



Board of Behavioral Sciences

Memo

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To: Board Members **Date:** February 18, 2025

From: Steve Sodergren
Executive Officer

Subject: **Discussion and Possible Recommendations on Updates to the Board Member Manual**

The Board Member Manual serves as a key reference for Board members, providing important information on laws, regulations, DCA policies, and Board policies to guide their actions and ensure the Board operates effectively and efficiently. The last update to the Manual was in 2018. To ensure it remains relevant and helpful, staff have been working on both content and formatting updates.

While most of the content remains unchanged, the Manual has been reorganized to improve the flow of information. Additionally, staff have included new materials to help Board members better navigate their roles. It is also proposed to incorporate additional resources to deepen members' understanding of the licensing, legislative, and budget processes.

The attached draft is in its early stages, and to help expedite the process of updating the Manual, staff is seeking feedback from Board members on potential additions or improvements to the current content that would further support their roles. A final draft will be brought back to the May 2025 Board meeting for review and final approval.


Recommendation

Staff recommends that the Board review the draft of the Board Member Manual and provide feedback on both the organization and content.


Attachments

Attachment A: BBS Board Member Manual 2025 Draft

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BBS BOARD MEMBER MANUAL
2025



INTRODUCTION

This procedure manual is provided to Board Members as a ready reference of important laws, regulations, DCA policies, and Board policies to guide the actions of the Board Members and ensure Board effectiveness and efficiency. The Executive Officer will coordinate an orientation session with each new Board Member upon his or her appointment, to assist the new member in learning processes and procedures.

CHAPTER 1: BOARD BACKGROUND

BOARD HISTORY

Legislation signed on July 18, 1945, by Governor Earl Warren created the Board of Social Work Examiners under the Department of Professional and Vocational Standards (renamed the Department of Consumer Affairs in 1970). California became the first state to register social workers. During the first 16 months of existence, the Board registered 4,098 social workers.

In the late sixties, the Marriage, Family, and Child Counselor Licensing Law and the Board of Social Work Examiners were combined and renamed the Social Worker and Marriage Counselor Qualifications Board. In 1970, regulatory oversight of Licensed Educational Psychologists was added, and the Board was renamed the Board of Behavioral Sciences Examiners.

In 1997 the name of the Board was changed to its present name, the Board of Behavioral Sciences. In 2010, a fourth mental health profession, Licensed Professional Clinical Counselors, was added to the Board's regulatory responsibilities.

Today, the Board licenses and regulates Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Educational Psychologists (LEP), and Licensed Professional Clinical Counselors (LPCC). Additionally, the Board registers Associate Clinical Social Workers (ASW), Associate Marriage and Family Therapists (Associate MFTs), and Associate Professional Clinical Counselors (Associate PCCs).

The first members of the Board were comprised of seven members, two of which were required to represent the public. The remaining members were required to be licensees of the Board. All members were appointed by the Governor and served a four-year term.

Today, the Board is comprised of thirteen (13) members; two (2) Licensed Clinical Social Workers, one (1) Licensed Educational Psychologist, two (2) Licensed Marriage and Family Therapists, one (1) Licensed Professional Clinical Counselor, and seven (7) members of the public. Each licensed member must possess a master's degree from an accredited college or university and shall have at least two years of experience in his or her profession.

The Board of Behavioral Sciences (Board) is one of the forty regulatory entities within the Department of Consumers Affairs (DCA). DCA is one of eight entities under the Business, Consumer Services and Housing Agency (BCSH), an agency within the California State Government Executive Branch.

BOARD MISSION & VISION

The Board's mission is to protect and serve Californians by setting, communicating, and enforcing standards for safe and competent mental health practices.

The vision of the Board is that all Californians are able to access the highest-quality mental health services.

To accomplish its mission, the Board develops and administers licensure examinations; investigates consumer complaints and criminal convictions; responds to emerging changes and trends in the mental health profession legislatively or through regulations; and creates publications for consumers, applicants, registrants, and licensees.

The highest priority for the Board is protection of the public in exercising its licensing, regulatory, and disciplinary functions. Board members fulfill this mandate through policy decisions and voting on proposed disciplinary actions in which a licensee or registrant has violated the Board's laws.

BOARD STRATEGIC PLANNING

The Board will conduct periodic strategic planning sessions about every three years. Dates for these sessions will be announced well in advance.

To understand the environment in which the Board operates and to identify factors that could impact the Board's success, the Board conducts a scan of the internal and external environments by collecting information through interviews with board members, the executive officer, and members of board management. In addition to these interviews, an online survey is sent to external stakeholders and Board staff. The goal of these processes is to assess the challenges and opportunities the Board is facing or will face in the upcoming years.

The trends identified from the environmental scan are used for discussion in subsequent board meetings that are open to the public. During these meetings the Board reviews of its mission, vision, and values and creates strategic goals and objectives that are used for the final strategic plan.

BOARD 2022-2026 STRATEGIC PLAN GOALS

Focusing on its mission, the Board identified six goals in its 2022-2026 strategic plan:

Goal 1: (Licensing) Establish licensing standards to protect consumers and allow reasonable and timely access to the profession.

Goal 2: (Examination) Administer fair, valid, comprehensive and relevant licensing examinations.

Goal 3: (Enforcement) Protect the health and safety of consumers through the enforcement of laws.

Goal 4: (Legislation and Regulation) Ensure the statutes, regulations, policies, and procedures strengthen the Board mandates and mission.

Goal 5: (Organizational Effectiveness) Build an excellent organization through proper Board governance, effective leadership, and responsible management.

Goal 6: (Outreach and Education) Engage stakeholders through continuous communication about the practice and regulation of the professions, and mental health care.

See Attachment A: Board of Behavioral Sciences Strategic Plan 2022-2026

CHAPTER 2: BOARD MEMBERS AND STAFF

BOARD MEMBERS (B&P 4990)

The Board is comprised of thirteen (13) members; two (2) Licensed Clinical Social Workers, one (1) Licensed Educational Psychologist, two (2) Licensed Marriage and Family Therapists, one (1) Licensed Professional Clinical Counselor, and seven (7) members of the public. Each licensed member must possess a master's degree from an accredited college or university and shall have at least two years of experience in his or her profession.

See Attachment B: Board Member Roster

BOARD MEMBER RESPONSIBILITIES

Whether you are attending a public board meeting or an event/activity unrelated to the Board, your role as a Board Member is continuous. The public perceives you as the "Board" and this perception will not end until your service on the Board is concluded. Therefore, it is important that your actions and conduct are a positive reflection upon the Board, and ultimately the Governor of California.

As a Board member you have a responsibility to several groups:

The General Public. Consumers expect that licensees will be qualified to perform properly and safely. They expect there to be a fair method of settling disputes that may arise with a licensed practitioner. They have a right to understand what is going on with the Board and how the Board makes decisions.

Potential Licensees. A person who wishes to become licensed should not be kept from denied a licensure for unreasonable reasons. The potential access should have access to comprehensive information that explains the licensure requirements. This will assist them if licensure is a potential option.

Other Board Members. You have the responsibility to listen and consider their views. You are responsible to work as a Board to determine appropriate policies to protect consumers and allow the Board to operate most effectively and efficiently.

Respondents/Probationers. You are responsible for reviewing and voting on disciplinary matters in a timely basis.

BOARD MEMBER TOP TEN TRAITS

1. **Think Public Protection:** Public protection is the Board's highest priority. Board members should consider issues before the Board from a point of view of their impact on consumers of the service rather than from a point of view of the professional licensee. The decisions should seek to increase public safety, but also take into consideration the impact a policy change may restrict or place an increased burdens on licensees.
2. **Put Principles Before Personalities:** Board members must practice honesty, tolerance, and patience with everyone-members of the public, fellow board members and staff. Treat others as you would expect to be treated.
3. **Be Objective:** Keep an open mind and be accepting of the opportunity to learn, grow and change.
4. **Build Relationships:** Get to know your executive officer and fellow board members and learn about their expertise and experiences.
5. **Always do Your Homework:** Be prepared to work hard and review all board meeting materials before the meetings. Seek a better understanding of the board's laws, regulations, policies, and licensing processes. Immerse yourself in what the board does, its mission, staffing structure, and priorities.
6. **Attend all Board Meeting:** You have valued skills and were selected to serve by the Senate, Assembly, or governor. Attend, pay attention and participate fully.
7. **Communicate and Ask Questions:** Listen and know the right questions to ask at board meetings to obtain the information you need to make good decisions.
8. **Be Aware of Conflicts of Interest:** Always be aware of real or perceived conflicts of interest. When an issue arises, inquire with your board counsel or the DCA ethics officer as to what course of action to take. Complete the Form 700 Statement of Economic Interests upon assuming your appointment, annually Each April 1 and upon leaving the board. Also, complete ethics training every two years.
9. **Work as a Team:** Check personal agendas at the door. Work together and draw from the strengths of other board members. Remember that the Board makes policy decisions; individuals do not.

10. **Use Your Resources:** Call upon your executive officer, DCA deputy, Legal affairs and the Board's executive liaison with your questions and concerns.

BOARD CHAIRPERSON

The Board shall elect a Chair and a Vice Chair from its membership. Not later than the first of June of each calendar year, the Board shall elect the officers. Officers shall serve terms of one year and may be re-elected to consecutive terms. The election of officers occurs at the May Board meeting. If for any reason the Chair of the Board is unable to continue in his/her role as Chair, the Vice Chair shall immediately assume the duties of Chair until the next election of officers.

See Attachment C: Board Policy #B-15-3, Succession of Officers.

BOARD CHAIRPERSON DUTIES

The Board Chairperson is responsible for the following:

- Spokesperson for the Board (may attend legislative hearings and testify on behalf of the Board, may attend meetings with DCA or Agency, may attend meetings with stakeholders and legislators)
- Meets and communicates with the Executive Officer on a regular basis
- Authors a Board Chair message for every quarterly newsletter
- Communicates with other Board Members for Board business
- Chairs and facilitates Board meetings
- Assigns Board Members to Board Committees, appoints the Chair for the Committee

In the absence of the Board Chair, the Board Vice Chair will perform the above duties.

COMMITTEES & COMMITTEE CHAIRPERSONS

Committees are created by and appointed at the discretion of the Board Chair. The Committee Chair is appointed by the Board Chair. Board Members who desire to serve on an existing committee or a future committee are encouraged to speak to the Board Chair. Committees are composed of a minimum of three members.

See Attachment D: Current Board Committees and Members

BOARD STAFF

Board Members are responsible for formulating decisions on Board policies and the board executive officer and board staff members are responsible for ensuring that Board members have the necessary information to make sound policy decisions. Additionally, the board executive officer and board staff are responsible for implementing the policies formulated by the Board members. Strategies for the day-to-day management of Board programs and Board staff is the responsibility of the Executive Officer.

Employees of the Board, except for the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and condition of employment are governed by a myriad of civil service laws and regulations, and often by collective bargaining labor agreements. Due to this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer.

BOARD EXECUTIVE OFFICER (BPC SECTION 4990.04)

The Executive Officer is appointed by and serves at the pleasure of the Board and is exempt from civil service. The Executive Officer shall exercise the powers and perform the duties delegated by the Board. The Executive Officer is responsible for the financial operations and integrity of the Board and is the official custodian of records. Annually, around October of each year, the Board Members will conduct a review of the Executive Officer's performance. The Board Chair will meet with the Executive Officer to discuss the performance appraisal.

BOARD ASSISTANT EXECUTIVE OFFICER

The Board's Assistant Executive Officer is responsible for managing the day-to-day functions of the Board and performs the Executive Officer's function when necessary.

BOARD PROGRAMATIC UNITS

The Board organizes its day-to-day function into nine programmatic units: administrative, cashiering, registration, registration, licensing, examination, criminal conviction, consumer complaint, discipline and probation, and legislation. The Board staff consists of 62+ fulltime employees that are managed by 7+ managers.

See Attachment E: Board Organizational Chart

CHAPTER 3: MEETINGS

BOARD MEETINGS

Business and Professions Code Section 101.7 requires the Board to meet at least two times per calendar year; holding at least one meeting in Northern California and one meeting in Southern California. The Board schedules four meetings usually in February/March, May, August/September, and November. The meetings are two or three days in duration. A two-day meeting is scheduled on Thursday and Friday. A three-day meeting is scheduled on Wednesday through Friday. The number of disciplinary matters and petitioners determine if two or three days are necessary.

The meeting dates are coordinated with the Board Chair, Vice Chair, and the upcoming legislative calendar. The meeting dates are announced prior to the August/September Board meeting.

BOARD MEETING FORMAT

The first day of the Board meeting (or two days if a three-day meeting is held) is reserved for all disciplinary matters and always includes a closed session. The closed session permits the Board to deliberate and render a decision on all disciplinary matters. The last day of the meeting is reserved for all Board business. At all Board meetings, Board Members are provided with a quarterly report regarding the Board's operations, statistics, and budget. All open sessions of the Board meetings are webcast.

COMMITTEE MEETINGS

The Board has one standing committee: The Policy and Advocacy Committee. The Policy and Advocacy Committee is comprised of a minimum of three Board Members. This Committee meets at least three times a year to discuss all legislative and rulemaking proposals. The meeting dates are coordinated with the Chair of the Committee and occur prior to the Board meeting. As needed, ad-hoc committees are established to address specific topic areas. The number of members on an ad-hoc committee ranges from two to four Board Members. All committee chairpersons and committee members are appointed by the Board Chair.

COMMITTEE MEETING FORMAT

Committee meetings are scheduled for one day. At all committee meetings, the members and the public discuss items on the meeting notice. The committee members will vote to recommend a position to the Board. The recommendation is presented at the next Board meeting. Alternatively, the committee members may direct Board staff to complete specified tasks and present the findings at a following committee meeting.

Members not on the committee can attend as part of the public but will not be able to vote on any recommendations.

MEETING ATTENDANCE (BOARD POLICY #B-15-1)

Board Members shall attend each meeting of the Board and their assigned committee. If a member is unable to attend, they must contact the Board Chair or the Executive Officer and ask to be excused from the meeting for a specific reason.

All meeting minutes will reflect Board Member attendance including when a member is excused or absent from the meeting.

See Attachment F: Board Policy #B-15-1, Board Member Attendance.

MEETING QUORUM

A quorum of the Board or Committee must be present to constitute an act and/or decision on behalf to the Board. If a quorum of the Board is not present, the meeting is canceled.

Quorum for a Board meeting is seven (7) members. Committee meetings require a majority of the Committee membership. For example, in committees comprised of three members, two members must be present.

MEETING AGENDAS

Meeting agendas are required to be published no less than ten calendar days before the meeting. Any discussions that occur in board or committee meetings must be related to the agenda topics. Any Board Member may suggest items for a meeting agenda to the Executive Officer or during the “Suggestion for Future Agenda Topics” that is part of each meeting. The Executive Officer sets the agenda at the direction and approval of the Board Chair or Committee Chairperson.

MEETING MATERIALS (BOARD PROCEDURE)

The Board staff prepares all materials for Board and Committee meetings. Board meeting materials are available electronically to all members. Board and Committee Members will receive all related material in advance of each meeting. To engage in a meaningful discussion to determine a recommendation or position, Board and Committee Members should thoroughly review all meeting materials prior to each meeting.

RECORD OF MEETING (BOARD PROCEDURE)

Board minutes are a summary, not a transcript, of each board meeting. The minutes are prepared and submitted for review by Board Members before the next board meeting. Board minutes are approved at the next scheduled meeting of the Board. The purpose of reviewing and approving the minutes at a Board meeting is not to approve of actions taken by the Board at the previous meeting, but rather to determine whether the minutes as drafted accurately reflect the Board’s discussion at the previous meeting. When approved, the minutes shall serve as the official record of the meeting.

MEETING RULES

The Board generally uses Robert’s Rules of Order as a guide for conducting its meetings, to the extent that this does not conflict with state law. More information regarding Robert’s Rules of Order is provided in Chapter 4.

CHAPTER 4: BOARD MEMBER ROLE – POLICY DECISIONS

HIGHEST PRIORITY FOR POLICY DECISIONS

Protection of the public is the highest priority for a Board Member. Board Members achieve this mandate by establishing policies that affect the 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.

STATUTES V. REGULATION

The Board formulates and establishes two types of laws. Statutes are enacted via the Legislature, and typically must be signed by the Governor. A bill must be successfully run to enact a statute. Regulations implement, interpret, or make statutes more specific. They are enacted via the Executive Branch (state agencies).

STEP 1: POLICY DISCUSSION

At each Board and Committee meeting, Board Members are presented proposals to modify or add to existing statutes and laws affecting the licenses and registrants governed by the Board. Each meeting packet will contain information relevant to the discussion, such as an analysis of the proposed bill or suggested language to modify an existing statute.

The meeting allows for Board Members and stakeholders to engage in an open discussion regarding the proposal. Below is a list of questions that are helpful to consider when determining an action or position on the proposal.

CONSUMERS

- Does a consumer safety issue exist?
- Does the bill assist consumer access to services?
- Does the bill ensure their safety?
- Will the provisions provide them with more information?
- Does the bill directly or indirectly increase costs for the consumer?
- Is any added cost worth the increased protection provided by the bill?
- Is there a less costly way to achieve the goals of the bill?

LICENSEES

- Is the provision necessary to ensure that they are **minimally** competent to perform their scope of practice?
- Will the bill increase costs for the licensees?
- Does the bill increase barriers to entry for licensees?
- The bill should not be concerned with elevating licensees (trade associations).
- Is there a way to achieve the bill's goal that is less costly for the licensees?

BOARD IMPACT

- Will the bill be costlier for the Board?
- Does the Board have the staff, resources, and expertise to perform any proposed additional functions?
- Is the proposed additional function appropriate for the Board to perform?
- Will it result in a fee increase?
- Is there a way to achieve the bill's goal that is less costly to the Board?
- The discussion may result in the following action.
- Board staff is directed to make the suggested changes and bring the proposal back at a future meeting.

- Board staff is directed to gather additional information to present at a future meeting.

STEP 2: POLICY APPROVAL (MOTIONS)

The Board uses Robert's Rules of Order (Robert's Rules) as a guide when conducting its meetings to the extent it does not conflict with state law. The Board has not adopted Robert's Rules as its mandatory governing procedure for meetings, nor has the Board historically chosen to apply its strict provisions. The Board is free to adjust its practice for handling motions to promote effective deliberation and decision-making.

The Board's custom and practice has been to use the following process when dealing with amendments to motions:

1. Following Board Member and comments from the public, a motion is made and seconded.
2. Discussion between Board Members and request for additional public comments.
3. Request for motion to be amended or a competing motion is made
4. If the first Member agrees to the amendment, and the amended motion is seconded, then it proceeds to discussion between Board Members, public comment, and vote.
5. If the first Member withdraws the original motion, then a new motion can be made and seconded, and the new motion proceeds to Board discussion, public comment, and vote.
6. If the first Member does not agree to amend or withdraw the motion, then it proceeds to public comment and vote. If it fails, then a new motion may be made.

See Attachment G: Robert's Rules of Order Guide

POLICY DECISIONS: LEGISLATION

As a member of a state regulatory board, the Board's position on a bill proposal affecting Board licensees/registrants is important to legislators. Regulatory agencies, such as the Board, are viewed as the experts for the professions it regulates. In determining policy changes, the legislature relies on their staff and regulatory boards for input. The absence of a position on a bill proposal that affects the Board's licensees and registrants may result in unintended consequences. Therefore, it is important when considering a position to understand the position's definition.

LEGISLATIVE POSITIONS DEFINED	
Position	Definition
Support	The Board agrees with the proposal. The Board will send a letter of support to the author and actively participate in the legislation process to get the proposal in law.
Support, if amended	The Board is seeking some changes to the proposal. If the requested changes are made, the Board will move to a support position. If changes are not made, the Board will move to a neutral (silent) position on the proposal.
Oppose	The Board does not agree with the proposal. The Board will send a letter of opposition to the author and actively participate in the legislation process to prevent the bill from becoming law.
Oppose, unless amended	The Board is seeking some changes to the proposal. If the changes are not made, the Board will move to an oppose position. If the changes are made, the Board will move to a neutral (silent) position on the proposal.
Neutral	The Board neither supports or opposes the proposal. The Board does not participate in the legislative process.

CHAPTER 5: BOARD MEMBER ROLE – DISCIPLINARY PROCESS

DISCIPLINARY PROCESS OVERVIEW

Each year, the Board receives over 1,500 consumer complaints and nearly 1,200 criminal arrest notifications. Through the enforcement process, each consumer complaint and criminal arrest notification is reviewed to determine if the matter is within the Board's jurisdiction. If the complaint or conviction is determined to be within the Board's jurisdiction, the allegations are investigated to determine if evidence exists to substantiate a violation of the Board's laws and regulations.

All complaint cases in which the evidence substantiates a violation has occurred, are referred to Subject Matter Experts (SMEs). The SME is a licensee of the Board and will review the investigation and evidence to determine if the violation constitutes gross negligence, incompetence, and/or patient harm. Cases in which clear and convincing evidence substantiates a violation of the Board's laws and regulations, appropriate disciplinary action is initiated.

The Board has two options available to impose discipline against a licensee. In cases in which the violations do not warrant the revocation of a license, a citation and fine is issued. In cases in which the violations are egregious and warrant formal discipline of the license/registration, the Board forwards the matter to the Attorney General's (AG's) office to pursue formal disciplinary action. Each decision is made in consultation with the Executive Officer.

CITATION AND FINE

A citation and fine issued to the licensee is not considered a formal disciplinary action. However, the matter is an administrative action and is subject to public disclosure. The fines are set forth in law and range from \$100 to a maximum of \$2,500. In specific circumstances (e.g., fraudulent billing to an insurance company), a fine up to a maximum of \$5,000 may be issued. All citation and fines issued include an order of abatement in which the cited person must provide information or documentation that the violation has been corrected. The cited person is afforded the opportunity to appeal the issuance of the citation and fine.

The cited person may submit a written request for an administrative hearing or an informal citation conference. All informal citation conferences are conducted by the Assistant Executive Officer and the Enforcement Manager. The citation may be modified, affirmed, or dismissed. If the cited person wished to contest the affirmed or modified citation, the matter will be referred to an administrative hearing before an Administrative Law Judge (ALJ).

FORMAL DISCIPLINARY ACTION

If an investigation and evidence substantiate gross negligence, incompetence, or patient harm, the Enforcement Analyst, in consultation with the Enforcement Manager and Executive Officer, determines whether the case should be forwarded to the AG's Office for formal disciplinary action.

Formal charges are almost always filed in cases in which the health and safety of the consumer has been compromised, and in which clear and convincing evidence can be established. The Board's Executive Officer determines whether to file formal charges for any violation of the Board's licensing laws. These formal charges are referred to as pleadings. In each pleading, the Executive Officer is the complainant. The Deputy Attorney General (DAG) assigned to the matter represents the Board.

PLEADINGS

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

In all formal disciplinary actions, the respondent is formally notified of the Board's proposed action, their rights under the law, and a due date to respond to the Board's notification.

ADMINISTRATIVE HEARINGS

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 will consider all the testimony and evidence and will prepare a Proposed Decision. Once the hearing is finished, the ALJ has 30 days to prepare the Proposed Decision and send it to the Board.

The OAH is 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 at mediations held to resolve disputes between parties. The ALJs are fully independent of the agencies whose attorneys appear before them. The ALJs are required to have practiced law for at least five years before being appointed and typically have over ten years of experience.

STIPULATIONS (SETTLEMENTS)

The licensee/applicant and Board may decide to settle the case at any time during the administrative process. Settlements are negotiated and completed prior to the date of an administrative hearing. Although settlements prior to the scheduled hearing avoid the expense of a hearing; this is not a reason to settle a case. Settlements are considered in cases where the respondent has presented mitigating information/evidence to demonstrate that he/she may be a good candidate for probation.

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 later 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, lengthy appeals are avoided, and the Board and respondent save time and money. Further, a licensee on probation is closely monitored by the Board.

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 Executive Officer, the respondent, respondent's attorney, and an ALJ.

If the parties are not able to agree on the proposed settlement terms, the matter will move forward to a hearing held at the Office of Administrative Hearings.

STIPULATIONS (SETTLEMENTS)-DECIDING ON TERMS

Stipulations (settlements) are negotiated by the DAG (in consultation with the Executive Officer), the respondent, and the respondent's legal counsel. Stipulation terms are provided to the DAG utilizing the Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (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 Executive Officer to arrive at a stipulation that will be acceptable to the Board. The Executive Officer considers 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
- 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 of respondent's wrongdoing and demonstration of corrective action to prevent recurrence

The Board's Disciplinary Guidelines were established to 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 considers 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.

See Attachment H: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

FORMAL DISCIPLINARY CASE OUTCOMES

The Board refers over 100 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 or registration is restored without restrictions. However, the discipline will remain part of the individual's record indefinitely.

FORMAL DISCIPLINE OUTCOME-DEFAULT DECISION

If an accusation is returned by the post office as unclaimed, the service is not possible because the Board does not know the whereabouts of a respondent. The respondent is considered to be in default. A respondent is also considered to be in default if the respondent fails to file a Notice of Defense upon receipt of the Accusation or Statement of Issues or fails to appear personally or through counsel at the hearing.

Default cases result in revocation of the license or denial of the application. The Board Members have delegated the authority to adopt a Default Decision to the Executive Officer. Within 7 days from the service date of the Default Decision, the respondent may serve a written request to vacate the decision. This request is presented to the Board Members to determine if they wish to grant the request.

FORMAL DISCIPLINE OUTCOME-PROBATION

Licensees who are placed on probation are monitored by the Board. The average length of probation is 3.9 years. Upon successful completion of probation, the license is restored and is unrestricted.

A probationary file is established to monitor an individual's compliance with the probation requirements (e.g., cost recovery payments, remedial education course completion, and quarterly reports). 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 is included that provides for automatic revocation of a license if certain conditions of probation are not met.

FORMAL DISCIPLINE OUTCOME-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, registrant, 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.

CHAPTER 6: BOARD MEMBER ROLE - DISCIPLINARY CASE REVIEW

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, reject, or hold for discussion. The decision on each case is based on a majority vote of the Board except for the vote to HOLD which requires two votes to hold a case for discussion.

BOARD VOTE PROCESS

Proposed Decisions (decision from the ALJ) and Proposed Stipulations (negotiated settlements) are uploaded to the Board via the BOX for their consideration and vote. Staff will notify the Board members through email the cases needing a vote and the deadlines to submit votes. Materials are confidential and include the following:

- Memo from enforcement manager listing the cases for review and decision
- Instructions to submit their vote and the definitions of each voting option
- Legal documents (Proposed Decision or Proposed Stipulation, and Default Decision)
- Memo from the assigned DAG (Proposed Stipulated Settlement cases only)
- Memo from the Board's legal counsel, when necessary

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. Voting members may not communicate with each other and may not contact the DAG, respondent, anyone representing respondent, any witnesses, the complainant, the ALJ, or anyone else associated with the case.

If a Board Member has any procedural questions, or any question specifically related to the cases, the questions should be directed to the Board's legal counsel.

Completed votes are due at the Board office no later than the due date indicated. To complete the voting process the Board member will reply to the assigned staff member with their votes for each case. The due dates are established in accordance with the timelines indicated in the Administrative Procedure Act (APA). It may be that your vote is the deciding vote in the outcome of a case. Therefore, it is critical that Board Members return their votes timely.

BOARD VOTE OPTIONS

Below are the Board vote options and their definition:

Board Vote: Stipulation & Proposed Decision Votes Defined	
Position	Definition
Adopt	A vote to adopt the proposed action means that you agree with the action as written.
Non-Adopt/Reject	A vote to non-adopt/reject the proposed action means that you disagree with one or more portions of the proposed action and do not want it adopted as the Board's decision. However, a majority vote to adopt will prevail over a minority vote to reject.
Hold for Discussion	A vote to hold for discussion may be made if you wish to have some part of the action changed in some way (increase penalty, reduce penalty, etc.). For example, you may believe an additional or a different term or condition of probation should be added, or that a period of suspension should be longer. At least TWO votes in this category must be received to stop the process until the Board can consider the case in closed session at the Board meeting. A member must indicated their reason for wanting to hold the case for discussion.

STIPULATIONS (PROPOSED SETTLEMENT) VOTE OUTCOMES

Board Vote: Stipulation & Proposed Decision Votes Outcome Defined	
Position	Definition
Adopt	If the decision of the Board is to adopt the terms proposed in the Stipulation, the respondent is served the final decision and the decision becomes effective 30 days from the Order date.
Non-Adopt/Reject	If the Board decides to reject the stipulation, the respondent is notified, and the matter resumes the process for a formal administrative hearing before an ALJ. Following the hearing, the ALJ will issue a Proposed Decision for the Board Members to consider.
Hold for Discussion	A Board Member may be unable to decide due to concerns or desire further clarification. <i>(Note: A Board Member may seek procedural clarification from the Board's legal counsel.)</i> In this situation, the Board Member may choose to hold the case for discussion citing the reasons for this vote. If two or more Board Members vote to hold the case for discussion, the case is discussed in the next available meeting during a closed session. If only one Board Member votes to hold the case for discussion, the case <u>is not</u> held for discussion and the majority decision of the remaining Board Members prevails.

PROPOSED DECISIONS (DECISION FROM THE ALJ FOLLOWING A FORMAL HEARING) VOTE OUTCOMES

Proposed Decisions are subject to a specified timeline pursuant to the APA. The Board has 100 days after receiving the Proposed Decision to either adopt or reject the Proposed Decision.

Board Vote: Proposed Decision Pocess Defined	
Position	Definition
Adopt	If the Board Members decide to adopt the Proposed Decision, the respondent is served the final decision and the decision becomes effective 30 days from the Order date.
Non-Adopt/Reject	If the Board Members do not agree with any aspect of the ALJ's Proposed Decision, they may reject the Proposed Decision. In this situation, the respondent is notified by Order of Rejection. Board staff will order the administrative hearing transcripts and request written arguments from the respondent. Board Members review the totality of the case including the transcripts and written arguments and meet in a closed session Board meeting with legal counsel to write their decision. The Board uses the Disciplinary Guidelines and applicable law when making such decisions. The Board's decision (Decision After Rejection) is then adopted and served to respondent as the final decision

DISQUALIFICATION – MAY NOT PARTICIPATE IN CASE DECISION

With some limited exception, a Board Member cannot decide a case if that 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 DCA legal counsel for guidance.

RECUSAL FROM CASE DECISION

If the Board Member knows the respondent and/or is familiar with facts/circumstances regarding the action that lead to the disciplinary matter, the Board Member shall consult with legal counsel regarding the Board Member's ability to participate in the case decision.

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 Board staff member who has not been an investigator, prosecutor, or advocate in the case; however, 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.

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.

CHAPTER 7: BOARD MEMBER ROLE-PETITION HEARINGS

PETITION HEARING OVERVIEW

The first day of the Board meeting consists of requests from probationers to modify the terms of their probation or from licensees seeking to reinstate their license. These individuals submit a request to the Board and include all documentation to support their request. Board staff will review all documentation to determine if the individual is eligible to make the request. If so, the individual will be scheduled to appear at an upcoming Board meeting or, in some instances, the case will proceed to OAH to be heard by an ALJ.

Prior to the Board meeting, Board staff will prepare the petition package, include all relevant documentation. All materials will be uploaded to the Board's Box account and will be viewable to Board members. Board Members should review the package thoroughly, noting any questions they may have about the documentation.

The petition hearings are conducted during an open session of the Board Meeting with an ALJ presiding. A court reporter is present to document the testimony. Unless otherwise indicated, all testimony, questions, and comments are part of the record. The hearing format begins with the ALJ announcing the petitioner's name and case number. The ALJ will explain the hearing process to the petitioner and ascertain if the petitioner has any questions. Once the ALJ is satisfied that the petitioner understands the process, the ALJ begins the hearing.

First, the DAG appears on behalf of the Board and introduces the case. The DAG provides the history of the conduct that resulted in probation or license revocation and introduces the relevant evidence. The DAG will question the petitioner regarding their request, supporting documentation, and rehabilitation efforts. The DAG's questions may occur either before or after the Board Members question the petitioner.

Next, the petitioner is provided an opportunity to testify in support of their request. The petitioner may or may not be represented by an attorney. The petitioner often reads a prepared statement or speaks freely. The petitioner may, or may not, call witnesses to provide testimony in support of the petitioner's request.

Following the petitioner's testimony, each Board Member is provided the opportunity to question the petitioner.

QUESTIONS FOR PETITIONERS

In your role to protect the public, it is critical to determine the following:

- Will the public be protected without the current restrictions?
- Will the petitioner deliver clinical services safely to the public?

Your decision must be based on the evidence before you: the petitioner's supporting documentation, petitioner's testimony, witness testimony, and rehabilitation. All questions to the petitioner should be related to documentation in the petitioner's packet and testimony provided by the petitioner.

Frequently, Board Members may inquire about the following topics:

- Inconsistencies in the documentation
- Inconsistencies or clarification related to the petitioner's testimony
- Incidents of non-compliance with probation
- Efforts related to rehabilitation and support systems
- Petitioner's efforts to practice self-care and good physical and mental health.
- Petitioner's personal growth while on probation
- What assurance does the petitioner offer that the incident will not reoccur?

These types of questions are appropriate and often, the responses aid in determining the petitioner's ability to safely practice.

Board Members should exercise caution to avoid inquiries that are not appropriate. For example, it is best to avoid questions that:

- attempt to relitigate the matter that led to the probation or revocation.
- may compel the petitioner to disclose a medical condition or physical disability.
- may compel the petitioner to disclose a protected group category (e.g., age, race, religion, sexual orientation).

CLOSED SESSION DELIBERATIONS

Upon conclusion of the hearing, the Board Members, ALJ, Board legal counsel, and a Board staff member will meet in closed session to discuss whether to grant the petitioner's request.

CHAPTER 8: MEETING REQUIREMENTS

BAGLEY-KEENE OPEN MEETING ACT

The Bagley-Keene Open Meeting Act (*Government Code Section 11120 et seq.*) directs that the people's business must be conducted openly. Therefore, decisions and actions by a public agency must be conducted openly so that the public may be informed. The Board achieves this legislative mandate by complying with all the requirements specified in the Bagley-Keene Open Meeting Act.

The Board has three duties under the Open Meeting Act: provide notice of meetings, provide opportunity for public comment, and conduct public meetings.

DEFINITION OF A MEETING (GOVERNMENT CODE SECTION 11122.5)

A meeting is defined in the Bagley-Keene Open Meeting Act (Open Meeting Act) as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." In this definition, the term "state body" refers to the Board.

The meeting definition also applies to all communication between Board Members (e.g., emails, telephone calls, texts, dining conversations) if the total number of Board Members involved in the communication is a majority of the Board or a Committee. If Board Members engage in any communication regarding Board business with more than one member, this communication is a violation of the Open Meeting Act. The violating members may be guilty of a misdemeanor (*Government Code Section 11130.7*).

There are some exemptions to the meeting definition. Please refer to the Bagley-Keene Open Meeting Act for clarification. When in doubt, contact the Executive Officer or the Board's legal counsel.

Please refer to Attachment I: Guide to the Bagley-Keene Open Meeting Act.

TELECONFERENCE MEETINGS (GOVERNMENT CODE SECTION 11123)

The Board may opt to hold a meeting via teleconference. This type of meeting is frequently held to discuss a single topic and when the discussion is anticipated to be less than 60 minutes. Meetings held via teleconference are also subject to the same notice requirements under the Open Meeting Act.

The meeting notice must be published at least ten days in advance and must include the physical location of each Board Member attending the meeting remotely. The Board Member must be present at the physical location he or she provided for the meeting notice. The public is permitted to attend the meeting at any of the locations listed on the meeting notice during an open session of the meeting.

Therefore, each Board Member must confirm that the physical location used for the teleconference meeting is ADA accessible. The public is not permitted to attend any part of the meeting that is designated as "closed session."

MEETING NOTICE REQUIREMENTS (GOVERNMENT CODE SECTION 11125)

The Board must give adequate notice of meetings to be held. The Board meets this duty at the time the meeting notice is published. The Board must give at least ten calendar day's written notice of each Board and Committee meeting. This notice is posted on the Board's website. The meeting notice includes the location(s) where the meeting will be held and the meeting agenda.

The agenda must include all items of business to be transacted or discussed at the meeting. A brief description of the item to be discussed at the meeting is required. The description may not be generalized (i.e., miscellaneous topics or old business) and must provide sufficient information so that the public is aware of the item to be discussed.

The notice must include the name, address, and telephone number of any person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. Additionally, the notice must contain information that would enable a person with a disability to know how, to whom, and by when a request can be made for any disability-related accommodation, including auxiliary aids or services.

A meeting notice, once posted, may not be revised after the tenth day prior to the meeting date.

OPPORTUNITY FOR PUBLIC COMMENT (GOVERNMENT CODE SECTION 11125.7)

The Board meeting must provide an opportunity for public comment. The Board solicits public comment for each topic on the agenda and after a motion is made. Additionally, every Board and Committee meeting agenda contains an agenda item that allows for public comment and matters not on the agenda. Board Members may not act or discuss matters presented by the public under these agenda items. The matter may be suggested for a future agenda item or for follow-up by Board staff.

PUBLIC MEETINGS

The Board must conduct the meetings in an open session except where a closed session is specifically authorized. All Board and Committee meetings, except for a closed session, are open to the public. Closed session meetings must follow the same meeting notice requirements and are held specifically for matters designated under law, such as discussion of disciplinary cases, pending litigation, and personnel matters.

CHAPTER 9: BOARD MEMBER TRAVEL

TRAVEL POLICIES

Board Members will be reimbursed for travel expenses related to all Board and Committee meetings. Reimbursement will be in accordance with current state travel reimbursement policies. Please refer to the Department of Consumer Affairs Travel Guide for specific travel guidelines and reimbursement policies.

Please refer to Attachment J: Department of Consumer Affairs Travel Guide.

TRAVEL APPROVAL (STATE ADMINISTRATIVE MANUAL SECTION 700 ET SEQ.)

Travel related to Board and Committee meetings do not need approval. All other travel related to Board business must be approved by the Department of Consumer Affairs (DCA) prior to the event. This includes any out-of-state travel. Under specific circumstances, a Board Member may travel to attend a national association meeting. Please contact the Executive Officer for further information.

TRAVEL ARRANGEMENTS (DEPARTMENT PROCEDURE/BOARD PROCEDURE)

Board Members should always contact Christina Kitamura to make travel arrangements for Board and Committee meetings. Ms. Kitamura will book flights, and hotel and rental car reservations. A hotel that honors the state government employee rate will be chosen for all Board Members needing a room. Rental cars will be reserved for Board Members when a car is needed. To encourage ride sharing, vans or large sedans are reserved. Board Members may also use taxi, ride sharing services such as Uber or Lyft, shuttle service, or a personal vehicle for transportation.

To facilitate easier travel planning, all Board Members should provide Ms. Kitamura with their credit card information and Southwest Rapid Rewards number. This information will be kept in a secure location and will be kept on file for future travel arrangements.

All travel and transportation arrangements are made in compliance with state travel guidelines. Any expenses incurred by a Board Member, which were not previously approved or within the state travel guidelines, may require written justification. The written justification will be submitted with the travel claim and is subject to the appropriate approvals. The expense may or may not be approved.

TRAVEL REIMBURSEMENT POLICIES EXEMPTIONS

LODGING EXEMPTION

State guidelines generally prohibit reimbursement for hotel expenses within 50 miles of an individual's home address or an extra night stay following the conclusion of the Board activity. However, an exception to this guideline may be obtained if the circumstances necessitate an overnight stay.

AIRPORT PARKING REIMBURSEMENT EXEMPTION

State guidelines strongly encourage the use of the least expensive parking available. However, if the Board determines that additional parking costs above the lowest-cost option are in the best interest of the State, a written justification explaining the necessity for the additional cost must be submitted with the travel claim.

TRAVEL CLAIMS (DEPARTMENT POLICY)

Rules governing reimbursement of travel and meeting expenses for Board Members are the same as for state management-level staff. All expenses must be claimed on the appropriate travel expense claim forms. All travel claim forms must be submitted to Christina Kitamura for processing.

Board Members are strongly encouraged to submit their travel expense forms immediately after returning from a trip and not later than the 15th of the month following the trip. It is also necessary to submit original receipts for expenses claimed such as parking, transportation service, bridge tolls, and flight itineraries. Hotel receipts must reflect a zero balance. Receipts for meals are not required for reimbursement.

Please refer to Attachment K: Travel Expense Claim Form.

CHAPTER 10: BOARD MEMBER PER DIEM (BPC SECTION 103, BOARD POLICY #B-15-2)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board Members is regulated by Business and Professions Code Section 103. This section provides for payment of salary per diem for Board Members “for each day actually spent in the discharge of official duties,” and provides that the Board Member “shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.”

Board Members fill non-salaried positions but are paid \$100 per day for each meeting day or 8-hour day spent performing Board business. Board Members are advised to submit the Per Diem Claim Form not later than the 5th day of the following month. This allows board staff to promptly process all per diem claims. Timely submission of all claims ensures prompt processing for reimbursements and avoids extra work for Board staff.

See Attachment L: Per Diem Claim Form.
See Attachment M: Per Diem Policy.

CHAPTER 11: BOARD MEMBER ADDRESSES & BUSINESS CARDS

BOARD MEMBER ADDRESSES (DCA POLICY)

Board Member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority by the individual Board Member.

A roster of Board Members is maintained for public distribution and is placed on the Board's website, using the Board of Behavioral Sciences' office address and telephone number.

CHAPTER 12: OTHER POLICIES AND PROCEDURES

PUBLIC RECORDS ACT AND COMPLAINT DISCLOSURE

The California Public Records Act (PRA), Government Code Section 6250 et seq., requires public records to be available upon request. The PRA provides for specific timelines and general process to respond to a request for public records. Further, Government Code Section 6254 specifies which records are not subject to public disclosure. As a state regulatory board within DCA, the Board is subject to the requirements for all public record requests. The Board's response is coordinated with its DCA legal counsel.

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

IMMUNITY FROM LIABILITY

There are many provisions in state law relating to the liability of public agencies and employees. Government Code Section 818.4 states, "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." Government Code Section 821.2 states, "A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

Many other complex provisions relate to defense, payment of a judgment or settlement, and indemnification. Specific questions should be discussed with the Board's legal counsel.

RESIGNATION OF BOARD MEMBERS (GOVERNMENT CODE SECTION 1750)

If it becomes necessary for a Board Member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the Director of DCA, the Board Chair, and the Executive Officer.

The departing Board Member is also required to complete and submit specific paperwork immediately following the effective date of the resignation. The departing Board Member is encouraged to contact Ms. Kitamura for further information.

REMOVAL OF BOARD MEMBERS (BPC 106)

The Governor has the power to remove from office, at any time, any member of any Board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

RULES FOR CONTACT WITH THE PUBLIC, A LICENSEE, AN APPLICANT, OR THE MEDIA

Occasionally, in your role as a Board Member, you may be contacted by a licensee, colleague, applicant, member of the public, or the media regarding an issue or concern that pertains to Board business or proceedings. Any one of these contacts may compromise your position relating to future decisions about policy, disciplinary actions, or other Board business.

To avoid compromising your role as a Board Member, please refrain from assisting the individual with his/her issue. Instead, offer to refer the matter to the Executive Officer or give the individual the contact information for the Executive Officer. Refrain from engaging in discussion with the individual and make every effort to end the conversation quickly and politely. Report all such contacts to the Executive Officer as soon as possible.

CONFLICT OF INTEREST (GOVERNMENT CODE SECTION 87100)

No Board Member may make, participate in making, or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has financial interest. Any Board Member, who has a financial interest that may be affected by a governmental decision, shall disqualify himself/herself from making or attempting to use his/her official position to influence the decision. Any Board Member who feels he/she is entering a situation where there is potential for a conflict of interest, should immediately consult the Executive Officer or the Board's legal counsel.

SERVICE OF LAWSUITS

Board Members may receive service of a lawsuit against themselves and the Board pertaining to a specific issue (e.g., a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the Board Member should accept service. Upon receipt, the Board Member should notify the Executive Officer of the service and indicate the name of the matter that was served, date and time of service, and any other pertinent information. The Board Member should mail the entire packet to the Executive Officer as soon as possible. In addition to mailing the packet, the Board Member should also scan and email the packet to the Executive Officer. The Board's legal counsel will provide instructions to the Board Members on what is required of them once service has been made.

EX PARTE COMMUNICATIONS (GOVERNMENT CODE SECTION 11430.10 ET SEQ.)

The Government Code contains provisions prohibiting *ex parte communications*. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative or if an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication."

An applicant who is formally being denied licensure, or a licensee/registrant against whom a disciplinary action is being taken, may attempt to directly contact Board Members.

If the communication is written, the member should read only enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, the Board Member should reseal the documents and send them to the Executive Officer or forward the email.

If the Board Member receives a telephone call from an applicant or licensee/registrant against whom an action is pending, the Board Member should immediately tell the person they cannot speak to the person about the matter. If the person insists on discussing the case, the person should be told that the Board Member will be required to recuse himself or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the licensee/registrant or applicant.

If the Board Member believes he or she has received an unlawful *ex parte* communication the Board Member should contact the Board's legal counsel and/or the Executive Officer.

CHAPTER 13: BOARD MEMBER REQUIRED TRAINING

Board Members are required to complete specific forms and training at various intervals during their appointment period. To ensure compliance and notification to the requisite agencies, all training certificates and required forms must be sent to Ms. Kitamura at the Board. The Sexual Harassment Prevention Training and registration for the Board Member Orientation Training are both accessed via the Learning Management System (LMS)

It is important that the Board have a copy of all required training and documents. This ensures that the Board has an accurate record that you have satisfied all requirements and are able to provide copies upon request. The following is the list of required training.

STATEMENT OF ECONOMIC INTEREST **[\(\[HTTP://WWW.FPPC.CA.GOV/FORM700.HTML\]\(http://www.fppc.ca.gov/form700.html\)\)](http://www.fppc.ca.gov/form700.html)**

This form is commonly referred to as Form 700 and is to be completed upon assuming the position, annually, and upon leaving. Under DCAs' Conflict of Interest Code, designated officials are required to complete a Statement of Economic Interests Form 700. Annually, DCA will send several reminders to complete this form with a link to the electronic filing system.

Failure to complete this form in a timely manner may result in a fine from the Fair Political Practice Commission. All fines are publicly noticed.

ETHICS ORIENTATION FOR STATE OFFICIALS (GOVERNMENT CODE SECTIONS 11146-11146.4)

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat the ethics orientation every two years throughout their term.

The training includes important information on activities or actions that are inappropriate or illegal. For example, public officials cannot take part in decisions that directly affect their own economic interests. They are prohibited from misusing public funds, accepting free travel and accepting honoraria. There are limits on gifts.

An online, interactive version of the training is available on the Attorney General's website at <https://oag.ca.gov/ethics/course>.

An accessible, text-only version of the materials is also available at the Attorney General's website.

Records concerning the attendance of this course must be kept on file for five years.

DCA BOARD MEMBER ORIENTATION TRAINING (BPC SECTION 453)

California Business and Professions Code Section 453 require every newly appointed member to complete a training and orientation program offered by DCA within one year of assuming office.

DCA has been advised that this statute also applies to all reappointed Board Members. Therefore, if you attended the training during your first term and are reappointed, you must attend the training following your reappointment. The training covers the functions, responsibilities and obligations that come with being a member of a DCA board. To receive credit for the training, Board Members must attend the entire day.

DCA schedules the Board Member Orientation Training (BMOT) sessions throughout the year. Specific locations are announced several months prior to the orientation.

SEXUAL HARASSMENT PREVENTION TRAINING (GOVERNMENT CODE SECTION 12950.1; CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 11024)

Section 12950.1 of the Government Code requires an employer having five or more employees to provide at least two hours of classroom or other interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. The employer shall provide sexual harassment training and education to each employee once every two years. New nonsupervisory employees shall be provided training within six months of hire. New supervisory employees shall be provided training within six months of the assumption of a supervisory position.

California Code of Regulations, Title 2, Section 11024 also specifies requirements of an employer to provide two hours of training mandated by Government Code 12950.1.

An online, two-hour Sexual Harassment Prevention Tutorial is provided by DCA.

CHAPTER 14: ADDITIONAL INFORMATION

- A. Board of Behavioral Sciences Strategic Plan 2022-2026
- B. Board Member Roster
- C. Board Policy #B-15-3, Successions of Officers
- D. Current Board Committees and Members
- E. Board Organizational Chart
- F. Board Policy #B-15-1, Board Member Attendance.
- G. Robert's Rules of Order Guide
- H. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.
- I. Guide to the Bagley-Keene Open Meeting Act
- J. Department of Consumer Affairs Travel Guide.
- K. Travel Expense Claim Form.
- L. Per Diem Claim Form
- M. Per Diem Policy
- N. Budget Cycle Overview
- O. Legislative Process Overview
- P. Regulation Process Phases
- Q. Enforcement Process Overview
- R. Helpful Websites