable rehabilitation evidence to be considered when determining penalties in proposed decisions. This proposal would also add examples of the types of evidence which the licensee/applicant (respondent) may submit to the Board (and the Board will review the evidence submitted) to demonstrate their rehabilitative efforts and competency.

Rationale: Evidence in mitigation is evidence that tends to lessen the degree of culpability (e.g., extenuating circumstances) and therefore may be considered in reducing the possible penalty contemplated by the Board. BPC section 480 permits the Board to request mitigating evidence to be submitted by an applicant for the purpose of demonstrating substantial relation or evidence of rehabilitation under certain circumstances (BPC, § 480, subd. (f)(2)). In addition, the courts have recognized that licensees in disciplinary proceedings should be permitted to present evidence of mitigation before consideration of a penalty imposed by an agency. ("The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." *Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

The proposed addition of the Evidence in Mitigation of Penalty and Rehabilitation Evidence sections to the Guidelines are intended to identify criteria to assist individuals with examples of types of circumstances or evidence that may be considered by the Board as mitigating (lessening the possible penalty) or the types of evidence that may be submitted to demonstrate rehabilitative efforts and competency. It is also designed to

serve as a guide for the Board in assessing mitigation and rehabilitation as it evaluates an individual's rehabilitation and fitness for the practice of vocational nursing and psychiatric technicians in a manner consistent with public health, safety, and welfare.

The Board often receives inquiries from individuals on the types of documents the Board accepts or receives in assessing mitigating evidence or an individual's rehabilitation. Accordingly, the Board developed a list of examples of the types of documentation it typically receives from applicants or licensees, which the Board has found helpful in making a determination on a person's proposed fitness (in light of the mitigating evidence) or rehabilitation. Including a list of mitigating evidence clarifies for ALJs what factors the Board wants considered when determining possible mitigation of the penalties in proposed decisions.

Examples of the types of mitigating circumstances that may be considered by ALJs are as follows:

1. Convincing evidence of rehabilitation consistent with criteria in CCR sections 2522 or 2579, as applicable.
2. Demonstration of remorse by the Respondent.
3. Demonstration of corrective action or plan to prevent recurrence.
4. Violation was corrected without monetary losses to consumers and/or restitution was made in full.
5. If the violation involved the conduct of multiple parties, the relative degree of culpability of the Respondent should be considered.

Examples of the types of evidence provided in the "Rehabilitation Evidence" section that may be submitted to demonstrate rehabilitative efforts and competency are as follows:

1. Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the Respondent's current competence in the practice relevant to the disciplinary proceeding, including the period of time and capacity in which the person worked with the Respondent. These statements or performance evaluations should include an acknowledgement of the allegations in the Accusation or Statement of Issues, to ensure that the evaluator has a clear understanding of the issues. Such reports must be signed under penalty of perjury.
2. Recent, dated, letters from counselors regarding the Respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation.

3. Recent, dated letters describing the Respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.) from their sponsor.
4. Recent, dated, laboratory analyses or drug screen reports, confirming Respondent's abstention from drugs and alcohol.
5. Recent, dated, physical examination/ or assessment report(s) by a licensed physician, confirming the absence of any physical impairment that would prohibit the Respondent from practicing safely.
6. Recent, dated, letters from probation or parole officers regarding the Respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance.
7. Recent, dated, letters from persons familiar with Respondent in either a personal or professional capacity regarding their knowledge of: the Respondent's character; the respondent's rehabilitation, if any; the conduct of which the Respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury.
8. Recent, dated completion certificates for education courses related to the grounds for discipline or denial in the Accusation or Statement of Issues.
9. Any other information that Respondent would like to submit that shows Respondent has worked to correct any unprofessional conduct or deficiencies charged in the Accusation or Statement of Issues.

The inclusion of the foregoing lists, while not exhaustive, is reasonably necessary to provide consistent guidance to individuals asking about mitigation or rehabilitation evidence. These types of examples may be submitted at the discretion of the individual and will be reviewed by the Board and considered on a case-by-case basis. In the Board's experience, these items are reasonably related to the question of whether mitigating or extenuating circumstances exist or should be considered and/or whether the person is rehabilitated (i.e., fit to practice with or without restriction and with safety to the public).

The requirement that the Board obtain "recent" information as specified above, also ensures that the Board is making decisions with the most updated, current information available to make a more fully informed and reasonable decision. The Board also retains its discretion to verify or investigate the information provided, as specified above, and also require any reports or letters (as specified above) to be signed under penalty of perjury by the persons submitting such information to help ensure truthful statements and

accurate information are being provided to the Board. The Board adds notice that it intends to investigate the validity of any submitted by a Respondent as rehabilitation evidence by including the language “Any evidence submitted to the Board will be subject to verification by Board staff.”

### **Addition of Model Orders Section**

Purpose: The purpose of this proposal is to include Model Orders, which includes orders for licensees, petitions for reinstatement, petitions to revoke probation, and orders for applicants, to be used by ALJs when drafting proposed decisions and DAGs and Board staff when drafting stipulated settlements of disciplinary cases.

Rationale: The proposal is necessary to ensure consistency in application and understanding of the content needed for the Board’s orders that are to be included in proposed decisions or stipulated settlements, as applicable. Numerous boards under the Department of Consumer Affairs have adopted similar model orders to simplify the decision writing process, provide clarity for applicants, respondents, attorneys, and Board staff, and provide transparency for consumers through specific, standard language applicable to each type of disciplinary action. In the Board’s experience, providing these templates of model language helps avoid possible mistakes in the Board’s orders, and helps guide users of the Disciplinary Guidelines to better understand the Board’s orders, requirements and their legal effects. The proposal would provide applicable language for different enforcement actions authorized by law to be taken by the Board: section A is model language for licensees/respondents in a disciplinary matter; section B is model language for petitioners seeking reinstatement of their license; section C applies to petitions brought by the Board’s Executive Officer to revoke the licensee’s probation; and section D is model language to be used for applicants in cases where a Statement of Issues has been filed. Described below are the proposed model disciplinary orders and the rationale and anticipated benefits for each order:

#### **A. Licensee Model Orders**

1. Revocation of License. This model order is necessary to instruct the ALJs and DAGs of the clear and concise language to be included in the disciplinary order for the Board’s approval. This model order reflects the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation. The proposal clarifies the respondent’s responsibility to relinquish and forward or deliver their license to practice as VN or PT and wall certificate to the Board. The proposal is necessary to provide a clear and reasonable deadline of ten days for relinquishing the license and wall certificate; such action is necessary to ensure that all indicia of licensure is returned, consistent with the Board’s revocation action. The proposal is also necessary to advise respondents when they can reapply or petition the Board for reinstatement of their revoked license; the one-year or three-year time frame (as applicable based on the type of violations involved in the case) is based on the timeframes and requirements set forth in BPC sections 2878.7 (VNs) and 4524 (PTs) for petitioning for reinstatement or reduction of penalty. The proposal would also include in the model language the requirement of respondent to pay the costs of investigation and prosecution within 30

days of the effective date of the decision, which in the Board's experience, is a reasonable amount of time for compliance with the order. This provision is necessary to assist the Board in recovering its costs of enforcement as authorized by BPC section 125.3. If the respondent is unable to pay the costs within 30 days, the model order would provide the option of a condition precedent that the respondent could pay these enforcement costs prior to reinstatement of their license and which must be paid in full prior to reinstatement, which is also authorized by BPC section 125.3.

2. Revocation Stayed and Licensee Placed on Probation. Government Code section 11519(b) provides the Board with the following authority:

“A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.”

Similar authority to issue a license on probation is found at BPC section 488(a)(2). This model order is necessary to implement the authority in Sections 488 and 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

3. Public Reproval. The Guidelines provide minimum terms and conditions that may include issuance of a public reproval. BPC section 495 authorizes the Board to issue a public reproval. This proposal would add model order language when the proposed decision or stipulated settlement would publicly reprove the licensee/respondent. The proposal is necessary to advise the licensee that the reproval constitutes disciplinary action and becomes a part of their license history with the Board consistent with BPC section 27(c)(9) (which requires public disclosure on the Internet of all enforcement actions) and the requirements of the California Public Records Act (Gov. Code §§ 7920.000 et seq.). This proposal also is necessary to provide to ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on the licensee is public reproval.

4. Surrender License in Lieu of Revocation. This model language is needed when the licensee, after receiving notice of a possible revocation by the Board by way of an Accusation, proposes to settle the matter by surrendering their license (see settlement authority at Government Code section 11415.60). In addition, BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee's surrender is done without the written consent of the Board. This model order is therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board's conditions and requirements for acceptance of a surrender. The proposal advises that the surrender would be effective as of the date of the Decision and requires respondent to relinquish and forward or deliver their license to

practice (to be inserted by the user as applicable for VN or PT) and wall certificate to the Board. The proposal is necessary to provide a deadline of ten days, which in the Board's experience is a reasonable amount of time for the licensee to comply, for relinquishing the license and wall certificate. The model order is also necessary to make clear to the licensee and the public that the license surrender, and Board acceptance of the surrender, constitutes the imposition of discipline against the licensee and becomes part of the licensee's history with the Board in compliance with the requirements of the California Public Records Act (Gov. Code §§ 7920.000 et seq.). The Board anticipates that ALJs, DAGs, and respondents will benefit by having standard language that could be included in a decision or stipulated settlement, and the public will be better informed and thereby benefit from unambiguous language describing the implication of the discipline imposed.

## **B. Model Orders for Petition for Reinstatement**

5. Grant Petition with No Restrictions on License. Following formal discipline, BPC sections 2878.7 and 4524 authorizes licensees to petition the Board for reinstatement of a revoked or suspended license after a specified waiting period of not less than one year from the effective date of the Board's decision to revoke or suspend the license. This model order is necessary to make clear to the licensee/respondent and the public one of the possible outcomes of a licensee's petition for reinstatement of a revoked, surrendered, or suspended license. In those cases where the Board agrees to grant the petition outright with no restrictions on the reinstated license, this model order would specify that the Board granted the petition for reinstatement of the license, and that it will be fully restored.

6. Grant Petition and Place Licensee on Probation. . Following formal discipline, BPC sections 2878.7 and 4524 authorizes licensees to petition the Board for reinstatement of a revoked or suspended license after a specified waiting period of not less than one year from the effective date of the Board's decision to revoke or suspend or accept the surrender of the license. Pursuant to the authority to stay any order under Government Code section 11519 discussed above, the Board may stay any order and place a license on probation with terms and conditions. This template language is necessary to provide ALJs and other interested parties notice of how to draft an order to reflect the Board's intent to reinstate a license on probation pursuant to Section 11519's authority. This model order is necessary to make clear to the licensee/respondent and the public the outcome of a licensee's petition for reinstatement of a revoked, surrendered or suspended license. This model order would specify that the Board granted the petition for reinstatement of the license, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions. This model order would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through a specified probationary period before restoring the license to an unrestricted license status.

7. Grant Petition and Place Licensee on Probation After Completion of Conditions

Precedent. Following formal discipline, BPC sections 2878.7 and 4524 authorizes licensees to petition the Board for reinstatement of a revoked, surrendered, or suspended license after a specified waiting period of not less than one year from the effective date of the Board's decision to revoke or suspend or accept the surrender of the license. This model order is necessary to make clear to the licensee/respondent and the public one of the possible outcomes of a licensee's petition for reinstatement of a revoked, surrendered, or suspended license. This model order would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which examples are provided so ALJs and DAGs have a clearer understanding what can be required as a condition precedent to be satisfied before a license is reinstated.

The order would allow an administrative law judge or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and that minimum standards for licensure are met. Examples include paying restitution, cost reimbursement, completion of CE, physical examination, completion of rehabilitation program, take and pass licensure examination. All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee and ensuring competency in the professions. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations more effective and related to the violations alleged. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Disciplinary Guidelines when outright denial of a reinstated license is not warranted.

The model order also includes an additional paragraph that upon completion of the conditions precedent, the license (type to be inserted by the user) shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted status.

8. Deny Petition. Another possible outcome of a petition matter is outright denial of the petition. This model order would provide that the petition for reinstatement filed by the petitioner [blank space to insert name], is hereby denied. This proposed model language is necessary to specify the clear and concise language to be used by an ALJ drafting a proposed decision when the petition for reinstatement of the license is denied by the Board. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

### C. Model Orders for Petition to Revoke Probation

9. Revocation of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, the Board may order revocation of the licensee's probation. (See, e.g., *Goldsmith v. California State Bd. of Pharmacy* (1961) 191 Cal.App.2d 866, 873 petition to revoke probation is merely a continuation of the original Accusation case and board had continuing jurisdiction over the matter to revoke probation.) This model order is necessary to provide clear and concise language to be used when the Board has determined that the licensee's probation is revoked. This change is also needed to ensure consistency in the issuance and application of the Board's orders. This proposal also adds to the order notice that petitioner is not eligible to apply for reinstatement for the applicable time period of either one or three years (as set forth in BPC sections 2878.7 (VNs) or 4524 (PTs)) from the effective date of the decision. This statement is necessary to provide notice to the licensee of the eligibility requirements for filing a new petition and the legal bar to petitioning the Board again before either one or three years has elapsed, as provided in the Board's applicable Practice Act.

10. Extension of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, one possible outcome and alternative to revocation is that the Board may order the licensee's probation term to be extended from the time specified in the Board's original disciplinary Decision. This model order is therefore necessary to provide clear and concise language to be used when a licensee's probation is extended. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

### D. Model Orders for Applicants

11. Grant Application with No Restrictions on License. BPC section 488 authorizes the Board to consider a variety of actions following a hearing on a statement of issues for a possible denial of license, including granting the license upon completion of all licensing requirements. These model orders would help implement those various options. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the licensee's application with no restrictions. BPC sections 2866 and 2867 (for VNs) and BPC sections 4511 and 4512 (for PTs) requires applicants to meet specified qualifications and pay a prescribed fee before issuance of a license. This model order is therefore necessary to implement these requirements, provide adequate notice to the licensee that additional action may be needed prior to issuance of the license, and to provide clear and consistent language to be used in the Board's decision to grant the license application and issue the license upon successful completion of all licensing requirements, including payment of all licensure fees.

12. Grant Application and Place Licensee on Probation. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application but determine the applicant should be monitored by the Board for public protection (see BPC section 488(a)(2)). This model order is necessary to provide clear



and consistent language to be used in the Board's decision to grant the license application and issue the license upon successful completion of all licensing requirements, including payment of all licensure fees, with immediate revocation, stayed, and probation with specified terms and conditions. This model order also helps ensure that applicants have notice that specified licensing conditions (as discussed above under "Grant Application with No Restrictions on License") have to be met prior to issuance of the probationary license.

13. Grant Application and Place Licensee on Probation After Completion of Conditions Precedent. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application after the applicant satisfies certain conditions, such as completing criminal probation (see BPC section 488(a)(2), (4)). This model order is necessary to provide clear and concise language to be used in the Board's decision to grant the license application and issue the license upon successful completion of specified terms and conditions. Examples are provided so ALJs and DAGs have a clearer understanding what can be required as terms and condition precedent to be satisfied before a license is reinstated. Examples include paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass licensure examination. All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in ensuring the applicant is adequately rehabilitated before being issued an unrestricted license. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make applicant orders and determinations more effective and related to the issues that serve as grounds for denial of the application. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Guidelines when outright denial of a license is not warranted.

The model order also includes another paragraph with a different provision that upon completion of the conditions precedent and successful completion of all licensing requirements, including payment of all fees, the respondent shall be issued a license (insert type VN or PT) and that the license shall be issued, immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be used for circumstances where the applicant has demonstrated they should be able to practice, but the Board determines the public would be better protected by monitoring the license through probation before issuing a permanent, unrestricted license. The prompt about listing the standard and optional conditions of probation is necessary to remind ALJs and DAGs of the need to specify those terms and conditions in the order, and where the Board recommends that they be placed in the order for easier comprehension.

14. Deny Application. This model order would provide for the circumstance when an applicant is being denied licensure (see BPC section 488(a)(3)). This model order is

necessary to provide clear and concise language to reflect the correct action that would be taken by the Board if the application is denied, and no license is issued. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

### **Underlying Data**

The following documents were relied upon:

1. Board of Vocational Nursing and Psychiatric Technicians (BVNPT) Strategic Plan 2020-2025
2. California State Board of Pharmacy AG Opinion No. 13-202 dated April 8, 2015
3. May 2, 2023 BVNPT Enforcement Committee Meeting Agenda, Relevant Meeting Materials; and Meeting Minutes
4. May 18-19, 2023 Board Meeting Agenda, Relevant Meeting Materials; and Meeting Minutes
5. August 2, 2023 BVNPT Enforcement Committee Meeting Agenda and Minutes
6. August 24-25, 2023 Board Meeting Agenda, Relevant Meeting Materials, and Meeting Minutes

### **Business Impact:**

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts/evidence/documents/testimony or other evidence:

The proposed regulatory action only impacts vocational nurse and psychiatric technician licensees and applicants who are disciplined by the Board for violations of the laws and regulations within its jurisdiction. The Board does not have the authority to take administrative action against a business.

The Board licenses, regulates, and investigates complaints against licensed vocational nurses and psychiatric technicians different license categories in California, totaling approximately 132,199 vocational nurses and 10,922 psychiatric technician licensees. The proposed regulatory action would only affect a vocational nurse and psychiatric technician licensee or applicant, who subjected themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided by simply complying with the laws and regulations governing the practice of licensed vocational nurses and psychiatric technicians.

### **Economic Impact Assessment:**

The Board has determined that this regulatory proposal will have the following

effects:

- It will not create or eliminate jobs within the State of California because the proposal only provides updated guidelines for imposing penalties on licensees and applicants who, through their own conduct, are subject to disciplinary action due to violations of the laws and regulations governing the practice of vocational nurses and psychiatric technicians. Therefore, the overall economic impact on jobs is insignificant.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only affects vocational nurses and psychiatric technician licensees and applicants who are disciplined by the Board for violations of the laws and regulations governing the practice of vocational nurses and psychiatric technicians.
- The Board does not have the authority to take administrative action against a business and does not maintain data regarding the number or percentage of vocational nurses and psychiatric technician licensees and applicants who own a business. Businesses operated by, or employing, vocational nurses and psychiatric technician licensees and applicants who are in compliance with the laws and regulations within the Board's jurisdiction will not be affected by this proposal. Therefore, the overall economic impact on businesses is insignificant.
- It will not create or eliminate businesses in the State of California because the proposal only affects vocational nurses and psychiatric technician licensees and applicants who are disciplined by the Board for violations of the laws and regulations governing the practice of vocational nurses and psychiatric technicians.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects vocational nurses and psychiatric technician licensees and applicants who are disciplined for violations of the laws or regulations within the Board's jurisdiction.
- This regulatory proposal benefits the health, safety, and welfare of California residents because it would provide protection to California residents by enhancing the Board's ability to take appropriate action against vocational nurses and psychiatric technicians licensees and applicants who, through their own conduct, expose themselves to administrative disciplinary action for violations of the laws and regulations within the Board's jurisdiction.
- This regulatory proposal does not affect worker safety because it does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because it is not related to the environment.

### **Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.