



2022

**BOARD MEMBER
ENFORCEMENT MANUAL**



**Board of Vocational Nursing
and
Psychiatric Technicians**

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Board of Vocational Nursing and Psychiatric Technicians Board Member Enforcement Manual

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INTRODUCTION

This procedure manual is a ready reference of the Board of Vocational Nursing and Psychiatric Technicians' (Board) Enforcement Division and the administrative discipline process. This manual is intended for Board members to refer to as they conduct Board related business.

Protection of the public is the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code (BPC), § [2841.1](#) & [4501.1](#)).

To accomplish the Board's mission of public protection, the Board regulates: Vocational Nurses (VN) and Psychiatric Technician (PT) programs located throughout the State of California; VNs and PTs employed in hospitals, long term care facilities, home health and school settings, correctional facilities, outpatient clinics, and military facilities; educational programs; and other practice settings.

The Board develops and administers licensure examinations; investigates consumer complaints and criminal convictions; and responds to emerging changes and trends in the profession legislatively or through regulations.

The Board's statutes and regulations found respectively in the [Business and Professions Code \(BPC\)](#) and [California Code of Regulations \(CCR\)](#) require an individual to be licensed before they engage in the practice and performance of the duties and functions of a VN or PT. These statutes and regulations set forth the requirements for licensure and provide the Board the authority to discipline licensees.

Board members serve a vital consumer protection role by making important policy decisions and voting on proposed disciplinary actions against Board licensees who violate Board laws and regulations. Further, Board members help guide licensing, enforcement, education, and consumer protection activities.

The Board's Enforcement Program serves a critical role in protecting consumers by:

- Enforcing the rules and regulations governing the practice of VNs and PTs;
- Investigating and taking disciplinary action against licensees who are unprofessional, incompetent, negligent and/or abusive;
- Monitoring probationers to ensure that they comply with the Board's terms and conditions of probation; and
- Developing innovative methods and procedures to enhance consumer protection, reduce costs and expedite complaint handling.

DRAFT

ENFORCEMENT OVERVIEW

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) is mandated to protect consumers from dangerous practitioners in the most efficient, effective and timely manner possible. Pursuant to [Business and Professions Code 101.6](#), the Board was established to protect public health, safety, and welfare, and must provide the following:

“ . . . a means of redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute the disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. . . ”

To this end, the Board has an aggressive enforcement program designed to protect consumers. The goal is to provide a fair and unbiased review and investigation process. Generally, most licensees serve consumers in a safe and professional manner. However, when a licensee fails to uphold their professional or ethical responsibilities, the Board conducts swift and just enforcement to protect the integrity of the profession and the safety of consumers.

The Complaint and Investigation Process

The Board investigates all complaints regarding vocational nurses and psychiatric technicians. An initial review is conducted to determine if there is a violation of the Vocational Nursing [Practice Act](#) or [Psychiatric Technicians Law](#) and if we have legal authority (jurisdiction) to take action. If these conditions are not met, the complaint is closed as "No Jurisdiction". If it is determined the allegation might be a violation, and there is legal authority to take action, Board staff conducts an investigation. Once jurisdiction is established, staff gathers the information required to review the facts of the complaint.

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

- Interpersonal conflicts.
- Employee-employer relations.
- Labor issues.
- Rudeness or impolite behavior.

Complaints are received¹, logged, responded to, and entered into BreEZe, the computer-based system. As complaints are received, Board staff conduct daily reviews of the new complaints to determine the appropriate course of action based on the Board's complaint prioritization guideline.

¹ By telephone, e-mail, on the Board's website, or via written communication.

Each category of complaint is given a priority of “urgent”², “high”³ or “routine”⁴, as required by the [Complaint Prioritization and Referral Guidelines](#). The Board established that complaints regarding patient death, patient abuse, sexual misconduct, substance abuse, and mental illness are categorized as urgent.

The fundamental purpose of an investigation is to determine if the allegation(s) have merit and if the evidence discovered is the basis for discipline. The investigative process may involve requesting more information from the complainant, including but not limited to written declarations, documentation, employment records, and billing statements. Employers, witnesses, supervisors, and administrators may be interviewed or asked to provide written statements and/or records to help ascertain if the allegations have merit.

In all cases, Board staff or the Division of Investigation (DOI) Investigator will attempt to obtain the complainants’ and licensees’ insight and perspective into the allegations. If the complainant licensee declines to participate in the investigation, it does not preclude the Board from taking action based on evidence it develops. If the Licensee fails cooperate/participate in the investigation, it may compromise the investigation process.

Complaints of a more serious nature or those that contain allegations of harm to the public are forwarded to DOI for investigation by a sworn peace officer. This is required by the [Complaint Prioritization and Referral Guidelines](#).

Most complaints are investigated by in-house enforcement analysts who conduct “desk” investigations by gathering information and documents via written communication. Desk investigations do not include field work but may include limited interviews.. Any investigation that requires field work is assigned to the Special Investigation Unit (SI) for assignment to a non-sworn Special Investigator.

When the investigation concludes, and the evidence does not support the allegations, the complaint is closed, and both the subject and complainant are notified. If a violation is substantiated, the case analyst recommends action taken. Violations of a lesser nature typically are resolved by issuing an notice of warning or a citation and fine. More serious cases warrant the initiation of formal disciplinary action with the AG to seek revocation, suspension, or probation of the license.

The Board works with the Division of Investigation, the assigned DAG, and, when necessary, local district attorneys to remove incompetent practitioners and reduce fraud. Resulting disciplinary action could include an Interim Suspension Order (ISO), as well as probation, suspension, and license revocation. The Board also has the authority to issue citations and assess fines. In less serious cases, enforcement staff work with licensees to ensure compliance with statutes and regulations as well as ethical standards.

² Requiring the most immediate resources

³ The next highest priority

⁴ Handled in the ordinary course of business

Board Member Involvement in Investigations

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

Board Members are reminded that if anyone contacts them to discuss a complaint, investigation, or who indicates disciplinary action has been initiated against them, the Board member must advise the individual that they are unable to discuss the matter and refrain from further discussion. Board members are encouraged to advise the individual that continued discussion could result in the Board member being disqualified from voting on the matter.

The Executive Officer should be contacted and advised of any direct contact by a licensee.

Discipline Process and the Attorney General's Role

The Board utilizes the services of the [Attorney General \(AG\)](#) and the [Office of Administrative Hearings \(OAH\)](#) to ensure that enforcement actions are handled in a fair and judicious manner. Every board, including the BVNPT, has its legal counsel in attendance at public meetings to assist the Board in its decision-making role and ensure that the many varied legal requirements are met.

Board Member Role

The Board members are excluded from the majority of the enforcement process⁵, because they must review the Administrative Law Judge's (ALJ) decision and determine whether or not to adopt it .

The Board is involved in establishing guidelines for staff, the Deputy Attorney General, and the Administrative Law Judge to utilize when drafting proposed decisions or stipulated agreements. Therefore, the Board sets its policies in regulation via the Disciplinary Guidelines.

. The ALJ has the authority to sometimes vary from the guidelines, but, for the most part, they rely on the guidelines from the Board to determine how they should adjudicate cases. The Board developed minimum and maximum guidelines to allow for the individual fact patterns in each case. The Executive Officer, board staff and the Deputy Attorney General (DAG) handling each individual case utilize the guidelines to negotiate appropriate probationary terms and conditions specific to the violations of any particular case.

Stipulated settlements are the product of careful, deliberate and measured analysis by Board staff and the DAG

Board Review of Stipulations and Proposed Decisions

The Board Members review and vote on each case where the matter is either settled prior to hearing or the ALJ issues a Proposed Decision. In all cases, the Board Member has the option to adopt, non-adopt, or hold for discussion. The decision on each case is based on a majority vote of the Board.

⁵ e.g. complaint review, investigations, prosecution.

Mail Vote Process

Proposed Decisions⁶ and Proposed Stipulations⁷ are emailed to the Board for their consideration and vote. Mail vote packet materials are confidential and include the following:

- Memo from enforcement staff listing the cases for review and decision.
- Instructions to submit the vote electronically.
- Legal documents⁸, and memo from the assigned DAG⁹.

Deliberation and decision-making should be done independently and confidentially by each Board Member. The Board Member shall only use the information provided to make their determination. Since the vote is done by email voting members may not communicate with each other and may not contact the DAG, the respondent, anyone representing the respondent, any witnesses, the complainant, the ALJ, or anyone else associated with the case.

Additionally, Board Members should not discuss pending cases with Board staff except for procedural questions, to ask whether additional information is available, and whether the agency may properly consider such information. It is strongly encouraged that these types of questions be directed to the Discipline Program Manager or the Board's legal counsel.

If a Board Member has any procedural questions not specific to evidence, or any question specifically related to the cases, the questions should be directed to the Board's Legal Counsel. Completed ballots are due at the Board office no later than the due date indicated in the ballot package. The due dates are established in accordance with the timelines indicated in the [Administrative Procedure Act \(APA\)](#). It may be that one Board member's vote is the deciding vote in the outcome of a case. Therefore, it is critical that Board Members return their votes timely.

Electronic Mail Ballot Definitions

Each electronic mail ballot has the following options for each case. The definitions for each option:

- **Adopt:** A vote to adopt the proposed action means that the Board member agrees with the action as written.
- **Non-Adopt:** A vote to not adopt the proposed action means that the Board member disagrees with one or more portions of the proposed action and does not want it adopted as the Board's decision.

⁶ The written decision from the ALJ, which is based on a hearing

⁷ Negotiated settlements which is based on discussions between board staff, the licensee and the DAG.

⁸ Proposed Decision or Proposed Stipulation, and Accusation or Statement of Issues or Petition to Revoke Probation

⁹ Proposed Stipulated Settlement cases only

- **Schedule for Closed Session:** A vote to hold for discussion in closed session may be made if a Board member wishes to have some part of the action changed in some way¹⁰ .. For example, a Board member may believe an additional or a different term or condition of probation should be added, or that a period of suspension should be longer.
- **Abstain:** Abstention is declining to vote for or against a proposal or motion.
- **Recuse:** a Board member removes him/herself from the voting process when a conflict of interest exists. Possible conflicts include, but are not limited to, financial or personal interests.

Electronic Mail Ballot Policy: Board decisions regarding disciplinary cases are adopted by majority vote. Electronic mail ballots are used for the efficient processing of disciplinary matters.

When two or more members vote to hold a case for discussion the case is brought to the next board meeting. Adopt or non-adopt ballots are simply tallied for the majority vote.

If sufficient votes are received to hold a proposed decision for closed session discussion, but a Board meeting is not scheduled before the time to act expires, a meeting is scheduled to discuss the case by teleconference if necessary.

¹⁰ Increase penalty, reduce penalty, etc.

CONSUMER PROTECTION ENFORCEMENT INITIATIVE

Consumer Protection Enforcement Initiative (CPEI)

Each board within the Department of Consumer Affairs (DCA) has a statutory mandate to hold consumer protection as its paramount objective. Over the years, boards' enforcement authorities have been slow to keep up with legal trends and changes in the professions regulated, and due process protections have grown to protect licensees above consumers. Various media articles published in 2009 highlighted that most DCA healing arts boards were taking over three years to complete investigations and take appropriate disciplinary actions against licensees.

The Governor directed the then State and Consumer Services Agency (SCSA)¹¹ to conduct an internal review of all the health care boards' enforcement programs and the DCA Division of Investigation (DOI). The SCSA found that most of the healing arts boards faced significant complaint investigation backlogs and processing delays. The Governor charged the DCA Director with reforming the enforcement processes for the healing arts boards.

DCA reviewed the existing enforcement process and found systematic problems which limited the boards' abilities to investigate and act on these cases timely. These problems ranged from legal to procedural challenges to inadequate resources. In response, DCA launched the [Consumer Protection Enforcement Initiative](#) (CPEI) to overhaul the enforcement process at the healing arts boards. The overall goal of CPEI is to efficiently process complaints and take disciplinary action against licensees within 12-18 months.

The CPEI is a systematic approach designed to address three specific areas:

- Administrative improvements.
- Staffing and information technology (IT) resources.
- Legislative changes.

Administrative Improvements

One of the initial administrative changes implemented by DCA was delegated subpoena authority to each executive officer as a tool to gather evidence and interview witnesses. Another improvement was the addition of an enforcement academy to teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas. DCA collaborated with the Attorney General's Office and the Office of Administrative Hearings (OAH) to establish performance agreements that expedite the case prosecution .

¹¹ Now known as the [Business, Consumer Services and Housing Agency](#)

Staffing

the Governor's budget released on January 8, 2010 contained approval for DCA to hire additional staff to address enforcement backlogs and improve investigative processing times. This included approval for non-sworn investigators and supervisors. Due to a State hiring freeze, the Board was unable to fill any of the positions until DCA approved a Hiring Freeze Exemption request June 10, 2011.

The Board's Special Investigations Unit was established July 1, 2011. Currently, the Board has one Supervising Special Investigator (SSI) and seven Special Investigator (SI) positions.

BreEZe

In addition to staffing needs, the need for a state-of-the-art integrated licensing and enforcement database was identified. DCA's previous licensing and enforcement database systems were antiquated and impeded the boards' ability to meet their program goals and objectives. The CPEI relies on advanced workflow capabilities and cross-entity external communications that the aging system's technology could not provide. In September 2011, DCA moved forward to contract with a vendor to develop the database.

The BreEZe system rolled out to DCA and its boards and bureaus for use in three stages. The Board was part of Release II released in January 2016. The BreEZe system is intended to support enforcement monitoring, automate manual processes, and offer online services to licensees and consumers.

Legislation and Regulations

On February 17, 2010, [Senate Bill \(SB\) 1111](#) (Negrete McLeod) was introduced and sponsored by the DCA. The proposed legislation was introduced to establish the Consumer Health Protection Enforcement Act and make enforcement processes more efficient. However, on April 22, 2010, SB 1111 failed to make it out of the Senate Business, Professions and Economic Development Committee.

On April 26, 2010, the DCA Director reported that CPEI would continue to be the Department's highest priority and it would move forward in implementing process improvements, staff development, performance measures, and adding enforcement resources. The Director also conveyed the Department believed many provisions of SB 1111 could be adopted as regulations and encouraged boards and bureaus to develop proposed regulations.

As a result, the Board moved forward with a rulemaking file to implement provisions of CPEI. The rulemaking file was approved by the Office of Administrative Law, and the regulations became effective June 30, 2012.

APPLICANT EVALUATION

Applicants with a Criminal History/Board Discipline

The Board gathers information regarding the applicant's criminal history or other Nursing Board discipline by requesting detailed information from the applicant about the conviction(s) including certified court documents, law enforcement reports, an explanation from the applicant about the circumstances surrounding the crime(s) and documentation regarding rehabilitation.

Assembly Bill (AB) 2138, Chiu

Per [AB2138](#), applicants are no longer required disclosed any information or provide any documentation regarding their criminal history. However, the Board may ask questions regarding an applicant's professional licensing disciplinary history as well as questions regarding convictions of crimes resulting in having to register as PC290 sex offender.

A complaint is opened and investigated if the applicant has any issues that fall outside of the [AB 2138](#) parameters.

The Board can only take into consideration substantially related convictions from the preceding seven years from the date of the application, with the following exceptions – serious felonies under [California Penal Code \(PC\) 1192.7](#) or convictions requiring [PC290 sex offender registration](#).

The Board has authority to deny licensure to a VN or PT applicant whose criminal background is [substantially related](#) to the license applied for and/or when there is reason to believe the applicant may jeopardize consumer health and safety.

\The Board may deny licensure for any of the following:

- **Conviction of a Crime** - Includes a plea or verdict of guilty or a conviction following a plea of nolo contendere¹²
- **Dishonesty** - Includes the commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit him/herself or another, or substantially injure another.
- **Related Criminal Behavior** - Commission of any act which, if done by a licensed vocational nurse or psychiatric technician, would be grounds for suspension or revocation of licensure.
- **Falsification of Application** - Includes knowingly making a false statement of fact in the application for licensure.

¹² A nolo contendere plea is a lot like a guilty plea; it carries the same fundamental consequences, but not the official admission of guilt

- **Disciplinary Action Taken by Another Agency or State** - Includes other California health care professional licensing boards or other governmental agencies throughout the United States.

Criminal Background Check

Applicants are required to submit fingerprints as part of the application process to conduct a criminal background check with the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

The Board gathers information regarding the applicant's criminal history by requesting detailed information from the applicant about the conviction(s) including certified court documents, police reports, an explanation from the applicant about the circumstances surrounding the crime(s) and documentation regarding rehabilitation.

An applicant with a criminal background is permitted to take the licensure examination once the education and experience requirements are met; however, a final determination on the application regarding a criminal background is made only after the applicant passes the licensure examination. By permitting the applicant to take the exam, the Board does not waive its right to deny licensure based on convictions once the applicant passes the exam.¹³

The Board evaluates the official criminal documents and supporting information to determine whether a license should be issued or denied. If the Board determines to deny licensure, a Statement of Reasons (denial notice) is mailed to the applicant informing him/her of the right to request a hearing within 60 days from the date of the denial letter.

If a hearing is requested, the application and supporting documentation are transmitted to the Attorney General's Office for the preparation of a Statement of Issues document. The Statement of Issues document is mailed to the applicant, and an administrative hearing is scheduled.

After the administrative hearing is conducted, the Administrative Law Judge (ALJ) who presided at the hearing submits a proposed decision to the Board for consideration.

¹³ The board staff does not review prior to the exam being passed to ensure that the Board does not waste resources reviewing cases for applicants who do not pass the NCLEX exam or take several years to do so.

COMPLAINT PROCESS

Each year the Board receives over 600 consumer complaints and nearly 4,800 criminal arrest notifications.

Anyone may file a complaint if he/she believes a licensee violated the law or provided substandard care. Complaints are most often received from consumers, their families, other members of the health care industry, law enforcement agencies, and health care facilities. The Board accepts complaints from any individual in any form, including anonymous complaints.¹⁴ Although most complaints are submitted via BreEZe, some are received via telephone.

Irrespective of the origin, all complaints are evaluated to determine Board jurisdiction and whether an informal or formal investigation should be conducted.

The Board uses a priority system whereby each complaint is assessed and given a priority. Priority status is given to complaints alleging patient death or serious harm. The Board will pursue the filing of a Penal Code Section 23 petition or an Interim Suspension Order (ISO) if the alleged violations warrant immediate disciplinary action.

The majority of cases can be investigated by enforcement staff. The investigation includes speaking to the parties involved, obtaining documents, and performing general fact finding.

Cases requiring more extensive investigation including interviewing witnesses, subpoenaing documents, and obtaining declarations are assigned to the Board's Special Investigations Unit for assignment to a non-sworn Special Investigator.

The most serious cases are referred to the Division of Investigation (DOI). The investigators are sworn peace officers and handle investigations related to criminal activity, and cases requiring extensive interviews.

¹⁴ It should be noted that anonymous complaints are difficult to investigate as many complainants leave off critical information, such as the work location, location of the incident, or enough specifics to determine which licensee the complaint is to be lodged against.

INVESTIGATION

Investigations are conducted to determine if there has been a violation of the statutes and regulations and perform general fact finding. The complaint intake process includes an initial case assessment to determine whether the case should be assigned to an enforcement analyst, referred to a Special Investigator or referred to DOI.

Desk Investigation

Most complaints are investigated by in-house enforcement analysts who conduct “desk” investigations by gathering information, written statements and documents. Desk Investigations are typically regarding subsequent arrest reports (SARs) received from Department of Justice, discipline by another California state agency and out of state discipline. Desk investigations do not include field work or interviews.

Non-Sworn Investigation

The Board’s Investigation Unit is comprised of Special Investigators (SI), a non-sworn classification who conduct field investigations of complaints which do not pose an immediate danger to public safety or have potential for substantial harm. Such complaints include allegations regarding failure to provide appropriate care, administrative recordkeeping errors and falsifications, or mandatory employer reports of suspension or termination. SI’s conduct investigations requiring interviewing witnesses, subpoenaing documents, and obtaining declarations.

Formal Investigation

[Division of Investigation](#) sworn investigators conduct investigations regarding allegations which pose an immediate danger to public safety or potential for substantial harm, such as complaints alleging gross negligence, incompetence or other acts of unprofessional conduct that may warrant formal disciplinary action or referral for criminal filing.

Completed investigative reports are reviewed and analyzed by Board staff. If the investigation does not substantiate the allegations, the complaint is closed. The complainant and licensee are notified.

After the documentary and interview evidence is obtained, the case is reviewed, and a determination made whether an expert opinion is necessary. If it is determined that expert opinion is necessary, Board staff will obtain the name of a qualified expert to ascertain whether a departure from the standard of practice occurred.

Next, enforcement managers evaluate each case on a case by case basis to determine which action, if any, should be taken against the licensee or registrant. Managers considers:

- *The gravity of the violation,*
- *The harm, if any, to the consumer/complainant,*
- *the ease to remedy the violation or situation.*

If, after reviewing the evidence and weighing all of these factors, staff finds that there is insufficient evidence, the complaint is closed.

If the investigation substantiates the allegations, the Board proceeds with appropriate action that may include:

- Issuance of a Notice of Warning;
- Issuance of a Citation and Fine; or
- Referral to the Attorney General's Office for formal disciplinary action¹⁵.

¹⁵ Suspension, revocation, or probation

DIVISION OF INVESTIGATION

The Division of Investigation (DOI) was established in 1961 to provide centralized investigative and law enforcement services for regulatory boards and bureaus within DCA. Within DOI, the Special Operations Unit (SOU) performs internal affairs and threat and workplace violence assessments for the Department. The SOU also performs protective and stand-by service, which includes serving adverse actions. Additionally, the SOU is responsible for conducting sworn and non-sworn background investigations and administering the Department's Criminal Offender Record Information (CORI).

The [Consumer Protection Enforcement Initiative](#) (CPEI) is a comprehensive initiative DCA has launched to overhaul the enforcement process at the healing arts boards it oversees. After CPEI was implemented in 2010, the DOI was directed to establish case criteria by which DOI accepted cases. Those guidelines were signed and approved by the Deputy Director in July 2014.

The [Case Acceptance Guidelines](#) are designed so that DOI, the law enforcement branch of DCA, handles almost exclusively criminal violation investigations. The CPEI created a non-sworn investigator classification and the Boards focus their resources on administrative, non-criminal violation investigations that do not require a sworn peace officer.

The [Case Acceptance Guidelines](#) are used to determine the referral of complaints to DOI and those that are retained by the Board for investigation by its non-sworn investigators. The Board refers complaints to DOI by submitting a "Request for Service" (RFS) to the DOI headquarters office in Sacramento. The RFS includes details of the complaint, action requested by the Board and the hours authorized for the investigation.

The DOI Headquarters staff assigns the complaint to the appropriate field office.

The field office supervisor assigns the complaint to an investigator for investigation. The investigator usually interviews the complainant, subject and witnesses and gathers all the necessary documents to substantiate the allegation(s). A written investigation report with attached evidence is prepared by the investigator, approved by the supervisor, and submitted to the Board for review.

DOI Field Offices:

- Central Valley
- Chatsworth
- Hayward
- Lakewood
- Ontario
- Sacramento
- San Diego

EXPERT REVIEW

The role of the expert is extremely important. Experts may be called upon to identify whether a departure from the standard of practice¹⁶ or other unprofessional conduct has occurred. The expert may be asked to serve as an expert witness at hearings that resulted from their written opinion. Experts may also be asked to serve in other capacities such as consulting with staff regarding scope of practice.

Each expert must possess the following minimum qualifications:

1. A current license in good standing; no prior or pending disciplinary actions with the Board or any other state licensing agency; and no pending investigations or enforcement actions.
2. Have a minimum of five years post-licensure experience.
3. Have worked directly with licensed vocational nurses and/or psychiatric technicians within the last 12 months as either an educator or practitioner in California.
4. Have knowledge of standards of professional practice for licensed vocational nurses and/or psychiatric technicians.
5. Possess strong written and oral communication skills and the ability to express ideas logically and critically.
6. Possess the knowledge and experience required to render an unbiased opinion that reflects current standards of professional practice for licensed vocational nurses and/or psychiatric technicians.
7. Be able to interpret the [Vocational Nursing Practice Act](#) and/or the [Psychiatric Technician Law](#).

Expert Review/Opinion

Experts are relied upon to identify whether a departure from the standard of practice or other unprofessional conduct has occurred. The expert may be asked to serve as an expert witness at hearings that resulted from their written opinion.

The Board maintains a list of experts who meet the qualifications and have completed training. Experts selected to review a case must have expertise related to the services provided by the respondent and/or respondent's specialty.

¹⁶ The expert reviews what is the community standard of care, whether there was a departure from the standard of care, and what the degree of departure was.

CITATION & FINE

The Board implemented the [Citation and Fine Program](#) in January 1996. The program provides an additional enforcement tool to ensure resolution of violations that do not warrant suspension, revocation or probation of a license.

The Board has authority to issue citations for three classes of violations:

- Class A Violations – Class A violations are issued against employers of VNs or PTs who fail to report to the Board, in writing, the suspension or termination for cause of a VN or PT in its employ within 30 calendar days from the effective date of the suspension or termination. The fine for a Class A violation cannot exceed \$10,000 per violation.
- Class B Violations - Class B violations are issued to licensees and represent the most serious threat to the health and safety of consumers for which citations can be issued. The fine for each Class B violation cannot be less than \$1,001 and cannot exceed \$2,500.
- Class C Violations - Class C violations are issued against licensees and represent the lowest threat to consumer health and safety. The fine for a Class C citation cannot exceed \$1,000.

The Board may issue a citation against a licensee with a fine of no more than \$5,000 if one or more of the following circumstances apply:

- The cited person has a history of two or more prior citations for the same or similar violations.
- The citation involves a violation that has a substantial risk to the health and safety of another person.
- The citation involves multiple violations that demonstrate a willful disregard of the law.
- The citation involves a violation perpetrated against an elder, disabled, or dependent person.

Citations are issued when a violation can be proven. Citations bridge the gap between a Notice of Warning letter and the initiation of formal disciplinary action. Board staff drafts the Citation and Fine for the Executive Officer's (EO) signature. Citations identify the codes that were violated

and contain a summary of the events and circumstances surrounding the violation. On occasion, citations may include an abatement order to correct a matter¹⁷..

Board staff serves the citation to the subject's address of record and tracks the citation for compliance or appeal. The cited individual has 30 days to pay any fine imposed, comply with any abatement order, or appeal the citation. If the fine is paid the matter is closed. If an order of abatement was also incorporated into the citation, the licensee must demonstrate compliance unless a later date for compliance is specified.

If a fine is not paid or appealed within 30-days, Board staff place a hold on the subject's license renewal and initiates a series of demand for payment letters. If the subject fails to respond to the third and final demand letter, the case is referred to the [Franchise Tax Board](#) for [collection](#). For non-compliance of the abatement order, the Board has the option to file an Accusation with the Attorney General's Office for failure to comply with the Citation Abatement Order (see disciplinary process).

There are three options to appeal a citation:

- (1) Request an informal conference with the EO¹⁸ ;
- (2) Request an administrative hearing; or
- (3) Request both an informal conference and an administrative hearing.

Informal conferences are held by teleconference or in person. A decision to affirm, modify or dismiss the citation after an informal conference must be mailed to the cited person within 14 calendar days from the conference date. If the citation is dismissed, the citation is closed. If the Citation and Fine is affirmed, the subject is required to pay the fine unless a request for an administrative hearing is filed. If the Citation and Fine is modified, a modified citation will be served. The subject will then be required to pay the modified citation unless a request for an administrative hearing is filed.

Requests for an administrative hearing are forwarded to the AG. ADAG is assigned and a hearing scheduled with the Office of Administrative Hearings (OAH). After hearing the case, an Administrative Law Judge (ALJ) issues a Proposed Decision for the Board to consider.

Board Member Involvement

Board Members are not involved in the citation process unless an administrative hearing is requested to appeal a citation. Citations are not considered formal disciplinary action since the license is not being revoked or restricted. Instead, Board members are provided statistical data regarding the issuance of citations at scheduled Board meetings.

A licensee who fails to pay an administrative fine cannot renew their license until the fine is paid.

¹⁷ E.g. submitting an address change, documenting patient/client records, completing course work, etc

¹⁸ Or their designee

FORMAL DISCIPLINE

The Board refers cases to the Attorney General when an investigation substantiates incompetence, gross negligence or other acts of unprofessional conduct which warrant formal discipline (license denial, suspension, revocation, or probation).

Acts subject to disciplinary action (which may result in revocation, suspension and/or probationary status of a license) include, but are not limited to:

- Unprofessional conduct;
- Sexual misconduct;
- Gross negligence;
- Conviction of a crime substantially related to the qualifications, functions, or duties of the licensee;
- Substance abuse and/or use of drugs with a client;
- Intentionally or recklessly causing harm to a client;
- Practicing beyond the scope of the license;
- Failure to maintain confidentiality;
- Failure to adhere to reporting requirements;
- Failure to keep proper medication and/or treatment records, etc.

Attorney General Role

The AG is responsible for prosecuting the administrative cases against licensees, who are also known as respondents. . A respondent might be suspended from practice, placed on probation or have her or his license revoked. An applicant may be denied licensure or issued a license and placed on probation. A DAG in the AG's Licensing Unit is assigned to represent the Board in these cases.

The DAGs work with the Board's enforcement staff to determine whether the necessary evidence exists for a successful prosecution. The burden of proof in these matters is clear and convincing evidence. If an individual holds a license with the Board, the burden of proof is the responsibility of the Board. If an individual is an applicant with the Board, the applicant has the burden of proof.

Burden Of Proof

In the case of a licensee, the burden of proof is on the Board to remove the license. In the case of an applicant the burden of proof rests on the applicant. This means the applicant must prove that they should be licensed.

Filing Formal Charges

Formal charges are almost always filed in cases in which the health and safety of the consumer is compromised, and in which clear and convincing evidence is established. These formal charges are referred to as pleadings. In each pleading, the Executive Officer is the complainant.

Pleadings

There are three types of pleadings. The type of pleading is dependent upon whether the respondent (subject of the case) is licensed with the board, an applicant for licensure, or on probation.

- **Accusation:** A written statement of charges against the holder of a license or privilege, to revoke, suspend or limit the license, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.
- **Statement of Issues:** A written statement of the reasons for denial of an application for a license or privilege, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.
- **Petition to Revoke Probation:** A written statement to revoke a probationer's license or registration alleging the probationer has violated the terms and conditions of his or her probation. Settlement terms are never offered in this circumstance.

Actions Preceding an Administrative Hearing

Once an Accusation, Statement of Issues, or a Petition to Revoke Probation is filed and the respondent served, the respondent may file a notice of defense and request an administrative hearing. All hearings are held before an ALJ from the OAH.

During this process, several outcomes may occur. The respondent may fail to respond to the notice of proposed action, which results in a default decision. The respondent may wish to settle the matter prior to a formal hearing. The case may proceed to a formal hearing.

Stipulations (Settlements)

The licensee/applicant and Board may decide to settle the case at any time during the administrative process. Settlements are entered prior to the date of an administrative hearing.

The settlement is reduced to a written stipulation and order which sets forth the settlement terms and proposed disciplinary order. The DAG prepares a memo describing the rationale for the proposed settlement. The memo and the written stipulation and order are forwarded to the Board Members for consideration and decision.

If the Board Members reject the proposed settlement, the case will return to the disciplinary process. A new settlement may be submitted to the Board Members at a later time or the case may proceed to an administrative hearing before an ALJ.

Stipulations prior to an administrative hearing also eliminate the six months to one-year delay that may result from attempting to schedule a mutually agreeable hearing date. The public is often better served because the resolution time is reduced and lengthy appeals avoided, and the

Board and respondent save time and money, and to guarantee an outcome. Further, a licensee on probation is monitored closely by the Board.

Determining Settlement Terms

Stipulations, also known as settlements, are negotiated between the DAG¹⁹), the respondent, and the respondent's legal counsel. Stipulation terms are provided to the DAG utilizing the Board's Disciplinary Guidelines. These guidelines provide the parameters for settlement terms for specific violations of law.

In negotiating a stipulation, the DAG works closely with the Board's staff to arrive at a stipulation acceptable to the Board. The Board's staff consider the evidence, the law, witness and subject matter expert testimony, and protection of the public in the decision process.

The following factors are considered when settlement terms are proposed:

- Nature and severity of the act(s), offense(s), or crime(s)
- Actual or potential harm to any consumer or client
- Prior disciplinary record
- Number and/or variety of current violations
- Mitigation evidence
- Rehabilitation evidence
- In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation
- Overall criminal record, in accordance with [AB 2138](#)
- Time elapsed since the act(s) or offense(s) occurred
- Whether the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties
- Recognition by respondent of her or his wrongdoing and demonstration of corrective action to prevent recurrence

The Board's disciplinary guidelines provide consistency in determining settlement terms.

Variation from the guidelines may occur when sufficient mitigating information or evidence warrants a reduction in the term and does not compromise consumer protection.

Enforcement staff consider the disciplinary guidelines when determining whether to seek revocation, suspension, and/or probation of a license. Board Members use the [Disciplinary Guidelines](#) when considering cases during closed sessions. The [Disciplinary Guidelines](#) are updated when necessary and are distributed to DAGs and ALJs who work on Board cases.

¹⁹ In consultation with Board staff

A pre-hearing conference may be scheduled to settle the case prior to the administrative hearing. Pre-hearing conferences are a more formal method for developing a stipulated agreement. These hearings involve the or Discipline Unit Manager, the respondent, respondent's attorney, and an ALJ.

Office of Administrative Hearings

The OAH provides independent ALJ's to conduct hearings for more than 1,000 state, local, and county agencies. Each year between 10,000 and 14,000 cases are filed with the OAH.

The OAH provides a central panel of experienced, highly qualified ALJs who preside as neutral judicial officers at hearings and settlement conferences. They also serve as impartial mediators to resolve disputes between parties. The ALJs are fully independent of the agencies whose attorneys appear before them. All OAH ALJs are required to have practiced law for at least five years before being appointed and typically have over ten years of experience.

The administrative hearing process is similar to any other court proceeding. The ALJ presides over the hearing; a DAG represents the Board and presents the case; and the respondent or the respondent's representative/attorney presents its case. Testimony and evidence are presented and there is a transcript of the proceedings.

Upon the conclusion of the administrative hearing, the ALJ considers all testimony and evidence and prepares a Proposed Decision, which must be completed in 30 days. . The Proposed Decision is submitted to the Board for consideration.

If the Board non-adopts the proposed decision, the hearing transcript is obtained and the Board decides the case itself based upon the administrative record. The respondent may petition for reconsideration if dissatisfied with the Board's decision or may appeal the decision by filing a Writ of Mandate with the appropriate Superior Court.

Formal Disciplinary Case Outcomes

The Board refers over 300 cases a year for formal discipline. The possible outcomes for these cases are denial of the application, revocation, surrender of the license/registration, or probation. If an individual is placed on probation, the individual must comply with the specific terms of the probation during the probation period. Once the individual has successfully completed probation, the license is restored without restrictions. However, the discipline remains part of the individual's record for a specific period of time.

Stipulated Settlement Agreements

Stipulated Settlement Agreements ('Stipulations') occur after a Statement of Issues, Accusation, or Petition to Revoke Probation has been filed. The respondent has filed an appeal or a Notice of Defense to request an administrative hearing to contest the charges and/or provide mitigating evidence. Often the respondent or their legal counsel contact the AG to inquire if a settlement is possible to avoid the uncertainties of a hearing and reduce respondent's legal costs.

If the case warrants settlement, Board staff provide settlement terms to the DAG). Board staff does not take this task lightly and any settlement that is being brought before the Board should be consistent with the [Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees](#).

The benefit of a settlement: the costs of holding a hearing are eliminated, the imposition of discipline is more expedient, and settlement terms coordinated in settlements are consistent with the Board's [Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees](#); in some cases the terms may be more specific than the outcome from a hearing and Proposed Decision. Stipulated settlements are reviewed and approved by the Board Executive Officer.

Proposed Decision

A Proposed Decision is the legal document issued by an Administrative Law Judge (ALJ) after the hearing. When the Board receives a Proposed Decision, it must be acted on within 100 days. If it is not acted upon, it will be considered accepted and the Board will not be able to change it.

Board staff is also required to provide the respondent and their legal counsel a copy of the Proposed Decision within 30 days of its receipt in the office regardless of whether the Board has acted on the Proposed Decision.

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

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

Factors to Consider When Deciding to Adopt, Non-Adopt or Review the Case in Closed Session

There are several factors to consider when a Board member determines how they vote. Each Board member must review the information through their unique lens and consider other factors considered:

- Nature and severity of the act(s), offense(s), or crime(s) under consideration;
- Actual or potential harm to the public;
- Actual or potential harm to any patient;
- Overall disciplinary record;
- Overall criminal actions taken by a federal, state or local agency or court;
- Prior warnings on record or prior remediation:
 - While lack of prior discipline may be significant mitigating factor where a licensee practiced for a substantial period, this mitigating factor carries little or no weight when a licensee practiced for only a short time before engaging in misconduct giving rise to discipline. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 (seven and one-half years without prior discipline insufficient to be considered a mitigating factor); *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 708 (four years without prior discipline not a significant mitigating factor).;
- Number and/or variety of current violations;
- Mitigating or aggravating evidence;

- In case of a criminal conviction, compliance with terms of a sentence and/or court ordered probation:
 - Sustained good conduct after the completion of probation in a criminal case provides a truer indication of rehabilitation than compliance with the terms and conditions of probation during probation, since rigorous compliance with the terms of probation in a criminal case does not necessarily prove anything more than good sense on the part of the licensee. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.);
- Time passed since the act(s) or offense(s) occurred;
- Cooperation with the Board and other law enforcement or regulatory agencies;
- Dishonesty at work:
 - Unlike work performance, dishonesty is not considered an isolated or transient behavioral act but considered more of a continuing trait of character of an employee. (*Gee v. State Personnel Board* (1970) 5 Cal.App.3d. 713, 719.) A healing arts licensee such as a vocational nurse may be subject to disciplinary action notwithstanding their technical competence or skill where their conduct calls their moral character for honesty into question. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.);
- Acknowledgement of wrong doing:
 - “Fully acknowledging the wrongfulness of [ones] actions is an essential step towards rehabilitation.” (*Seide v. Commission of Bar Examiners* (1989) 49 Cal.3d 933, 940.) However, mere “[r]emorse does not demonstrate rehabilitation. While a candid admission of misconduct and a full acknowledgment of wrongdoing may be a necessary step in the process, it is only a first step.” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.) Sustained conduct over an extended period of time demonstrating fitness to hold a professional license gives a truer indication of rehabilitation than mere remorse. (*Ibid.*); and
- Payment of restitution:
 - Restitution paid under the force of criminal proceedings is not properly considered to have any mitigating effect. (*Hitchcock v. State Bar of California* (1989) 48 Cal.3d 690, 709.) Moreover, payment of “[r]estitution *after* disciplinary proceedings have been initiated is entitled to little weight in selecting the appropriate discipline for professional misconduct.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310 (italics in original.)

If the Board votes to non-adopt a Proposed Decision, the Board must act on the matter within 100-days from the date it receives the transcripts and exhibits from the hearing; a new 100-day deadline is established to act.

This review typically occurs at a Board meeting during closed session.

Proposed Decision Review Process

Board Members should review the charging document²⁰, noting the allegations and the circumstances and events surrounding the charges.

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

Factors to Consider Whether to Hold or Non-adopt an ALJ's Proposed Decision

Consider **non-adopting** an ALJ's Proposed Decision in these circumstances:

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

Consider holding a case over for closed session discussion when:

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

Documents Provided

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

²⁰ Accusation, Statement of Issues, or Petition to Revoke Probation

Non- Adopt (Proposed Decision) - Increase Penalty

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

When the Board votes to non-adopt a Proposed Decision to increase the penalty, the Board must act on the matter within the 100-days from the date it receives the transcripts (if ordered) and a new 100-day deadline to act is established. If transcripts are not ordered, the original 100-day deadline applies. Should the Board fail to act within the statutory 100-day deadline, the Proposed Decision is deemed adopted by operation of law and the Board loses jurisdiction to act on the matter.

Review Process

Board Members review the charging document²¹, noting the allegations and the circumstances and events surrounding the charges.

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

Documents Provided

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

Proposed Decisions - Citations

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

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

²¹ Accusation, Statement of Issues, Petition to Revoke Probation

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

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

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

When a Proposed Decision is received in the Board's Office, it must be acted on within 100 days. Failure to act within 100 days results in the adoption of the Proposed Decision by operation of law, and the Board loses jurisdiction to act.

Review Process

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

Documents Provided

- Citation
- Proposed Decision
- Ballot, if by mail or email

Default Decision

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

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

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

Once the Default Decision and Evidentiary Package are received, a Board member vote package is prepared. If a regularly scheduled Board Meeting is being held in less than three weeks, the package is held until the Board meeting. Otherwise, the package is sent out for vote by email.

Review Process

Board Members review the Default Decision, Evidentiary Package, and charging document to determine if cause exists to proceed with a Default Decision for the respondent's failure to file a Notice of Defense or appear at their scheduled hearing.

Documents Provided

- Charging document
- Default Decision
- Evidentiary Package
- Ballot, if by mail or email

Request to Vacate Default Decision

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

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

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

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

If respondent submits a timely Request to Vacate the Default Decision stating the grounds to vacate, the request may be granted and remanded to hearing. The Decision is sent to the DAG with instructions to schedule a hearing as soon as possible.

Petition for Reconsideration

After the Board issues a Decision, either the Respondent or the Petitioner may request reconsideration of all or part of a case.²² The power of the Board to order reconsideration shall expire 30 days after service of the Decision to the Respondent, or prior to the effective date of the Decision if before 30 days.

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

²² Board staff may also petition the Board to reconsider all or part of a case

If respondent submits a timely Petition for Reconsideration, a mail vote package is prepared for Board Members to either grant or deny the motion.²³ .

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

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

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

If the Board fails to act²⁴ within the time allowed, the Petition shall be deemed denied.

Review Process

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

Documents Provided

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

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

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

§ 820 Examination of licentiate for mental illness or physical illness affecting competency

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his

²³ This is the request for the Board to reconsider the case only; the merits of the case are not considered at this time

²⁴ receive and review package and a quorum of votes render a decision on the Petition

or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

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

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

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

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

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

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

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

Review Process

(Board members do not see nor are they made aware of the Petition or the Order at this point.) If an Accusation is filed, Board members will be made aware of the Petition and Order when they are requested to vote on a: Stipulated Settlement, Proposed Decision or a Default Decision.

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

No Documents Are Provided At This Point

Petitions for Reinstatement of License and Early Termination or Modification of Probation

An individual whose license is revoked, suspended, surrendered, or placed on probation, may petition the Board for reinstatement or modification of the penalty including modification or early termination of probation. Pursuant to Business and Professions Code sections 4524 and 2878.7, the individual may petition the Board, after a period not less than the following minimum periods from the effective date of the disciplinary order:

- At least three years for the reinstatement of a license that was revoked or surrendered. The Board, in its sole discretion, may specify in its order a lesser period;
- At least two years for the early termination of a probation period of three years or more;
- At least one year for the early termination of a probation period of less than three years;
- At least one year for the modification of a condition of probation or for the reinstatement of a license revoked for mental or physical illness.

Status of Petitioner Hearings Study

The Enforcement Committee is studying the effect of referring petitions for reinstatement or for the modification or early termination of probation for hearing and proposed decision by an Administrative Law Judge.

The Board voted to refer petitioner hearings to the Office of Administrative Hearings (OAH) at the February 2021 meeting. The board took this action to reduce the backlog of 60+ petitions due to the limited number of hearing slots at regular board meetings and the further reduced number due to COVID-19.

At the time of this board action, petitions were set for hearing before the board two years out. As the result of referring the petitions to OAH, the backlog of petitions was eliminated.

The Board retains full authority to decide the petition outcomes referred to OAH for hearing. The process is the same as the discipline case process. An Administrative Law Judge hears the petition and makes a proposed decision. The board retains the power and authority to accept or reject the proposed decisions of the Administrative Law Judge similar to the discipline case process and may, if necessary, hold a recommended decision for deliberation in closed session.

To date, the board adopted all proposed decisions through the mail balloting process and has not held any for discussion in closed session, indicating that the majority of board members agree with the factual findings and conclusions of law made by the Administrative Law Judge.

The Enforcement Committee continues to study these trends and develop further recommendations for handling petitioner hearings once sufficient data is obtained and analyzed to prevent future backlogs.

their

Probation Monitoring

Licensees placed on probation are monitored by the Board. The average length of probation is three to five years and the license is restored upon successful completion of probation.

A probationary file is established to monitor an individual's compliance with the probation requirements.²⁵ When a probationer violates a term of probation, the Board has the option to revoke probation and impose previously stayed discipline. Within some stipulated agreements, language includes automatic revocation of a license if certain conditions of probation are not met.

Criminal Prosecution

Depending on the nature of a complaint, cases may be referred to local law enforcement entities. All cases in which there is sufficient evidence to file charges against a licensee, or person performing unlicensed activity are referred to the appropriate city or district attorney's office. Criminal actions include, but are not limited to, violations of the licensing laws of the Board.

Public and Complaint Disclosure

Business and Professions Code section 27 specifies information, such as enforcement actions and a licensee's address of record, must be available through the Internet (aka Board website). Providing this information allows consumers to verify a professional's licensure status as well as determine if there is any disciplinary action. The Board's licensing records are updated daily.

Disqualification from Deciding a Case

With some limited exceptions, a Board Member cannot decide a case if a Board Member investigated, prosecuted or advocated in the case or is subject to the authority of someone who investigated, prosecuted or advocated in the case. A Board Member may be disqualified for bias, prejudice or interest in the case. When in doubt, Board Members should contact the Board's legal counsel for guidance.

Ex Parte Communications Definition and Limitations

"Ex Parte" technically means "by or for one party only." In practice, it is a limitation on the types of information and contacts that Board Members may receive or make when considering a case. While a case is pending, there are only limited types of communications with Board Members that are allowed if all parties are not aware of the communication and do not have a chance to reply.

For example, a Board Member can accept advice from a staff member who has not been an investigator, prosecutor, or advocate in the case; but that person/staff cannot add to, subtract from, alter or modify the evidence in the record. Or, a Board Member can accept information on a settlement proposal or on a procedural matter.

²⁵ i.e., cost recovery payments, remedial education course completion, and quarterly reports

Most other communications may need to be disclosed to all parties, and an opportunity will be provided to the parties to make a record concerning the communication. Disclosure may also apply to communications about a case received by a person who later becomes a Board Member deciding the case. Receipt of some ex parte communications may be grounds to disqualify a Board Member from that case.

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DEFINITIONS OF COMMON TERMS

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

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

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

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

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

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ATTACHMENTS

Attachment A

Attachment B

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Attachment

BVNPT Disciplinary Guidelines

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