

TITLE 16. CALIFORNIA BOARD OF BEHAVIORAL SCIENCES

INITIAL STATEMENT OF REASONS

Hearing Date: The Board of Behavioral Sciences (Board) has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Sections Affected: Section 1888 of Division 18 of Title 16 of the California Code of Regulations (16 CCR).

INTRODUCTION AND PROBLEM STATEMENT:

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs) (Business and Professions Code (BPC) sections 4980 et seq.), Licensed Educational Psychologists (LEPs) (BPC sections 4989.10 et seq.), Licensed Clinical Social Workers (LCSWs) (BPC sections 4991 et seq.), and Licensed Professional Clinical Counselors (LPCCs) (BPC sections 4999.10 et seq.).

The Board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure. This includes registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs) and Associate Clinical Social Workers (ASWs), and applicants pending registration.

The Board is responsible for licensing and discipline of the above professionals and enforcement of Chapters 13, 13.5, 14 and 16 of Division 2 of the BPC which regulates the above professions as set forth in BPC section 4990.18. BPC section 4990.16 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions (BPC section 4990.16). Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

BPC section 4990.20 authorizes the Board, in accordance with the Administrative Procedure Act (APA) (Government Code section 11400 et seq.), to adopt, amend, or repeal rules and regulations that are reasonably necessary to administer and enforce the provisions of law that it administers and enforces. Government Code section 11425.50(e) specifies that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation in accordance with the APA.

Current law incorporates by reference into 16 CCR section 1888 the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” (Uniform Standards/Disciplinary Guidelines), last revised in December 2020. Current law also incorporates by reference the “Quarterly Report Form”, last revised January 12, 2001, within the Uniform Standards/Disciplinary Guidelines document.

16 CCR section 1888 requires the Board, in reaching a decision on a disciplinary action under the APA, to consider the Disciplinary Guidelines. The current Disciplinary Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that have occurred in the probationary environment.

The Uniform Standards contained within the Board’s Uniform Standards/Disciplinary Guidelines document is based on the “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” that was developed in response to Senate Bill 1441 (Statutes of 2008, Chapter 548), which created the Substance Abuse Coordination Committee (SACC), chaired by the Director of the Department of Consumer Affairs (DCA). The Committee formulated standards for healing arts Boards to use in dealing with substance-abusing licensees. The Uniform Standards document was originally published in April 2010 and was most recently revised in March 2019, with those revisions published to DCA Boards in March 2021. The Board is updating its incorporation of the revised Uniform Standards, and proposes other changes detailed herein.

If the Uniform Standards/Disciplinary Guidelines are amended, the corresponding regulation, 16 CCR section 1888, must also be amended to incorporate by reference the revised Uniform Standards/Disciplinary Guidelines as approved by the Board on August 18, 2023. The specific changes to the Disciplinary Guidelines and the reasons for those changes are provided in detail below.

ANTICIPATED BENEFITS OF THE REGULATIONS

The proposed amendments make the Uniform Standards and Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders for consistency, and strengthen consumer protection. The Board anticipates that the updated Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Attorneys General (AG), legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions and making improvements for readability and inclusivity. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the Administrative Law Judges (ALJs) who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable.

SPECIFIC CHANGES: PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT, OR REPEAL:

The Board proposes the following changes:

1. PROPOSED CHANGES TO 16 CCR SECTION 1888

Amend 16 CCR Section 1888: “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”

Purpose: In addition to a technical, non-substantive change to correct capitalization of the word “Section” in subsection (a), the Board proposes to amend the existing document incorporated by reference in this section entitled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” to reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in December 2020. Therefore, the revision date of this document must be changed. The existing date of December 2020 would be repealed under this proposal, and the new revision date will be specified by OAL based on the date that it determines this proposal becomes effective. In addition, the authority and reference citations have been amended to include relevant new statutes.

This section currently specifies that if a violation involves drugs and/or alcohol, then the violation “is a substance abuse violation” and if the licensee “does not rebut that the violation is a substance abuse violation” then the Uniform Standards shall apply without deviation. The proposed amendment would modify this text to say that such a violation is “presumed to be” a substance abuse violation; and if the licensee does not “successfully” rebut the “presumption” that the violation is a substance abuse violation, then the Uniform Standards shall apply.

This proposal would also incorporate the “Quarterly Report Form”, last revised January 12, 2001, by reference into this section. This form is required to be completed by licensees on probation and submitted to the Board on a quarterly basis. The revision date will be specified by OAL based on the date that it determines this proposal becomes effective. This form is currently incorporated by reference into the Disciplinary Guidelines document, and not in any actual regulation section. This proposal would move that existing requirement for probationers to complete and submit quarterly reports using the prescribed form into the regulatory language of 16 CCR section 1888. Changes have also been proposed to the Quarterly Report form (see section ZZ below for greater detail on the purpose and rationale for that form).

Lastly, this proposal would add section 11519 of the Government Code as a reference.

Rationale: This section currently requires that the Uniform Standards be applied to every violation involving drugs or alcohol. After this language was initially adopted by the Board, the Attorney General’s Office issued a formal opinion (AG Opinion No. 13-02) which found that Boards must use the Uniform Standards in all cases which they apply, and that Boards may establish a regulation defining a “substance abusing licensee” for purpose of determining who is subject to the Uniform Standards, as long as the regulation is consistent with BPC section 315.

In light of the Attorney General’s (AG) opinion, and in the interests of avoiding confusion and more clearly specifying how a determination shall be made as to whether an individual is a “substance abusing licensee”, and when the Uniform Standards shall or shall not apply, the proposed changes specify that the violation is “presumed to be” a substance abuse violation and the Uniform Standards must be used unless a licensee or registrant “successfully” rebuts the “presumption” that the violation is a substance abuse violation.

The proposal will also ensure that the reference to the Uniform Standards/Disciplinary Guidelines reflects the correct version of the document, which helps to ensure that the correct version of this document is in use.

The proposal is also necessary update the authority and reference citations of section 1888 to include additional sources for the Board’s authority to discipline licensees. This includes adding BPC section 495 as an authority citation, adding BPC sections 495, 865.1 and 865.2 and Government code section 11519 to the reference citations. For greater notice to the public, these amendments clarify the Board’s authority to promulgate the Disciplinary Guidelines and the statutes that the regulation and the Disciplinary Guidelines, incorporated by reference, implement, interpret, and make specific.

The “Quarterly Report Form” is currently incorporated by reference into the Disciplinary Guidelines document. The quarterly reporting requirement and form is used by the Board as an important enforcement tool to monitor and evaluate a respondent’s progress while on probation with the Board. This proposal will require all probationers to submit this form to the Board into CCR section 1888 as a new subsection (d) (a requirement that is currently within Standard Term and Condition no. 18 “File Quarterly Reports”) and incorporate the form by reference into the actual regulation section rather than into the Disciplinary Guidelines, which is also incorporated by reference. This follows guidance from the Office of Administrative Law (OAL) that recommended the Board move the incorporation language from the Disciplinary Guidelines document (currently on p. 52, standard term no. 18 “File Quarterly Reports”) into the regulatory language for 16 CCR section 1888 to align more closely with the requirements for incorporating documents at Title 1, California Code of Regulations section 20. The Board asks OAL to insert the effective date of this document into the proposed revision date section of the form and requires licensees to obtain the form from the Board directly to help ensure adequate notice

to the regulated community regarding the most recent form; this also helps ensure that the latest version is being used by Board staff, Administrative Law Judges and respondents. These documents are incorporated by reference due to the length of the documents.

2. PROPOSED CHANGES TO UNIFORM STANDARDS/DISCIPLINARY GUIDELINES

A. Global Technical Changes to Uniform Standards/Disciplinary Guidelines

Purpose and Rationale: Minor technical changes are proposed to be made throughout the Uniform Standards/Disciplinary Guidelines to correct grammar, punctuation, syntax, and diction, including as described below:

1. Replace gendered terms with gender-neutral language for compliance with Assembly Concurrent Resolution No. 260 of 2018 (ACR 260), which states that “state agencies should ... use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.”
2. Strike the term “registration” in most places, as described in the note proposed to be added to the Introduction (p. 1) to help streamline the document for improved readability, and for consistency with BPC sections 23.7 and 23.8.
3. Add a shortform reference for Business and Professions Code, which is “B&P Code” for easier comprehension and more concise terminology throughout the Disciplinary Guidelines document.
4. Correct capitalization for accuracy, consistency and readability. This includes capitalization of the terms “section,” “Respondent,” “Order,” and “Decision” where appropriate for consistency with official Board orders and court documents.

B. Cover Page, Introduction, and Table of Contents (Cover and Pages 1-3)

Purpose and Rationale: The proposed changes would do all of the following:

- Amend the revision date as determined by OAL on the cover page of the Uniform Standards/Disciplinary Guidelines to ensure that the correct version of this document is in use and consistent with the title of the document referenced in 16 CCR section 1888.
- Update the table of contents to accurately reflect the titles proposed to be added or amended consistent with the proposed changes to those titles (as discussed further below) throughout the document, and with specific page numbers to be included after OAL approval to provide for ease of reference and to ensure that the document is user-friendly.
- Amend the Introduction (page 1) as follows:

- Change “controlled substance” to “drugs” to provide for consistency with section 1888. The term “drugs” is more accurate, as some drugs that are not controlled substances can be abused, such as certain over-the-counter products.
- Change the words “an identification” and replace it with the active verb “identifies” for greater comprehension.
- Add an abbreviation for the Business and Professions Code (BPC) to provide for improved readability.
- Add language to specify that the language for proposed terms and conditions are “divided into two categories, for purposes of this document, and further specify that the Model Disciplinary Orders section is divided into two categories: (1) Optional Terms and Conditions of probation which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of the case, and (2) Standard Terms and Conditions which generally appear in all cases involving probation. These changes provide clarity in the organization of the document and transparency by describing how the terms and conditions are to be applied. This also helps to ensure an understanding that the Deputy Attorney General (DAG) and/or Board should modify the list of Optional Terms and Conditions based on the specifics of each case, and that the Standard Terms and Conditions generally apply in each case involving probation.
- Inform readers that all disciplinary actions will be published on the Internet in compliance with BPC section 27 and to facilitate greater access under of the California Public Records Act. This provides for advance transparency since disciplinary actions are required to be posted by the Board in compliance with BPC section 27(b)(13) and are a matter of public record as per the requirements of the California Public Records Act (CPRA -- Government Code (GC), sections 7920.000 et seq.). The CPRA requires the Board to make all non-exempt public records (investigatory files are not exempt -- see GC section 7923.600) promptly available upon request to any person upon payment of specified fees (see GC section 7922.53).
- Add a note that all references to the word “license” or “licensee” throughout this document shall also be interpreted as meaning “registration” or “registrant” unless otherwise specified. This is necessary because all references to “registration” or “registrant” are proposed to be removed. This note promotes an understanding that references to “license” or “licensee” also mean “registration” or “registrant” unless otherwise specified and align with the use of such terminology as defined at BPC sections 23.7 and 23.8.

3. PROPOSED CHANGES TO UNIFORM STANDARDS

C. Global Change to Uniform Standards: Substance Abuse Disorders (Pages 4-14)

Purpose and Rationale: The proposed changes would make a global change throughout the Uniform Standards to change substance “abuse” disorder or disorders to substance “use” disorder or disorders to conform the phrase to the actual name of the diagnosis used by mental health professionals, and is a term used elsewhere in the Uniform Standards (see page 13 “Substance Use Disorder Not Diagnosed”).

D. Amend Introductory Paragraphs to Uniform Standards Related to Substance Abuse Section (Page 4): Uniform Standards

Purpose: The proposed amendments to the paragraphs prior to the “Clinical Diagnostic Evaluations” section add an introduction to the Uniform Standards that clarifies the process for determining whether a licensee is “a substance abusing licensee” consistent with section 1888, including the proposed changes to section 1888. The amendments would do all of the following:

1. Specify that whether the Board’s “Uniform Standards Related to Substance Abuse” (“Uniform Standards”) terms and conditions of probation apply depends on whether the licensee is found to be a substance abusing licensee.
2. Specify that, if applicable, the Uniform Standards shall be used in lieu of any similar standard or optional terms and conditions of probation proposed in the Guidelines unless otherwise specified, but that the standard and optional terms of probation should still be used in formulating the penalty or probationary order and in considering additional terms and conditions of probation appropriate for greater public protection.
3. Specify that if the conduct found to be a violation involves drugs or alcohol, then the violation is “presumed to be” a substance abuse violation for the purposes of BPC section 315.
4. Specify that if the licensee does not rebut the “presumption” then the “Uniform Standards” must be used without deviation. Also, conversely, if the licensee successfully rebuts the presumptive finding that the violation is a substance abuse violation, then the “Uniform Standards” do not have to be used.
5. Make changes to the paragraph below the subheading titled “Uniform Standards for Licensees or Registrants Whose License or Registration is on Probation due to a Substance Abuse Violation” to make non-substantive changes to the title to correct capitalization and remove the word “Registrants” and specify in the paragraph below the title that the Uniform Standards apply when a license is placed on probation “in whole or” in part due to a substance abuse violation, unless the licensee “successfully” rebuts “the presumption that” the violation is a substance abuse violation.

Rationale: Providing introductory paragraphs to the Uniform Standards will help provide notice to the regulated community regarding the “trigger” for implementation of the Uniform Standards and reinforce the requirement that the Uniform Standards must be used in all cases in which they apply. These changes will also help the reader understand the types of cases in which the Uniform Standards do and do not apply, consistent with CCR section 1888, including the proposed changes to CCR section 1888 (see Rationale in section 1 for the changes to CCR section 1888 that mirror language being included here).

Specifying that, in addition to the Uniform Standards, the Board’s standard and optional terms and conditions of probation should still be used, is necessary to help ensure that those who are formulating the penalty or probationary order (ALJs and Board members) consider the full range of possible terms and conditions of probation as appropriate for greater public protection.

The amendments to the paragraph below the subheading resolve potential confusion regarding whether the Uniform Standards must be applied in cases where a substance abuse violation is just one component of a case that includes other violations. The proposed changes are necessary to give adequate notice to the affected licensees that any case where a violation meeting the criteria in CCR section 1888 applies means that the Uniform Standards shall be used unless the licensee “successfully” rebuts the presumption that the violation is a substance abuse violation. This interpretation ensures compliance with the requirements of BPC section 315, which specifies that all healing arts boards, including this Board, “shall use” the Uniform Standards in dealing with substance-abusing licensees and in accordance with the advice of the Attorney General’s Office (see Underlying data).

E. Amend Clinical Diagnostic Evaluations and Clinical Diagnostic Evaluation Report Sections (Pages 4-6)

Purpose and Rationale: In addition to the amendments to remove references to “registrant”, add nongendered pronouns in place of gendered nouns and change wording to substance “use” disorders for the reasons noted above, the proposed amendments specify that practice restrictions apply to each licensee who “is ordered to” undergo a clinical diagnostic evaluation to give greater notice and greater understanding that such restrictions only apply to licensees who undergo an evaluation “ordered” by the Board. This requirement mirrors the standard prescribed by the SACC’s Uniform Standard #1 (see Underlying Data) and the existing requirements of this section set forth in the first sentence of this section.

For the Clinical Diagnostic Evaluation Report section, the amendments also specify that the evaluator shall not have a “current or prior” financial, personal, business, professional, “or therapeutic” relationship with the licensee, which helps to avoid a potentially biased evaluation and provides for consistency with current similar requirements for supervisors and chemical dependency support or recovery group

meeting facilitators within the Disciplinary Guidelines' terms and conditions of probation. Specifying that the evaluator shall not have a "therapeutic" relationship with the licensee helps to ensure greater notice and understanding that a therapeutic relationship is a type of professional relationship and is therefore prohibited, thus avoiding a potentially biased evaluation. The Board has had several instances of probationers proposing an evaluator whom they have seen for psychotherapy. This is counter to the Uniform Standards which specify that there shall be no "personal" or "business" relationship. However, probationers have argued that a personal or professional relationship is not the same as a therapeutic relationship.

Lastly, the language clarifies that a final written report shall be provided to the Board no later than 10 "calendar" days from the date the evaluator is assigned the ~~matter~~ evaluation. This provides greater notice and avoids confusion regarding the time frame and, in the Board's experience, provides a reasonable amount of time for such report to be provided. Changing "matter" to "evaluation" clarifies that the time frame is calculated based on when an evaluator is assigned the evaluation (they are not assigned a "matter"). The Board also proposes a grammatical addition of the word "a" before "like scope of practice in paragraph no. 2 of this section.

F. Amend Supervisor Requirements and Chemical Dependency Support or Recovery Group Meetings Standards (Pages 6-8)

Purpose and Rationale: In addition to the amendments to remove references to "registrant" and change wording to substance "use" disorders for the reasons noted above, the proposed amendments would clarify that a supervisor or group meeting facilitator of a chemical dependency support or recovery group shall not have a current or former "therapeutic" relationship with the licensee. The current language prohibits a "professional" relationship. Specifying that the supervisor shall not have a "therapeutic" relationship with the licensee helps to avoid confusion and ensure greater understanding that a therapeutic relationship is a type of professional relationship and is therefore prohibited, thus avoiding potential bias on the part of the supervisor or meeting facilitator. The Board has had several instances of probationers proposing a supervisor or group meeting facilitator whom they have seen for psychotherapy. This is counter to the Uniform Standards which specify that there shall be no "personal" or "business" relationship. However, probationers have argued that a personal or professional relationship is not the same as a therapeutic relationship. The Board also proposes a grammatical addition of the letter "s" and an apostrophe after the word "licensee" as applicable in three paragraphs of this section for grammatical reasons.

G. Amend Chemical Dependency Support or Recovery Group Meetings and Major and Minor Violations Standards (Pages 8-9)

Purpose and Rationale: The proposed amendments make a correction changing "other nationally certified organizations" to "a nationally certified organization" and to

clarify that an unexcused “absence” at a required meeting is a minor violation to resolve wording errors that exist in the Uniform Standards. Changing “Be licensed or certified by the state or ~~other a~~ nationally certified organizations” is necessary because the state is not a nationally certified organization. Replacing “unexcused attendance” with “unexcused absence” (at a required meeting) is necessary because there is no such thing as “unexcused attendance”.

H. Amend Positive Test for Alcohol and/or a Controlled Substance and Drug Testing Standards (Pages 10-11)

Purpose and Rationale: In addition to grammatical changes to add “s” after licensee in the third bulleted sentence before the word “employer,” and make other non-substantive revisions as noted above, the proposed amendments specify that prior to vacation or absence, “any” alternative to the licensee’s drug testing ~~location(s)~~ requirements (including frequency) must be approved by the Board, and clarify that test results must be provided within 7 “calendar” days of receipt of the specimen.

Existing text in this section is derived from Uniform Standards #4 of the SACC’s document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” revised April 2011. The above-noted changes are necessary to update the standards consistent with the revised SACC Uniform Standards document and associated revisions to Uniform Standard #4 made by the SACC in March 2019, which include (SACC revisions adding text are in red, ~~strike through~~ and underline for comparison):

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

These conforming changes to this Uniform Standards condition will allow the Board to continue to monitor the probationer fairly and accurately in order to ascertain if they are substance and/or chemical free and in compliance with the minimum standards required to be used by the Board in accordance with BPC section 315.

The amendments are necessary to give notice and ensure greater understanding that a licensee must continue to comply with any and all drug testing requirements while on vacation or during another type of absence and brings the text into compliance with the “Uniform Standards for Substance Abusing Licensees” which was amended by the DCA SACC in March 2019, with those revisions released to DCA Boards in March 2021. The language of BPC section 315 is clear that the standards developed by DCA SACC are to be adopted: “...uniform standards that will be used by healing arts Boards.” (BPC section 315(a)). Adoption of the revision of this testing standard as set forth in the March 2019 Uniform Standards is necessary because this Board is required to adopt the Uniform Standards pursuant to BPC section 315 and has no discretion to not follow those standards once an individual has been determined to be a substance abuser according to the California

Attorney General's office (see Underlying Data).

Specifying that test results must be provided to the Board within 7 "calendar" days resolves ambiguity and provides notice about the time frame and, in the Board's experience, provides a reasonable amount of time for test results to be provided.

I. Amend Drug Testing Frequency Schedule and Drug Testing Frequency Schedule Exceptions Sections (Pages 11-13)

Purpose: In addition to changes to remove gendered pronouns and the word "registrant" or "registration" as noted above, the proposed amendments would do the following:

1. *Licensee Demonstrates Previous Testing and Sobriety:* Clarify that if the licensee can demonstrate previous testing and sobriety, the Board may consider altering the testing frequency schedule so that it is "equivalent to the standard to the schedule prescribed above". The proposed language refers to the chart on page 11.
2. *Violations Outside of Employment:* Add a number in parentheses (7).
3. *Not Employed in Health Care Field:* Clarify that the time frames pertaining to Level I testing frequency is at least 60 "calendar" days after return from a period of not working in a health care field.
4. *Tolling:* Specify that the licensee shall notify the Board upon their return to "practice in" California and specify that tolling of probation will not be postponed when either a positive test result is received, or the person's license has been suspended.
5. *Substance Use Disorder Not Diagnosed:* Change "toxicology screening" to "drug testing" and change "period" to "frequency."
6. *Licensed Supervision During Practice:* Specify that the Board may reduce testing frequency to a minimum of 24 times per year for any licensee if the licensee receives a minimum 50% supervision per day by a supervisor licensed by the Board.

Rationale: The Board provides the following rationales for the above-noted changes:

1. *Licensee Demonstrates Previous Testing and Sobriety:* Specifying that any testing frequency schedule alterations must be equivalent to "the schedule prescribed above" rather than equivalent to the "standard" provides notice about what is meant by the term "standard". This will help avoid confusion and ensure that any changes to testing frequency will be equivalent to the standards prescribed by the chart on page 11.
2. *Violations Outside of Employment:* Adding a number in parentheses (7) helps emphasize the time frame.

3. *Not Employed in Health Care Field:* Specifying that the time frame for Level I testing frequency is at least 60 “calendar” days provides clarity in regard to the time frame and, in the Board’s experience, also provides for an adequate length of time for Level I testing frequency upon return to practice.
4. *Tolling:* The Board does not need to know for public protection purposes when someone returns to California. The Board does need to know when the person decides to resume practice in California and is therefore under its jurisdiction, so that it can resume the disciplinary safeguards it had put into place to ensure the individual practices safely. Existing text for this provision is derived from Uniform Standard #4 of the Substance Abuse Coordination Committee’s Uniform Standards document (see Underlying Data). This requirement currently states, in part: “The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled.” However, it is not immediately clear in this section when the overall probationary period would not be tolled and therefore understood when testing may be postponed by the Board.

Specifying that tolling of probation will not be postponed when either a positive test result is received (resulting in suspension – see Optional Term #10), or the person’s license has been suspended is necessary because in both of these cases, the licensee’s probationary status would not be placed in a tolling status (see Standard Term of Probation Condition #21 and Optional Term #10). This notice therefore makes clear that the Board will not postpone the testing schedule requirements if the probationer is either suspended by order of the Board at the outset (as part of the initial disciplinary order) or later tests positive for a prohibited substance while on probation (therefore requiring the probationer’s license to be suspended).

Continuing testing under these circumstances helps further protect the public by allowing the Board to continue to monitor a probationer’s compliance with abstention conditions while the probationer is temporarily out of practice. This notice also ensures the Board maintains consistency in implementation between the various terms and conditions of probation.

5. *Substance Use Disorder Not Diagnosed:* Changing “toxicology screening” to “drug testing” is necessary for greater comprehension by the regulated community and for consistency with the terminology used elsewhere in the Uniform Standards. Changing “period” to “frequency” is necessary to avoid confusion, as the sentence refers to “24 times per year” rather than a time period.
6. *Licensed Supervision During Practice:* Allowing a reduced frequency for drug testing when a licensee is under 50% or more supervision provides for flexibility and brings the text into compliance with the updated “Uniform Standards for Substance Abusing Licensees” which was amended by the DCA SACC in March 2019, with those revisions released to DCA Boards in March 2021. The language

of BPC section 315 is clear that the standards developed by DCA SACC are to be adopted: "...uniform standards that will be used by healing arts Boards." (BPC section 315(a)). Adoption of the March 2019 Uniform Standards is necessary because this Board is required to adopt the Uniform Standards pursuant to BPC section 315 according to the California Attorney General's Office (see Underlying Data) "as written". The above-noted changes are necessary to update the standards consistent with the revised SACC Uniform Standards document (see underlying data) and associated revisions to Uniform Standard #4 made by the SACC in March 2019, which include (SACC revisions adding text are in red and underline for comparison):

VI. LICENSED SUPERVISION DURING PRACTICE

"A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the board."

Further, under the circumstance described, the licensed supervisor that supervises the practicing licensee the respondent would be able to monitor the respondent's activities during that supervision. If the Board or its designee considered such supervision sufficient to mitigate the potential of the respondent to abuse substances during the supervision, then it would be reasonable for the Board or its designee to reduce the testing requirement to a minimum of 24 times a year, or twice monthly.

AMENDMENTS TO SECTION ON CRITERIA TO PETITION TO RETURN TO PRACTICE AND CRITERIA TO PETITION FOR REINSTATEMENT TO UNRESTRICTED LICENSE

Purpose and Rationale: The changes to this section include removing gendered pronouns "his or her" and removing references to "registration" or "registrant" for the reasons set forth above in the rationales for Section A of this document entitled "A. Global Technical Changes to Uniform Standards/Disciplinary Guidelines."

4. PROPOSED CHANGES TO PENALTY GUIDELINES (SECTION II); MODEL DISCIPLINARY ORDERS (SECTION III); AND BOARD POLICIES AND GUIDELINES (SECTION IV)

J. Global Changes to Section II: Penalty Guidelines; Section III: Model Disciplinary Orders; and Section IV: Board Policies and Guidelines (Pages 15-58)

Purpose and Rationale: The amendments would make the following global changes to pages 15 to 58:

1. Replace gendered terms with gender-neutral language throughout to bring this document into compliance with Assembly Concurrent Resolution No. 260 of 2018 (ACR 260), which states that “state agencies should ... use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.
2. Change substance “abuse” disorders to substance “use” disorders throughout to conform the phrase to the actual name of the diagnosis used by mental health professionals, and is a term used elsewhere in the Uniform Standards (see page 13 “Substance Use Disorder Not Diagnosed”).
3. Change “controlled substances” to “drugs” throughout to provide for consistency with the wording used in CCR section 1888.
4. Add a note to the “Minimum Penalty” column throughout the Penalty Guidelines chart on pages 17-33 to help ensure that the Introduction to Penalty Guidelines on Page 15 has been read before penalties are selected. This will help ensure an understanding of how the Penalty Guidelines are to be applied.
5. Strike the word “actual” after “suspension” throughout the Penalty Guidelines. This is necessary because “actual” is an extraneous word that does not provide for any meaning in this context (a suspension is a suspension).
6. Add “pertaining to the violation” after “Education” in each place that it appears, which indicates to affected licensees that required education must pertain to the violation to help ensure remediation of the violation at issue in the case and is a more accurate description of the requirements of this condition. The terms of this penalty are described on page 44 #6, which states “Course content shall be pertinent to the violation...”.
7. Make non-substantive changes throughout the Penalty Guidelines chart to provide for improved readability including changing “exam” to “examination” and “exams” to “examination(s)” for consistency with the title of the optional term and condition Take and Pass Licensure Examinations as provided on page 44 of the Disciplinary Guidelines; providing for consistency in capitalization of violation categories and penalties; separating paragraphs in the Minimum Penalty column into bullet points; and adding section symbols (§) where needed to reflect that multiple sections are listed or to add a missing section symbol.

5. PROPOSED CHANGES TO PENALTY GUIDELINES (SECTION II)

The Penalty Guidelines provide information regarding violations of laws under the jurisdiction of the Board and the range of penalties for each violation.

K. Amend Introduction to Penalty Guidelines (Page 15)

Purpose and Rationale: The proposed amendments would do the following:

1. Add the words “Introduction to” the title to provide better guidance to the users regarding the purpose of this section and suggested directions on how the Guidelines are structured and used.
2. Clarify that the Penalty Guidelines provide information regarding violations (rather than “attempt” to provide) which will help to avoid misunderstandings about the intended use and thoroughness of the Penalty Guidelines, which do in fact provide information rather than “attempt” to provide information.
3. Remove the reference to “appropriate” before the word “penalties” for each violation for clarity and to avoid confusion because it is up to the DAG and the Board to determine the “appropriate” range of penalties for each violation based on the circumstances of each case.
4. Inform the reader that minimum and maximum penalty considerations are listed for each violation category, which helps to explain how the Penalty Guidelines section is structured and assists the DAG and the Board when considering penalties for each case.
5. Delete references to “is followed in parenthesis by a number, which” corresponds to a number and add terms that specify that each penalty listed corresponds with a description of the penalty in the following chapter. This is necessary to provide the DAG or Board with greater ease in locating the description of the specific terms of each penalty when formulating disciplinary orders. The amendment also clarifies that a description of the “revocation” penalty is not located in Chapter III, which is necessary to add to avoid confusion because revocation is not a term or condition of probation and Chapter III only contains standard and optional terms and conditions of probation.
6. Explain that the recommended terms and conditions of probation are divided into two general categories, using language that mirrors the description of Model Disciplinary Orders in the Introduction on Page 1, to clarify how the Penalty Guidelines section is structured. Describing how those categories are to be used and applied provides clarity and transparency and helps to ensure that the DAG or Board considers the list of Optional Terms and Conditions based on the specific circumstances of a particular case and assists with understanding that the Standard Terms and Conditions should generally be applied in each case involving probation.
7. Strike language that says, “Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations.” This is necessary as it is inconsistent with the intent and purpose of this document. As noted in CCR section 1888, this document is required to be considered, and in the case of the Uniform Standards for substance-abusing licensees, used by the Board in reaching a decision on a disciplinary action under the APA involving a particular

law or regulation under the Board’s jurisdiction. The document otherwise speaks for itself in this regard, and the Board finds this sentence only confuses users of this document as to its purpose.

8. Explain that optional conditions listed under a violation category should be “considered and” imposed where appropriate “depending on the nature and circumstances of a particular case”. This provides clarity and transparency to guide the users on when and how to apply the Optional Conditions listed in the Guidelines and helps to ensure an understanding that the DAG or Board should consider the list of Optional Terms and Conditions based on the nature and circumstances of each case to help ensure the most legally defensible, and fair and balanced approach to imposing penalties.

L. Amend Minimum and Maximum Penalty Chart Columns (Pages 16-33)

Purpose and Rationale: The proposed changes would do the following:

Page 16: Strike the word “Minimum” from the third column’s header and remove the “Maximum Penalty” column in its entirety. The penalties for the violation categories listed on page 16 do not have minimums or maximums – there is only one set of penalties for these violations either revocation or denial of the license, as applicable. This is due to mandates in law (e.g., sexual contact with a client) or due to the Board’s assessment of the high potential of serious harm to the public (e.g., engaging in sexual orientation change efforts with a minor). The changes would therefore improve the chart’s legal accuracy and avoid confusion regarding the Board’s statutory authority or public policy recommendations and streamline this page for users of the Guidelines.

Pages 17-33: Add a note to the “Minimum Penalty” (retitled “Penalty” in this proposal) column header that says, “Note: See Introduction to Penalty Guidelines on page 15 before selecting penalties”. This will help to ensure that the DAG or Board members formulating penalties have read the introduction describing how to apply the Penalty Guidelines, thereby helping to ensure that the DAG or Board considers the list of Optional Terms and Conditions based on the specifics of each case, and that the Standard Terms and Conditions should generally be applied in each case involving probation. This will help ensure the most legally defensible, and fair and balanced approach to imposing penalties.

M. Amend Penalty Guideline Chart: Statute and Regulation Reference Changes (Pages 16-33)

Purpose: Certain legal references under the Statutes and Regulations column in the Penalty Guidelines chart have been added, stricken or modified due either to amendments to this document, due to recent law changes, due to an erroneous listing, or for readability as further specified below. In addition, “MFT” has been changed to LMFT throughout, the LPCC license type and reference has been added to page 31, the abbreviation for the “B&P” code has been added where missing on

page 19, and an additional “§” (section) symbol has been added where there are multiple sections referenced (“§§”). Specific changes are shown in the chart below.

Rationale: These amendments are necessary to ensure that the contents of the Statutes and Regulations column of the Penalty Guidelines chart is correct, up-to-date, in a logical order, not duplicative, and more easily readable. Listing the correct section of law ensures that the correct penalty is applied to the specific violation. The rationale for each reference change is shown in the chart beginning on the next page.

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS		
Violation Category	Reference Change	Rationale
Engaging in Sexual Contact with Client / Former Client (p. 16)	LMFT: Strike subsection (k) of B&P* §4982.26	There is not, nor has there ever been a subsection (k). Section 4982.26 (in its entirety) is the correct reference.
Engaging in Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act Occurred Prior to or After Registration or Licensure OR Engaging in an Act Described in Section 261, 286, 288a, or 289 of the Penal Code with a Minor or an Act Described in section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board (p. 16)	LCSW: Change B&P § 4992.3(y) to (ab)	Subsection (y) was renumbered to subsection (ab) via AB 93 (Chapter 743, Statutes of 2018).

**Please note that the Disciplinary Guidelines document uses “B&P” as an abbreviation for the Business and Professions Code, and therefore this acronym was carried over to this chart even though the remainder of this document (Initial Statement of Reasons) uses “BPC” as the abbreviation*

*** OAL Matter Number: 2024-0829-02, effective 1/1/2025*

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS

Violation Category	Reference Change	Rationale
Sexual Misconduct (p. 17)	LCSW: Strike CCR § 1881(f)	Duplicates B&P §4992.3(l); CCR §1881(f) has been recently stricken via a regulatory change* due to the duplication.
	LEP: Move B&P § 4989.54 to first in the list	Provides for readability by placing references in numerical order
	GP: Add B&P § 4990.40	This section pertains to revocation of a license or registration due to sexual contact with a client and needs to be added to ensure comprehensive coverage of the penalties required by law to be considered by the Board including this requirement for outright revocation for such acts.
Commission of an Act Punishable as a Sexually Related Crime (p. 18)	LCSW: Strike CCR §1881(f)	Duplicates B&P §4992.3(l); CCR §1881(f) has been recently stricken via a regulatory change* due to the duplication.
Impaired Ability to Function Safely due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency (p. 19)	GP: Add B&P § 822	Specifies the actions a licensing agency may take when it determines that its licentiate's ability to practice safely is impaired because the licentiate is mentally ill, or physically ill affecting competency. This is necessary to ensure accurate notice of the scope of authority to discipline for such acts.
Intentionally / Recklessly Causing Physical or Emotional Harm to Client (p. 21)	LCSW: Strike CCR §1881(d)	Duplicates B&P §4992.3(j); CCR §1881(d) has been recently stricken via a regulatory change* due to the duplication.
Gross Negligence / Incompetence (p. 22)	LCSW: Add subsection (e) to B&P §4992.3 reference; Strike CCR §1881(m)	B&P §4992.3(e) describes acts that are considered gross negligence and therefore needs to be added. CCR 1881(m) duplicates B&P §4992.3(e) and has been recently stricken via a regulatory change* due to the duplication.
General Unprofessional Conduct (p. 23)	LPCC: Add CCR §1823	This section contains unprofessional conduct regulations that are directly pertinent to this violation category and therefore need to be added.

* OAL Matter Number: 2024-0829-02, effective 1/1/2025

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS

Violation Category	Reference Change	Rationale
Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License (p. 25)	LCSW: Strike CCR §1881(e)	Duplicates B&P §4992.3(k); CCR §1881(e) has been recently stricken via a regulatory change* due to the duplication.
Performing, Representing Ability to Perform, Offering to Perform, Permitting Trainee or Associate to Perform Beyond Scope of License / Competence (p. 25)	LMFT: Strike repeated instances of § “4982”; Strike CCR § 1845 (a) and (b)	Striking unnecessary repeated mentions of the same section number provides for streamlining and readability. CCR §1845(a) mirrors B&P §4982(l) and (s) CCR §1845(b) mirrors B&P §4982(l) and (t)
	LCSW: Strike CCR §1881(g) Change § 1881 (h) to (b)	CCR §1881(g) duplicates B&P §4992.3(m); CCR §1881(g) has been recently stricken via a regulatory change* due to the duplication. Changing CCR §1881(h) to (b) is necessary due to an amendment made via a regulatory change*.
	LEP: Strike CCR §1858(b)	Duplicates B&P §4989.54(r); CCR §1858(b) has been stricken via a regulatory change* due to the duplication.
	LPCC: Strike repeated instances of § “4999.90”	Provides for streamlining and readability.
Discipline by Another State or Governmental Agency (p. 26)	LEP: Strike repeated instances of § “4989.54”	Provides for streamlining and readability.
Securing or Attempting to Secure a License by Fraud (p. 26)	LCSW: Strike second mention of “B&P§”	Provides for streamlining and readability.

* OAL Matter Number: 2024-0829-02, effective 1/1/2025

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS

Violation Category	Reference Change	Rationale
Misrepresentation of License / Qualifications (p. 26)	LMFT: Strike CCR §1845(a) and (b)	These subsections are not applicable to this violation category. §1845(a) pertains to performing or holding self out as able to perform services beyond their field of competence; 1845(b) pertains to a supervisee. in addition, these subsections were recently stricken via a regulatory change* due to duplication of statute.
	LCSW: Change B&P §4992.3(f) to (g);	Corrects a reference error - subsection (f) pertains to violating, attempting to violate, or conspiring to violate the chapter or regulations (pertains to a different category). Subsection (g) pertains directly to misrepresentation and therefore needs to be added.
	Strike CCR §1881(a)	CCR §1881(a) duplicates B&P §4992.3(g) and were recently stricken via a regulatory change* due to the duplication.
Violates Exam Security / Subversion of Licensing Exam (p. 26)	LMFT: Add subsection (ab) of B&P §4982	This subsection deems that engaging in any conduct that subverts or attempts to subvert any licensing exam or the administration of an exam is unprofessional conduct, and therefore is directly pertinent to this violation category.
	LCSW: Add B&P § 4992.3(ac)	B&P § 4992.3(ac) prohibits engaging in any conduct that subverts or attempts to subvert any licensing examination or its administration.
	Strike CCR §1881(l)	CCR §1881(l) duplicates B&P §4992.3(r); CCR §1881(l) has been recently stricken via a regulatory change* due to the duplication.
	LEP: Add subsection (z) of B&P §4989.54	These subsections deem that engaging in any conduct that subverts or attempts to subvert any licensing exam or the administration of an exam is unprofessional conduct, and therefore are directly pertinent to this violation category.
	LPCC: Add subsection (aa) of B&P § 4999.90	
Impersonating Licensee / Allowing Impersonation (p. 27)	LCSW: Change CCR §1881(b) to (a)	Subsection (b) has been recently changed to (a) via a regulatory change*.

* OAL Matter Number: 2024-0829-02, effective 1/1/2025

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS

Violation Category	Reference Change	Rationale
Aiding and Abetting Unlicensed / Unregistered Activity (p. 27)	LCSW: Strike CCR §1881(c)	Duplicates B&P § 4992.3(i); CCR §1881(c) has been recently stricken via a regulatory change* due to the duplication.
Failure to Maintain Confidentiality (p. 28)	LCSW: Strike CCR §1881(i)	Duplicates B&P §4992.3(n); CCR §1881(i) has been recently stricken via a regulatory change* due to the duplication.
Failure to Provide Sexual Misconduct Brochure (p. 28)	Strike repeated instances of § “728” for each license type and just list the GP reference once	Provides for streamlining and readability.
Improper Supervision of Trainee / Intern / Associate / Supervisee (p. 28)	LMFT: Strike repeated instances of § “4982” Strike CCR §1845(b)	Striking unnecessary repeated instances of the section number provides for streamlining and readability. Duplicates B&P §4982(t); CCR §1845(b) has been recently stricken via a] regulatory change* due to the duplication.
	LEP: Strike CCR §1858(b)	Duplicates B&P § 4989.54(ab); CCR §1858(b) has been recently stricken via a regulatory change* due to the duplication.
	LPCC: Strike repeated instances of § “4999.90”	Provides for streamlining and readability.
Violations of the Chapter or Regulations by licensees or registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience (p. 29)	LMFT, LCSW, LPCC: Strike B&P §§ 4982(u), 4992.3(s) and 4999.90(u)	This violation category is being split into two via this regulatory proposal: “Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board” and “Violations Involving Gaining or Supervision of Required Hours of Experience”. The stricken subsections are only applicable to the newly separated category “Violations Involving Gaining or Supervision of Required Hours of Experience” and are proposed to be added to that category.

* OAL Matter Number: 2024-0829-02, effective 1/1/2025

RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS

Violation Category	Reference Change	Rationale
Pay, Accept, Solicit Fee for Referrals (p. 29)	LCSW: Strike CCR §1881(n)	Duplicates B&P §4992.3(p); CCR §1881(n) has been recently stricken via a regulatory change* due to the duplication.
Failure to Disclose Fees in Advance (p. 30)	LCSW: Strike CCR § 1881(j)	Duplicates B&P §4992.3(o); CCR §1881(j) has been recently stricken via a regulatory change* due to the duplication.
False / Misleading / Deceptive / Improper Advertising (p. 30)	LCSW: Add B&P § 4992.10 and Strike CCR § 1881(k) LEP: Add B&P § 4989.47 LPCC: Add B&P § 4999.72	LCSW: B&P § 4992.10 prohibits use of a false, misleading or deceptive fictitious business name. CCR §1881(k) duplicates B&P §4992.3(q); CCR §1881(k) has been recently stricken via a regulatory change* due to the duplication. LEP: B&P § 4989.47 prohibits use of a false, misleading or deceptive fictitious business name. LPCC: B&P § 4999.72 prohibits use of a false, misleading or deceptive fictitious business name. These are necessary to ensure comprehensive coverage of the areas under the Board's jurisdiction related to this type of conduct.
Failure to Keep Records Consistent with Sound Clinical Judgment (p.30)	LCSW: Change B&P § 4992.3(t) to (w)	Subsection (t) was renumbered to subsection (w) via AB 93 (Chapter 743, Statutes of 2018).
Willful Violation of Chapter 1 (Commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code (Client Access to Records) (p. 31)	LCSW: Change B&P § 4992.3(w) to (z) LPCC: Add B&P §4999.90(ad)	LCSW: Subsection (w) was renumbered to subsection (z) via AB 93 (Chapter 743, Statutes of 2018). LPCC: This was an erroneous omission in past versions of this document. Subsection (ad) deems willful violation of Chapter 1 of the BPC as unprofessional conduct, and therefore is directly pertinent to this violation category.
Failure to Comply with Section 2290.5 (Telehealth) (p. 31)	LCSW: Change B&P §4992.3(x) to (aa)	Subsection (x) was renumbered to subsection (aa) via AB 93 (Chapter 743, Statutes of 2018).

* OAL Matter Number: 2024-0829-02, effective 1/1/2025

N. Global Amendments to Penalty Guidelines Chart: Suspension, Standard Terms and Conditions, Education, Law and Ethics Course, and Readability Changes (Pages 16-33)

Purpose and Rationale: The proposed changes would make global amendments to the penalty guidelines chart including the Minimum Penalty column, and in several cases, the Maximum Penalty column, to do the following:

1. Move the “Standard terms and conditions” reference in the “Minimum Penalty” columns from its own bullet and combine it with the prior bullet that specifies probation length (Example p. 17: “7 years probation; standard terms and conditions”) or add it as a new condition on pages 17 (Sexual Misconduct), 20 (Chemical Dependency or Use of Drugs or Alcohol With Client While Performing Services), 21 (Intentionally/Recklessly Causing Physical or Emotional Harm to Client), 22 (Gross Negligence/Incompetence), 23 (General Unprofessional Conduct), 24 (Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions), 25 (Commission of Dishonest, Corrupt, or Fraudulent Act and Performing, Representing Ability to Perform Beyond Scope of License/Competence), 26 (Misrepresentation of License/Qualifications and Violates Exam Security), 27 (Impersonating Licensee/Allowing Impersonation and Aiding and Abetting Unlicensed Activity), 28 (Failure to Maintain Confidentiality, Failure to Provide Sexual Misconduct Brochure, Improper Supervision of Supervisee), 29 (Violating or Attempting to Violate the Chapter or Regulations, Violations Involving Gaining or Supervision of Required Hours and Pay, Accept, Solicit Fee for Referrals), and for all other violation categories listed on pages 29-31.

This will help to clarify that for all cases involving probation, the Board’s standard terms must be included in the disciplinary order and is consistent with how this phrase is listed in other sections of the penalty chart (see page 18 of the penalty guidelines chart).

2. Add “Law and Ethics Course” to the Minimum Penalty column in each place that it does not currently appear, and add it to the Maximum penalty column for the violations “Improper Supervision of Trainee / Intern / Associate / Supervisee” (p. 28), “Failure to Disclose Fees in Advance” (p. 30), “False / Misleading / Deceptive / Improper Advertising” (p. 30), “Failure to Keep Records Consistent with Sound Clinical Judgment” (p. 30), “Willful Violation of Chapter 1 (Commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code” (p. 31), and “Failure to Comply with Section 2290.5 (Telehealth)” (p. 31). Requiring this course for all probationers provides for greater public protection, as it will help to ensure that licensees are aware of or reminded of their legal and ethical responsibilities, which may help prevent future violations.

3. Strike “and if warranted” in each place that it appears, which is necessary because “and if warranted” is misleading – all listed penalties are “if warranted” (terms should be considered “if warranted” based on the facts and circumstances of the case as explained in the Model Disciplinary Orders Introduction and in the rationale above).
4. Change “controlled substances/use of alcohol” to “drugs and alcohol” in the reference to “Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency” term on p. 19, which is necessary for consistency of the use of those terms throughout the Disciplinary Guidelines, to avoid confusion by the users of these Guidelines, and because substances that are not controlled, such as over-the-counter products, can also be abused. “Striking “use of” assists in readability since “Abstain from use of drugs and alcohol” has the same meaning as “Abstain from drugs and alcohol”.
5. Except in one instance on page 26 in the title of the violation category “Violation of Exam Security/Subversion of Licensing Exam” where “Exam” is changed to “Examination” for consistency with the more formal language used throughout the document, throughout the penalty chart “exams”, “examinations”, and “examination” have been changed to “examination(s)”. This is necessary in order to clarify that a LMFT, LCSW or LPCC probationer may be required take one or both of the required licensing exams as deemed appropriate on a case-by-case basis. This change is also necessary because there is only one licensure examination for LEPs, and for consistency in wording throughout the penalty chart.
6. Add bullets, modify punctuation, and modify capitalization to provide for readability throughout the Penalty Guidelines chart.

O. Amend Penalty Guidelines: Engaging in Act with a Minor Punishable as a Sexually Related Crime... or Engaging in an Act Described in Section...of the Penal Code (Page 16)

Purpose and Rationale: The proposed changes would add a reference to Penal Code (PC) section 287, and strike reference to PC section 288a within the Violation Category column for “Engaging in Act with a Minor Punishable as a Sexually Related Crime... or Engaging in an Act Described in Section...of the Penal Code”. Adding PC section 287 is necessary because it pertains to oral copulation, an act that falls under this category, and striking PC section 288a is necessary because PC section 288 is listed in full further down in the Violation Category title which says “...or an act described in Section 288...”.

P. Add New Violation Category to Penalty Guidelines Chart: Engaging in Sexual Orientation Change Efforts with a Patient Under Age 18 (Page 16)

Purpose: This proposed amendment adds a violation category to the Penalty Guidelines for engaging in sexual orientation change efforts (SOCE) with a minor client. It would add references to the general provisions of the BPC that define SOCE (§ 865); prohibit SOCE with a client under age 18 (§ 865.1); and specify that SOCE shall be considered unprofessional conduct and subject a mental health provider to discipline (§ 865.2).

Rationale: SB 1172 (Lieu, Chapter 835, Statutes of 2012) made it an unprofessional conduct violation to engage in any SOCE with a patient under the age of 18. It is necessary to establish the recommended penalties and include this violation in the Penalty Guidelines to provide for consistency in disciplinary orders for such violations, and to ensure all parties know the penalties for such a violation.

Revocation or denial of license was selected as the recommended penalty due to the serious and lasting harm that sexual orientation change efforts have on clients. The analysis for SB 1172 states, “Sexual orientation change efforts (SOCE) pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources. This is documented by the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation in its 2009 Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation.”

Cost recovery is also listed as a penalty as it is recommended in all cases in line with Board policy to recover costs in every case. Since BPC section 125.3’s authority is discretionary (cost recovery “may” be ordered by an ALJ “upon request” from the Board) and to address questions from stakeholders regarding the Board’s position, the Board has adopted a policy to make it clear that it expects such cost reimbursement to be requested in every case, including for these violations, and to explain the Board’s rationale for taking such a policy position. In the Board’s view, those who have been found to have committed a violation should pay cost recovery where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost recovery in all cases where it is determined to be appropriate. The legal citations listed are necessary to provide for ease of reference.

Q. Amend Penalty Guidelines: Sexual Misconduct Violation (Page 17)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum and Maximum Penalty columns for the violation category “Sexual Misconduct (Anything other than as defined in B&P Section 729)” as follows:

Minimum Penalty Column:

1. Reduce the minimum length of suspension from 120 days to 60 days. This would provide the Board more flexibility in applying appropriate penalties based upon the facts and circumstances of a particular case, rather than being forced to articulate a special circumstance warranting deviation from the guidelines. In some cases, in the Board’s experience, 60 days is sufficient time for some licensees to allow for self-reflection and for the probationer to implement required changes to practice (as specified in the probationary order) before returning to practice while on probation.
2. Strike “Take and pass licensure examinations as a condition precedent to resumption of practice”. “Take and pass licensure examinations” is duplicated in the 11th bullet of this section. “As a condition precedent to resumption of practice” is being stricken because the terms of this penalty are described on page 44 #7, and state, “Respondent shall not practice until such time as Respondent has taken and passed the examination(s)”. Therefore, it is not necessary to restate this requirement here.
3. Add “costs” after “Reimbursement of probation program”. This is necessary to provide notice and clarity as to what is being reimbursed and is consistent with how this phrase is listed in other sections of the penalty chart.
4. Change “enter and complete a rehabilitation program approved by the Board” to “Rehabilitation program” as the term itself already contains requirements for attending such a program; these words are therefore not necessary. This helps to streamline the chart for readability. The terms of this penalty are described on page 45 #9 of the Disciplinary Guidelines and includes the requirement that the Board approve such program.
5. Strike “reimbursement of probation program costs” as it duplicates a bullet point that appears two bullets earlier in the list.

Maximum Penalty Column:

6. Add a reference to B&P 4990.40. Existing text for the section relating to the “Sexual Misconduct” maximum penalty column contains a reference note directing users to review statutory provisions pertaining to sexual contact with a client contained in practice acts for the LEP, LCSW, and MFT professions. The Board proposes to update its authority in this area to include a corresponding general authority statute covering all of the licensees under its jurisdiction by

adding a reference to B&P section 4990.40. Adding section symbols is necessary as this is standard when referring to sections of law.

7. Strike “The Board considers this reprehensible offense to warrant revocation/denial.” This is necessary because, based upon the Board’s experience, the violations in this category can be different in nature, severity, and impact. Unlike sexual contact cases (referenced as noted above), where outright revocation is mandated by law, other sexual misconduct cases may be evaluated, and penalties decided according to the facts of the particular case. As a result, the Board would like to remove this language so that it is clearer that the Board may consider a range of penalties short of outright revocation, and this current text implies that outright revocation is the only available option.

R. Amend Penalty Guidelines: Commission of an Act Punishable as a Sexually Related Crime (Page 18)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Commission of an Act Punishable as a Sexually Related Crime” to reduce the minimum length of suspension from 120 days to 60 days. Reducing the minimum length of suspension would provide more flexibility in applying appropriate penalties based upon the facts and circumstances of a particular case, rather than being forced to articulate a special circumstance warranting deviation from the guidelines. In some cases, in the Board’s experience, 60 days is sufficient time for some licensees to allow for self-reflection and for the probationer to implement required changes to practice (as specified in the probationary order) before returning to practice while on probation.

S. Amend Penalty Guidelines: Impaired Ability to Function Safely due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency (Page 19)

Purpose and Rationale: In addition to the global changes noted above, the proposal would amend the Minimum Penalty column for the violation category “Impaired Ability to Function Safely due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency” as follows:

1. Change “Random” to “submit to” drug and alcohol testing for consistency with other sections of the penalty chart, as well as for accuracy. While random testing may occur, the Uniform Standards (p. 11) contains a drug testing frequency schedule, and therefore some testing is not random and licensees on probation may be directed to test by the Board or its agents with notice to the licensee according to that schedule. Also, move the existing abstention requirement to a new location at the beginning to emphasize the restriction and conform word choice from controlled substances to “drugs” as discussed above to thoroughly

cover all drugs that may be abused and that are prohibited under this term of probation.

2. Change “therapy” to “psychotherapy” for consistency with the actual name of the term, as described on page 39 #3 of the Disciplinary Guidelines.

T. Amend Penalty Guidelines: Chemical Dependency or Use of Drugs or Alcohol With Client While Performing Services (Page 20)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Chemical Dependency or Use of Drugs or Alcohol With Client While Performing Services” as follows:

1. Modify the title of the Violation Category to clarify that it pertains to chemical dependency “or” use of drugs “or alcohol” with client while performing services. This helps to ensure understanding that this category applies to either violation listed in this category, as opposed to the two violations combined. Adding “or alcohol” clarifies that use of alcohol with a client is included in this violation category since abstinence from all addictive substances would be required for any licensee who violates the applicable statutes listed in this section.
2. Reduce the minimum length of suspension from 120 days to 60 days. This would provide more flexibility in applying appropriate penalties based upon the facts and circumstances of the particular case, rather than being forced to articulate a special circumstance warranting deviation from the guidelines. In some cases, in the Board’s experience, 60 days is sufficient time for some licensees to allow for self-reflection and for the probationer to implement required changes to practice (as specified in the probationary order) before returning to practice while on probation.
3. Change “Random” to “submit to” drug and alcohol testing. This change is necessary for consistency with other sections of the penalty chart, as well as accuracy. While random testing may occur, the Uniform Standards (p. 11) contains a drug testing frequency schedule, and therefore some testing is not random and licensees on probation may be directed to test by the Board or its agents with notice to the licensee according to that schedule.
4. Strike “Supervised practice”. This is necessary to avoid duplication in the chart, as it duplicates the 7th bullet.
5. Add “Attend recovery support program” optional term reference. This is necessary because the Board sometimes requires this as a term of probation for licensees with this violation to help prevent relapse, even though it is currently not included in the list of “Optional Terms and Conditions of Probation” (it is proposed to be added as an optional term as part of this proposed rulemaking; please see rationale for that new term below). Alcoholics Anonymous is an example of such a program.

U. Amend Penalty Guidelines: Intentionally / Recklessly Causing Physical or Emotional Harm to Client (Page 21)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Intentionally / Recklessly Causing Physical or Emotional Harm to Client” to reduce the minimum length of suspension from 90 days to 60 days. This would provide more flexibility in applying appropriate penalties based upon the facts and circumstances of the particular case, rather than being forced to articulate a special circumstance warranting deviation from the guidelines. In some cases, in the Board’s experience, 60 days is sufficient time for some licensees to allow for self-reflection and for the probationer to implement required changes to practice (as specified in the probationary order) before returning to practice while on probation.

V. Amend Penalty Guidelines: Gross Negligence / Incompetence (Page 22)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Gross Negligence / Incompetence” as follows:

1. Move existing “5 years probation” minimum recommendation to the 3rd bullet to provide consistency with how the other sections of the penalty chart are organized. The Board would retain this minimum recommended length as it believes, in its experience, that it is the minimum sufficient to monitor a licensee for return to unrestricted practice and help ensure competent and safe practice.
2. Move existing “supervised practice” term reference to its own bullet to emphasize this term as an integral part of rehabilitation for public protection, improve readability and provide consistency with how the other sections of the penalty chart are organized.
3. Add “Attend recovery support program”, which is necessary because the Board often requires this as a term of probation for licensees with this violation to help prevent relapse, and for that reason it is proposed to be added to the list of “Optional Terms and Conditions of Probation”. Alcoholics Anonymous is an example of such a program.

W. Amend Penalty Guidelines: General Unprofessional Conduct (Page 23)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “General Unprofessional Conduct” as follows:

1. Add “costs” after “Reimbursement of probation program” to provide notice and clarity as to what is being reimbursed; this is consistent with how this phrase is listed in other sections of the penalty chart (see page 18 of the penalty chart).

2. Move “Law and Ethics Course” to its own bullet emphasize its importance in the role of rehabilitation, improve readability, and provide consistency with how the other sections of the penalty chart are organized.
3. Add “Attend recovery support program”, which is necessary because the Board sometimes requires this as a term of probation for licensees with this violation to help prevent relapse, which is why it is proposed to be included in the list of “Optional Terms and Conditions of Probation”. Alcoholics Anonymous is an example of such a program.

X. Amend Penalty Guidelines: Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee (Page 24)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee” as follows:

1. Strike “(Costs and conditions of probation depend on the nature of the criminal offense)” as it does not match the language in the “Cost Recovery” standard term and condition of probation as described on page 55 of the Disciplinary Guidelines, which specifies (as amended) “Respondent shall pay the Board \$_____ for the reasonable costs of the investigation and prosecution of Case No. _____.”.
2. Add “In addition” as a heading for the sections that specify additional terms and conditions for certain types of crimes and strike the word “Add:” that currently appears in each of these sections to provide for improved organization, clarity and readability.
3. DRUGS AND ALCOHOL section:
 - a. Change “Random” to “submit to” drug and alcohol testing, which is necessary for consistency with other sections of the penalty chart (see page 17 of the penalty chart), as well as accuracy. While random testing may occur, the Uniform Standards (page 11) contains a drug testing frequency schedule, and therefore some testing is not at random but directed by the Board or its agents according to the schedule. This change would account for both scenarios.
 - b. Replace slashes “/” between words with commas and “or” to assist with readability.
 - c. Add “Attend recovery support program”, which is necessary because the Board often requires this as a term of probation for licensees with this violation to help prevent relapse, which is why it is proposed to be included in the list of “Optional Terms and Conditions of Probation”. Alcoholics Anonymous is an example of such a program.

Y. Amend Penalty Guidelines: Performing, Representing Ability to Perform, Offering to Perform, Permitting Trainee or Associate to Perform Beyond Scope of License / Competence (Page 25)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the title of the column for the violation category “Performing, Representing Ability to Perform, Offering to Perform, Permitting Trainee or Associate to Perform Beyond Scope of License / Competence”. It would modify the title of the section, changing “Able” to “Ability” and “Intern” to “Associate”, a grammatical improvement that assists in readability. Changing “Intern” to “Associate” is necessary to accurately reflect the title of the registration type, which was changed effective January 1, 2018, via legislation (SB 1478, Chapter 489, Statutes of 2016).

In addition, the “Statutes and Regulations” column would be amended to better align and remove those statutes or regulations that are not related to the violation category listed in this section and to remove duplicative statutory references as described above in the chart included in this document in the chart above entitled “RATIONALE FOR PENALTY GUIDELINE CHART REFERENCE AMENDMENTS.” In addition, repeal of reference to BPC section 4980.02 in that section is necessary as it relates to scope of practice and not the actual violation section that would be charged for this type of violation pursuant to BPC section 4982(l), (s) or (t).

Z. Amend Penalty Guidelines: Discipline by Another State or Governmental Agency (Page 26)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Discipline by Another State or Governmental Agency” by striking “And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.” Striking this wording, which proposes certain penalties “if warranted” is necessary because it creates confusion when read in conjunction with the bullet above this wording, which says “Determine the appropriate penalty by comparing the violation under the other state with California law.” This means that the individual determining the penalty would need to refer to another section of the penalty chart that contains the comparable violation in order to determine the penalty, which may or may not include consideration of the conditions listed under the “if warranted” section. Therefore, the inclusion of this wording is confusing and may be ambiguous or misleading in terms of guidance in determining appropriate penalties.

AA. Amend Penalty Guidelines: Impersonating Licensee / Allowing Impersonation (Page 27)

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Impersonating Licensee / Allowing Impersonation” by adding “Supervised practice”. Adding “Supervised practice” provides for greater public protection, which is necessary because impersonating a licensee or allowing impersonation is an intentional act that warrants the need for supervision to help ensure that licensees are monitored and practice within legal mandates and ethical guidelines. This term also allows the Board to monitor the competency of the respondent by use of a fellow practitioner. Since these types of violations typically also include other failures involving incompetence and negligence, the Board believes this optional term would help assist in monitoring these failures through supervision by a Board-approved supervisor.

BB. Amend Penalty Guidelines: Improper Supervision of Trainee / Intern / Associate / Supervisee (Page 28)

Purpose: In addition to the global changes noted above, the proposed changes would amend the Minimum and Maximum Penalty columns for the violation category “Improper Supervision of Trainee / Intern / Associate / Supervisee” as follows:

Minimum Penalty Column:

1. Move “Revocation stayed” and “30-90 days actual suspension” to Maximum Penalty column.
2. Strike “and if warranted: supervised practice”.

Maximum Penalty Column:

Strike “Revocation / Denial of license or registration” and “Cost recovery” (moved to a new section of the bulleted list) and add the following:

- Revocation stayed
- 30-90 days suspension
- 2 years probation; standard terms and conditions
- Education pertaining to the violation
- Law and ethics course
- Cost recovery
- Reimbursement of probation program costs
- Supervised practice

Rationale: Moving the penalties “Revocation stayed” and “30-90 days actual suspension” from the Minimum Penalty column to the Maximum Penalty Column is necessary because the Board feels that a suspension is not typically warranted for

public protection in these cases. By virtue of being on probation, a licensee is not allowed to supervise. However, they may be safe to practice psychotherapy with clients and therefore suspension should not be the default minimum penalty. This change will give the Board more flexibility to adjudicate cases and apply appropriate penalties, rather than being forced to articulate a special circumstance warranting deviation from the guidelines. The minimum penalties proposed in this section would provide the Board, in its experience, with the necessary tools to properly monitor and allow the respondent to remediate this type of violation. As noted above, education pertaining to the violation and a law and ethics course, an educational course on the subject matter involved or ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

Revocation stayed added to the maximum penalty section: Government Code section 11519(b) provides the Board with the following authority:

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

The reference to “revocation stayed” is therefore necessary to implement the probation and “stay” authority in BPC section 488 and Government Code section 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

Other added terms to the maximum penalty section: The proposed maximum penalties would include all of the minimum penalties currently proposed for this type of violation for the reasons noted above as well as the addition of 30-90 days’ suspension and supervised practice. The maximum penalties added reflect the fact that on occasion, the severity and impact of improper supervision necessitates greater penalties for public protection purposes, but not to the extent that necessitates revocation and denial of license. In many cases in the Board’s experience, the proposed maximum penalties are typically sufficient for the Board to monitor the respondent for public protection and for the licensee to self-reflect and remediate the issues that caused the violation for the more serious violations of the supervision standards listed in this section. Should the Board adjudicate a case where even more egregious conduct occurred and revocation was appropriate, the Board will still have the ability to justify a deviation from the guidelines and revoke or deny the license as set forth in CCR section 1888 and the “Introduction to Penalty Guidelines” section of the Guidelines document.

Cost recovery is also listed as a penalty as it is recommended in all cases in line with Board policy to recover costs in every case as authorized by BPC section 125.3. BPC section 125.3 permits the Board to recover “reasonable costs of the investigation and enforcement of the case” and add such costs as a reasonable term and is authorized as a condition of probation per Government Code section 11519. The Board also proposes to add “reimbursement of probation program costs” consistent with other terms and conditions of probation listed in the Guidelines as a reasonable cost that should be borne by the respondents. As noted above, in the Board’s view, those who have been found to have committed a violation should pay cost recovery where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost recovery and reimbursement of probation monitoring costs in all cases where it is determined to be appropriate.

CC. Amend Penalty Guidelines: Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board (Page 29)

Note: This category is being split from a category it is currently combined with titled: “Violations Involving Acquisition and Supervision of Required Hours of Experience”. The changes to that split out category are shown in the next section.

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for the violation category “Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board” as follows:

1. Change the title of this section as follows: ~~Violations~~ Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulations Adopted by licensees or registrants the Board / ~~Violations Involving Acquisition and Supervision of Required Hours of Experience~~. Changing the section title is necessary for two reasons. First, this category is being split into two, as it contains two completely different violations for which the penalties should differ. Combining the two violations creates confusion for those formulating penalties. Secondly, the changes to the section title portion that remains avoids confusion for those formulating penalties in cases where a licensee attempts to violate or conspires to violate any provision of the chapter or regulations adopted by the Board. These related violations are currently not listed in the penalty chart and therefore need to be added, and the Board believes this is the most appropriate placement. Current statutory references to violations of supervision or gaining of required hours of experience would be moved to the new section as described below (i.e., BPC sections 4982(u), 4992.3(s), and 4990.90(u)).
2. Strike “Registration on probation until exams are passed and license issued”; “License issued on probation for one year”; and “Rejection of all illegally acquired

hours”. This is necessary because these penalties do not directly apply to this violation (these penalties are intended for the category being split out titled, “Violations Involving Gaining or Supervision of Required Hours of Experience”).

3. Repeal reference to “License issued on probation for one year” and add 3-5 years probation, which is necessary because the current minimum proposed is insufficient to ensure adequate rehabilitation in the Board’s experience. This provision is most commonly used when a licensee conspires to violate the Board’s laws regarding unlicensed activity, which presents significant risk of harm to the consumer since licensure helps to ensure that minimum standards are met through the Board’s regulatory oversight and provides some assurance that the provider of services is competent. This penalty is appropriate considering the high risk of harm to a consumer receiving services from an unlicensed individual who has not met the standards for professional licensure. In the Board’s experience 3-5 years’ probation is typically sufficient time to monitor an applicant or licensee and determine whether further enforcement action is necessary to protect the public.
4. Strike “Registration on probation until exams are passed and license issued” and “License issued on probation for one year” (both from prior category) and add “3-5 years probation”. These changes are necessary because in the Board’s experience, 3-5 years’ probation is typically sufficient time to monitor an applicant or licensee and determine whether further enforcement action is necessary to protect the public. A registration may be held for many years and may not need to be on probation for that entire time.

DD. Add to Penalty Guidelines: Violations Involving Gaining or Supervision of Required Hours of Experience (Page 29)

Note: This category is being split from a category it is currently combined with titled: “Violating, Attempting to Violate, or Conspiring to Violate any Provision of the Chapter or any Regulation Adopted by the Board”. The changes to that split out category are shown in the prior section.

Purpose and Rationale: The proposed changes would add a new section to the chart and new Minimum Penalty column for the violation category “Violations Involving Gaining or Supervision of Required Hours of Experience” as follows:

- **Statutes and Regulations column:** Add new statutory references, by license type, to the following statutes, which are necessary to ensure adequate notice to affected stakeholders of the Board’s authority to charge for these types of violations:

LMFT: B&P § 4982(u)

LCSW: B&P § 4992.3(s)

LEP: B&P § 4989.54(ac)

LPCC: B&P § 4999.90(u)

GP: B&P § 480

- Violation Category column: Change the existing section title as follows: “Violations Involving ~~Acquisition and~~ Gaining or Supervision of Required Hours of Experience” and move and add it to a new section as “Violations Involving Gaining or Supervision of Required Hours of Experience” to better indicate and provide greater notice that the violation may be in either gaining the required hours or in supervision of the hours.
- Minimum and Maximum Penalty Columns: The purpose of this proposal is to establish maximum and minimum penalties for implementing the sections listed in the “Statutes and Regulations” column noted above. Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties associated with this specific subject matter for all license types. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline or deny for this type of violation. The Guidelines provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

To implement the Board’s authority and standards for enforcement, the proposal would specify a maximum penalty of revocation/denial of license and cost recovery, and minimum penalties of revocation stayed, 3 to 5 years’ probation on standard terms conditions, rejection of all illegally acquired hours, supervised practice, cost recovery, reimbursement of probation program costs (to emphasize these standard terms for all affected stakeholders) and optional conditions of education pertaining to the violation, and law and ethics course.

- In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation or denial for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Board considers violations based upon gaining required hours of experience or supervision of such required hours serious, as these violations directly relate to competency of the supervisee and their ability to practice with safety to the public. As a result, the maximum penalty is recommended for such violations is revocation or denial of license. However, the Board recognizes that there may be extenuating circumstances and depending on the nature of the offense that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the minimum penalty of revocation stayed, 3 to 5 years’ probation with standard terms and optional terms and conditions noted above. This minimum penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to

applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation for licensees and denial of the application for applicants.

- As noted above, the addition of “revocation stayed” language in the minimum penalty column is necessary to implement the Board’s probation and “stay” authority in BPC section 488 and Government Code section 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.
- In addition, fair and cost-effective consumer protection is best served by the Board seeking to obtain cost recovery and reimbursement of probation monitoring costs in all cases where it is determined to be appropriate and applicable as authorized by BPC section 125.3 and Government Code section 11519. This helps prevent an unfair and disproportionate impact upon the regulated community as a whole.

EE. Amend Penalty Guidelines(Pages 30-31): Failure to Disclose Fees in Advance; False / Misleading / Deceptive / Improper Advertising; Failure to Keep Records Consistent with Sound Clinical Judgment

Purpose and Rationale: In addition to the global changes noted above, the proposed changes would amend the Minimum Penalty column for each of the above violation categories by adding “costs” after “Reimbursement of probation program”. This is necessary for notice and clarity as to what is being reimbursed and is consistent with how this phrase is listed in other sections of the penalty chart (see page 18 of the penalty chart).

FF. Amend Penalty Guidelines (Page 31): Willful Violation of Chapter 1 (Client Access to Records)

Purpose and Rationale: In addition to the global changes noted above, the proposed change would amend the Violation Category title by adding “(Client Access to Records)” to provide for advance notice, clarity and ease in locating the pertinent violation category in the Guidelines.

GG.Add to Penalty Guidelines: Consumer Protection Enforcement Initiative – New Unprofessional Conduct Regulations Sections for Failure to Provide Records, Cooperate or Participate in a Pending Investigation, Report to the Board, or Comply with a Court Order as Specified (Pages 32-33)

Purpose: The proposed changes would add four violation category sections for various unprofessional conduct regulations listed below to the Penalty Guidelines chart, including new columns showing the applicable regulations, violation category titles, and recommended minimum and maximum penalties.

In July 2009, the Los Angeles Times published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. These articles exposed the need for healing arts boards within the Department of Consumer Affairs (Department) to improve the enforcement process to ensure patient safety.

As a result of the article, the Department held an informational hearing and investigated the problems that were addressed in the Los Angeles Times article. The Department developed a report (Department of Consumer Affairs “CONSUMER PROTECTION ENFORCEMENT INITIATIVE: A Systematic Solution to a Systemic Problem”, updated 1/21/10” – CPEI Report) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards.

The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to be enacted. When the bill failed to be enacted into law, the Department encouraged the healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

In 2013, the Board added unprofessional conduct provisions via regulation based on direction from DCA’s CPEI report (see below for citations). These provisions, which became effective July 1, 2013, pertain to Board investigations and include the following violations:

- Failure to provide records to the Board within 15 days of receipt (16CCR §§ 1823(a), 1845(e), 1858(c), and 1881(q)).
- Failure to cooperate and participate in a pending Board investigation (16CCR §§ 1823(b), 1845(f), 1858(d), and 1881(r)).
- Failure to report to the Board within 30 days a felony or misdemeanor conviction or any disciplinary action taken by another licensing entity or government authority (16CCR §§ 1823(c), 1845(g), 1858(e), and 1881(s)).

- Failure to comply with a court order mandating release of records to the Board (16CCR §§ 1823(e), 1845(i), 1858(g), and 1881(u)).

Rationale: Existing regulations do not contain references to the above-noted CPEI unprofessional conduct regulations nor the minimum or maximum penalties for these violations with violation category titles as proposed in this section of the chart. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline or deny for this type of violation. It is necessary to establish these violation category titles with recommended minimum and maximum penalties in the Penalty Guidelines to provide for consistency in disciplinary orders, and to ensure all parties know the recommended penalties for such violations. The minimum and maximum penalties are proposed to be the same for each of these four violation categories being added. In the Board’s experience, the minimum proposed penalty of revocation stayed, 3-5 years’ probation with standard terms and optional conditions sufficient to monitor many probationers for these types of violations, while proposing a maximum penalty of revocation of the license for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

In particular, the minimum penalty probationary period was selected because the impact of these violation types is similar to *“Violations of the Chapter or Regulations by Licensees or Registrants”*, with a 60 to 90-day suspension added. This more rigorous probationary period with term of suspension is warranted since failure to provide records, failure to cooperate in an investigation, or failure to report a conviction or discipline can add months to the process to investigate a licensee. Any delay in an investigation may result in a potential harm, including a dangerous licensee continuing to practice. Therefore, this longer probationary period with term of suspension is necessary, in the Board’s experience, to remediate misconduct and encourage future compliance.

For the minimum proposed penalty, the Board proposes to add an optional “education pertaining to the violation” term for consideration for these types of violations. This optional term is being proposed to help educate and remediate a respondent’s related knowledge deficiencies that led to the violation(s), therefore aiding in the rehabilitation of the licensee for the protection of the public.

Finally, for the minimum proposed penalty, the Board proposes to add an optional “law and ethics course”, for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a willful or deliberate disregard for the law or the Board’s authority) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

As noted above, the addition of “revocation stayed” language in the minimum penalty column is necessary to implement the Board’s probation and “stay” authority

in BPC section 488 and Government Code section 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

In addition, fair and cost-effective consumer protection is best served by the Board seeking to obtain cost recovery and reimbursement of probation monitoring costs in all cases where it is determined to be appropriate and applicable as authorized by BPC section 125.3 and Government Code section 11519.

The legal citations proposed to be added in the “Statutes and Regulations” column are necessary to provide for ease of reference and pertain directly to each violation category for each profession.

HH. Amend Introduction to Model Disciplinary Orders (Page 35)

Purpose: The proposed changes would modify the introductory page to the Model Disciplinary Orders section, which includes restructuring the introductory paragraphs, as follows:

1. Repeal the existing phrases ~~“The first category consists of **Optional Terms and Conditions of Probation**; that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case,~~
2. Add a new sentence to the Optional Terms section to state: “These terms and conditions of probation address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of the case.”
3. Repeal the words in the Standard Terms section that state “The second category consists of...” and “which must” and replace them with the words “These terms and conditions of probation which must generally appear in all Proposed Decisions and proposed stipulated agreements.
4. In the third paragraph, for emphasis and greater comprehension, add the word “items” before the numbers “1-16”, capitalize the word “FIRST” and add the phrase: “as specified under Standard Terms and Conditions of Probation items” before the numbers 17-32.
5. Add a note specifying that the term “designee” refers to the Board’s Executive Officer, Assistant Executive Officer, Enforcement Program Manager, and Probation Monitor(s).

6. In addition, the existing titles for the list of Optional Terms and Conditions of Probation have been modified in Item Nos. 1, 2, 6, 8, and 9 and the title deleted for Item No. 10 (“Abstain from Use of Alcohol/Submit to Drug and Alcohol Testing”) to reflect the new section titles and renumbering of several terms and conditions proposed to be added or amended in the Optional Terms section of the Guidelines in this rulemaking.
7. Add new “Attend Recovery Support Program” term and condition title; and renumber the items due to this addition.

Rationale: Modifying the introductory paragraphs as noted above is necessary to provide greater notice and readability. These changes provide clarity in the organization of the document and transparency by describing how the terms and conditions (Optional or Standard Terms and Conditions of Probation) are to be applied. This also helps to ensure an understanding that the Deputy Attorney General (DAG) and/or Board should modify the list of Optional Terms and Conditions based on the specifics of each case, and that the Standard Terms and Conditions generally apply in each case involving probation.

Adding a note defining “designee” is necessary for notice, clarity and transparency to all affected stakeholders, and because the Board only meets periodically, making it necessary for qualified Board staff being able to receive critical information and make determinations in regard to the need for a psychological or psychiatric evaluation, for example, much more quickly. Adding the title for a new term and condition of probation and renaming several section titles is necessary to ensure the titles match the new and updated titles for each section and that users of the document can locate each section easily.

II. Amend Optional Terms and Conditions of Probation: Suspension (Page 36)

Purpose: In addition to making non-substantive changes to correct capitalization and gendered pronouns, the proposed changes would amend the optional term and condition of probation “Suspension”, changing the title of this section from “Actual Suspension” to “Suspension”; specify that the suspension period is in “calendar” days; and strike the requirement that a licensee who has been suspended be required to complete the required licensure examinations as a condition precedent to resumption of practice.

Rationale: The change to the section title, striking the word “actual” before the word “suspension”, will assist in resolving confusion over the meaning of this term, as there is only one type of suspension (a suspension is a suspension). Specifying “calendar” days as the time period provides for more accurate notice of the time frame and is consistent with current Board practice.

Striking the requirement to take the licensure examinations as a condition precedent is necessary because passing the licensure examinations is a separate term and condition of probation that is listed in the Penalty Chart as applicable only to certain violations, and not in all cases where a license is suspended (for example, see the list of penalties for “Commission of an Act Punishable as a Sexually Related Crime” on page 18 of the Disciplinary Guidelines).

In addition, it is problematic to require passage of examinations during a licensee’s probationary period, as it could take months for the licensee to fulfill this requirement, and the probationary period is not paused during this time. For example, if the probationary period is two years and the licensee’s suspension is for 60 days but they take 120 days to pass the exams, this would result in the licensee not practicing for an additional 60 days while the clock is running on their probationary period, effectively shortening their probation period by 60 days. Probation is intended to run while a licensee is practicing, and this term and condition does not allow for probation to be paused in this situation. For probation to be effective (licensee’s practice is supervised, for example), the licensee must be practicing.

JJ. Amend the Evaluator, Mental Health Professional or Supervisor Criteria to Add New Criteria Psychiatrists and Disqualifying Conditions to Optional Terms and Conditions of Probation: Clinical Diagnostic Evaluation; Psychological / Psychiatric Evaluation; Psychotherapy; Supervised Practice (Pages 36-43)

Purpose: The proposed changes would amend the optional terms and conditions of probation for the categories “Psychological / Psychiatric Evaluation”; “Psychotherapy”; “Clinical Diagnostic Evaluation”; and “Supervised Practice” in regard to probation-required Evaluators, Psychotherapists and Supervisors. As a term or condition of probation, a licensee may be required to undergo a clinical diagnostic evaluation, a psychological or psychiatric evaluation, participate in psychotherapy, or practice under supervision with a licensee who meets certain criteria. For each of these categories, the proposal sets forth the following requirements for an evaluator, mental health professional, clinical diagnostic evaluator, or supervisor of a probationer to be approved by the Board and meet for the purposes of these terms of probation (see qualifying criteria paragraph nos. 4-5):

- An evaluator, psychotherapist or supervisor who does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the respondent (probationer);
- An evaluator, mental health professional or supervisor who has never been the subject of a disciplinary action against their license, as specified.

In addition, the proposal would:

- Define “disciplinary action” as the license having been placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned.
- Require a licensed physician and surgeon serving in any of these roles to be certified in psychiatry by the American Board of Psychiatry and Neurology (ABPN) (see qualifying criteria paragraph 3 of the “Psychotherapy” term and paragraph 2 for all other terms).

Rationale: Prohibiting an evaluator, mental health professional or supervisor from having a current or prior financial, personal, business, professional, or therapeutic relationship with the probationer helps to avoid a potentially biased evaluation due to the current or previous relationship. Prohibiting the use of an evaluator, mental health professional, or supervisor who has ever been the subject of a disciplinary action against their license also helps to avoid a potentially biased evaluation that could provide the probationer with a reason to question their credibility if their evaluation or quarterly report is unfavorable to the probationer.

Defining “disciplinary action” provides clarity by listing the types of disciplinary actions and ensures understanding of which licensees are prohibited. To ensure applicants fully understand what “disciplinary action” means in determining whether their evaluator, supervisor or mental health professional qualifies, and to provide a definition that includes the types of actions the Board is authorized to take under the Board’s laws and pursuant to the Administrative Procedure Act (see Gov. Code, § 11503), the definition for “disciplinary action” shall mean placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned.

Requiring an evaluator who is a licensed physician and surgeon to be certified in psychiatry by the American Board of Psychiatry and Neurology (ABPN), a member of the American Board of Medical Specialties (ABMS), is necessary because the state does not issue “psychiatrist” licenses, it issues physician and surgeon licenses. Business and Professions Code sections 651(h)(5)(C) and 2453.5 prohibit physicians from advertising that they are board certified unless they are certified by specified, private standards setting bodies, including the ABMS. A licensed physician and surgeon may obtain additional training and a certification in psychiatry through the ABPN to demonstrate their mastery of this area. Requiring certification by the ABPN, the only organization that issues widely accepted psychiatrist certifications, helps to ensure that the evaluator possesses the knowledge and skills necessary to conduct an evaluation, provide psychotherapy, or provide supervision for psychotherapists all of which are possible outcomes for this term and condition of probation.

KK. Amend Optional Term and Condition of Probation: Psychological / Psychiatric Evaluation (Page 36-38)

Purpose: In addition to the changes noted above in item JJ, the proposed changes would amend the optional term and condition of probation “Psychological / Psychiatric Evaluation” as described below:

1. Specify that the time frame for undergoing an a psychological / psychiatric evaluation (evaluation) is in “calendar” days.
2. Clarify that the probationer must “undergo” (instead of “complete”) an evaluation.
3. Clarify that the Board or its designee “approves” (instead of “appoints”) the evaluator.
4. Specifies the following criteria for evaluators:
 - Holds a current, active, and unrestricted license as a Psychologist or Physician and Surgeon issued by the licensee’s respective California state Board (Board of Psychology for psychologists and either the Medical Board of California or the Osteopathic Medical Board for physicians and surgeons);
 - Requires a licensed physician and surgeon to be certified in psychiatry by the ABPN (see section JJ for purpose and rationale);
 - Possesses a minimum of two years of experience performing psychological or psychiatric evaluations;
 - Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the probationer (see section JJ for purpose and rationale); and,
 - Has never been the subject of a disciplinary action against their license, and defines “disciplinary action” (see section JJ for purpose and rationale).
5. Requires the probationer to submit to the Board or its designee for prior approval a written request by mail or email that includes the name and qualifications of one or more proposed evaluators prior to undergoing an evaluation.
6. Specifies that the written request shall include the proposed evaluator’s license type, license number and a statement describing how the criteria for Board approval is met (as set forth in paragraphs 1-5 above this paragraph).
7. Specifies that failure to pay for the “evaluation” (instead of “report”) “within the time frame specified by the evaluator” (instead of “in a timely fashion”) constitutes a violation of probation.
8. Specifies that the report shall include an evaluation of the probationer’s ability to “practice” (instead of ability to “function independently”) as a “licensee” (instead of “counselor”, which is more accurate as the title varies depending on the type of licensee involved).

9. Specifies that the respondent shall “sign” (rather than “execute”) a Release of Information.
10. Specifies that the Release of Information shall authorize the evaluator to communicate with the Board; to furnish the Board with a current diagnosis; and to furnish the Board with a written report regarding the respondent’s judgment and ability to practice safely.
11. Requires the respondent to provide the evaluator with a copy of the Board’s Decision prior to the evaluation being performed.
12. Add a subheading “Additional Conditions When Supervision is Recommended by the Evaluator”.
13. Specifies that if supervised practice is indicated by the evaluation, the respondent shall submit in writing by mail or email to the Board, within 30 calendar days of being notified by the Board, the name and qualifications of one or more proposed supervisors and plans for supervision.
14. Specify what the plan for supervision shall contain, including how the supervisor and supervisee will meet the requirements of this term and condition, as well as specifying the frequency, duration and type of supervision.
15. Specify what the request for approval of a proposed supervisor must contain, including each proposed supervisor’s license number, license type and a description of how they meet the criteria for Board approval.
16. Specify the criteria for Board approval of a proposed supervisor as follows:
 - a. Holds a current, active and unrestricted California license to practice psychotherapy or psychological counseling. Specifies that a registration is not considered a license for purposes of qualifying as a supervisor under this term and condition.
 - b. Has practiced for at least two (2) years immediately preceding any supervision, in California or any other state, as a LPCC, LMFT, psychologist licensed pursuant to Chapter 6.6 (commencing with B&P Code section 2900), LCSW, LEP, licensed physician and surgeon who is certified in psychiatry by the ABPN, or equivalent out-of-state license (see section JJ for purpose and rationale for requiring a psychiatrist to be certified in psychiatry by the ABPN).
 - c. Has provided psychotherapy or psychological counseling or has provided direct clinical supervision of psychotherapy performed by marriage and family therapist trainees, AMFTs, APCCs, or ASWs, for at least two (2) years within the five (5)-year period immediately preceding any supervision.
 - d. Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the respondent (see section JJ for purpose and rationale).
 - e. Has never been the subject of a disciplinary action against their license. For the purposes of this section, “disciplinary action” shall mean: the license has

- been placed on probation, revoked, suspended, reprovved, censured, reprimanded, restricted, limited, or conditioned (see section JJ for purpose and rationale).
17. Specify that if a supervisor has not been approved by the Board or its designee within 45 calendar days of submission of the request for approval, the respondent shall cease practice until a supervisor has been approved.
 18. Require the supervisor to submit quarterly written reports to the Board or its designee verifying that supervision has taken place as required and including an evaluation of respondent's performance.
 19. Require the respondent to sign a Release of Information authorizing the supervisor to communicate with the Board, and to sign an agreement with the supervisor and the Board regarding respondent's and the supervisor's requirements and reporting responsibilities.
 20. Specify that failure to file the required reports within the time frames specified by the Board shall be a violation of probation.
 21. Require the respondent to give the supervisor access to the respondent's fiscal and client records.
 22. Specify that supervision shall consist of at least one (1) hour per week in individual face to face meetings.
 23. Specify that all costs of supervision shall be borne by the respondent.
 24. Specify that supervision obtained from a probation supervisor shall not be accepted by the Board as experience gained toward licensure.
 25. If the supervisor is no longer available, require the respondent to notify the Board within 10 calendar days of the date the supervisor is no longer available, and within 20 calendar days of the date the supervisor is no longer available, require the respondent to submit in writing by mail or email to the Board or its designee for its prior approval the name and qualifications of one or more proposed new supervisor(s) and a plan for supervision by each supervisor.
 26. Specify that if a new supervisor is not approved by the Board or its designee within 20 calendar days of the date the supervisor is no longer available, respondent shall not practice until a new supervisor has been approved by the Board or its designee. If respondent fails to submit a proposed new supervisor and plan for supervision as required or fails to cease practice in accordance with this section when there is no supervisor approved by the Board or its designee, this shall constitute a violation of probation.
 27. Removes the word "independently" from before "safely" since safe practice necessarily covers all aspects of practicing with safety to the public, the Board

finds the word “independently” unnecessary and therefore proposes to remove it.

28. Strikes the “FYI” regarding Board requirements for appointment of qualified evaluators who have “appropriate knowledge, training, and experience in the area involved in the violation.”

Rationale: The changes are necessary for the following reasons:

1. Specifying that the time frame for undergoing an evaluation is in “calendar” days is necessary for clarity and notice to respondents of the time frame and, in the Board’s experience, provides for an adequate amount of time for the evaluation to occur.
2. Clarifying that the respondent must “undergo” (instead of “complete”) an evaluation better imparts that the evaluation is a process – it is not a simple task that the respondent “completes” - instead it is a process that the respondent submits to as required by the Board and as set forth by the evaluator.
3. Clarifying that the Board or its designee “approves” (instead of “appoints”) the evaluator reflects current Board practice. The Board no longer maintains an approved list of evaluators that it can appoint, as this became no longer tenable as the Board’s regulated population (and correspondingly its number of probationers) has grown over the years. Allowing the respondent to select the evaluator using the Board’s minimum criteria as set forth in the proposal allows the Board to set minimum criteria needed to assure the effectiveness of the evaluation while allowing the respondents some independent choice in selecting an evaluator that suits their personal preferences. This helps encourage greater compliance with this term and condition of probation.
4. Specifying criteria for evaluators will assist probationers in finding qualified evaluators that the Board is more likely to approve, and will do the following:
 - Requiring a current, active, and unrestricted license issued by the licensee’s California state Board is necessary to ensure that the evaluator is actively practicing and in compliance with requirements for active practice without restrictions and will help to ensure that the evaluator is knowledgeable about current California practice, including legal and ethical standards. These requirements also provide some assurances that the individual has a current knowledge and experience base, is minimally competent to perform their duties, and is not limited in their competency or restricted in any manner from discharging those duties.
 - Requiring an evaluator to possess a minimum of two years of experience performing psychological or psychiatric evaluations helps to ensure that the evaluator possesses an adequate level of expertise in conducting evaluations, which is critical to ensuring an effective evaluation necessary to help ensure safe practice for public protection.
5. Requiring the probationer to submit a request by mail or email for prior approval including the name and qualifications of proposed evaluators provides for

adequate notice of what is required of the respondent, and will help ensure that the Board is provided the documentation necessary to make a determination of fitness to practice with or without continued or further restriction or conditions.

6. Specifying that the request must include the proposed evaluator's license information and a statement describing how they meet the criteria for approval is necessary to identify the proposed evaluator and assist the Board in determining whether the qualifications are met as such information will be used to investigate the proposed evaluator's background, verify that the proposed evaluator is appropriately licensed as required and has no disqualifying conditions.
7. Specifying that it is a violation of probation when the probationer fails to pay for the "evaluation" (instead of "report") "within the time frame specified by the evaluator" (instead of "in a timely fashion") resolves ambiguities with the current language and provides greater notice that the probationer pays for the full evaluation process and not just the report, and helps ensure the probationer knows exactly when they must pay the evaluator.
8. Specifying that the evaluator's report shall include an evaluation of the respondent's ability to "practice" (instead of "function independently") helps to ensure that the report focuses on safe practice rather than independent functioning. Further, it will avoid confusion because some respondents are registrants, and a registrant is always required to practice under supervision.
9. Specifying that the respondent shall "sign" (rather than "execute") a Release of Information resolves ambiguity in what is precisely required of the respondent. "Execute" implies carrying out an action and may lead the respondent to question whether other steps need to be taken in addition to a signature.
10. Specifying that the Release of Information authorizes the evaluator to communicate with the Board, and to furnish the Board with a current diagnosis and written report regarding respondent's judgment and ability to practice safely, is necessary to ensure that the evaluator is able to freely discuss the evaluation and any diagnoses with the Board's representatives including probation monitors, and to ensure the Board is able to make effective decisions regarding the respondent's safety to practice with the public.
11. Requiring the respondent to provide the evaluator with a copy of the Board's Decision prior to the evaluation ensures that the evaluator is aware of all of the facts supporting the Board's Decision and findings of violation, including respondent's background and history as a particular licensee of the Board, as well as the Board's requirements for an evaluation. This helps an evaluator to be fully informed prior to conducting an evaluation and assists the evaluator in providing a more complete report that addresses areas of specific concern raised by the Board's Decision with the overall goal of helping the Board to determine whether a respondent is able to safely practice their particular profession.
12. Adding a subheading "Additional Conditions When Supervision is Recommended by the Evaluator" helps to differentiate the subject of the

paragraphs that follow the heading from the rest of the section for ease of readability.

13. Requiring the respondent to submit in writing, within 30 calendar days of being notified by the Board of the evaluator's recommendation for supervised practice, the name and qualifications of one or more proposed supervisors, as well as plans for supervision, provides greater comprehension and advance notice of how and when the respondent must submit proposed supervisors for Board approval, provides the Board with the documentation necessary to make a determination and, in the Board's experience, allows a respondent adequate time to do so (30 calendar days).
14. Requiring the plan for supervision to describe how the requirements specified will be met assists the Board in determining the adequacy of the plan.
15. Specifying what the request for approval of a proposed supervisor must contain allows the Board to determine whether a proposed supervisor may be approved in accordance with standards to ensure safe practice.
16. Specifying criteria for supervisors will assist probationers in finding qualified supervisors that the Board is more likely to approve as it demonstrates, in the Board's experience, that there will be a reliable evaluation of a respondent's fitness for practice submitted to the Board, and will do the following:
 - a. Requiring a current, active, and unrestricted license issued by the licensee's California state Board is necessary to ensure that the supervisor is actively practicing and in compliance with requirements for active practice without restrictions and will help to ensure that the supervisor is knowledgeable about California practice, including legal and ethical standards.
 - b. Requiring the supervisor to have practiced for at least two years immediately preceding any supervision as a LPCC, LMFT, LCSW, LEP, licensed psychologist, licensed physician and surgeon who is certified in psychiatry by the ABPN is necessary for public protection, as it will ensure the supervisor has enough experience to oversee the practice of another mental health professional, and is up to date on legal and ethical requirements, for example.
 - c. Specifying that the supervisor must have provided psychotherapy or psychological counseling, or direct supervision of psychotherapy performed by trainees or associates for at least two out of the past five years is necessary to ensure recent clinical knowledge and experience that supports their ability to provide effective supervision to a professional providing clinical services (psychotherapy).
17. Requiring the respondent to cease practice if a supervisor has not been approved within 45 calendar days of the effective date of the Decision, until a supervisor has been approved, is necessary because practicing without supervision risks harm to the public when a respondent has demonstrated their inability to meet minimum standards for safe practice.

18. Requiring the supervisor to submit quarterly written reports verifying that supervision has taken place as required and an evaluation of respondent's performance is necessary to ensure the probationer is meeting the terms and conditions of their probation and to support public protection.
19. Requiring the respondent to sign a Release of Information authorizing the supervisor to communicate with the Board (instead of completing any required consent forms) is necessary for specificity in what is required, and to ensure that the supervisor is able to freely discuss the probationer's performance and any concerns with the Board with concern for possible violations of a respondent's therapeutic and medical privacy, and to ensure the Board is able to make informed and effective decisions regarding the probationer's safety to practice with the public.
20. Specifying that failure to file the required reports within the time frames specified by the Board shall be a violation of probation is necessary for transparency as to what constitutes a probation violation.
21. Requiring the respondent to give the supervisor access to the respondent's fiscal and client records is necessary to provide the supervisor with the access needed to fairly and accurately evaluate the probationer's performance in the interest of public protection.
22. Specifying that supervision shall consist of at least one (1) hour per week in individual face to face meetings is necessary for consistency with the separate Supervised Practice term and condition (p. 41-43 of the Guidelines).
23. Specifying that all costs of supervision shall be borne by respondent is necessary for consistency with the separate Supervised Practice term and condition (p. 41-43 of the Guidelines) and ensures that costs for a violation is not borne by other licensees who have not violated minimum standards of practice.
24. The following provisions, applicable when the supervisor is no longer available, are necessary as described below:
 - a. Reducing the time frame for the respondent to notify the Board when the supervisor is no longer available from 15 days to 10 calendar days is in the interest of public protection, as practicing without supervision risks harm to the public. Specifying calendar days is necessary to resolve ambiguity in the time frame.
 - b. Requiring the respondent to submit for approval by mail or email the qualifications of proposed new supervisors and supervision plans ensures that the probationer understands how to request approval and provides the information necessary for the Board or its designee to make a determination. Allowing the Board's designee to receive the request and make a determination conforms with the supervisor selection process that occurs at the initiation of probation.
 - c. Prohibiting the respondent from practicing when a new supervisor has not been approved within the specified time frame is necessary because practicing without supervision risks harm to the public when a respondent

has not been able to demonstrate they can practice independently with safety to the public.

- d. Specifying that it is a violation of probation for a respondent to fail to request approval of a new supervisor or to fail to cease practice as specified when there is no supervisor approved increases transparency, helping to ensure that the probationer understands the ramifications of such occurrences and thereby increases chances of remediation of the violations and overall rehabilitation.

25. Striking the “FYI” in regard to Board requirements for appointment of qualified evaluators is necessary because having knowledge, training and experience in the area involved in the violation is not always possible, and while it may be helpful, it is not truly necessary for conducting an evaluation. The Board believes that the proposed criteria for evaluators is sufficient for a thorough evaluation to occur and for the Board to obtain an expert opinion on the respondent’s fitness to practice with safety to the public.

LL. Amend Optional Term and Condition of Probation: Psychotherapy (Pages 39-40)

Purpose: In addition to the changes noted above in item JJ, the proposed changes would amend the optional term and condition of probation “Psychotherapy” as described below:

1. Change “therapy” and “counseling” to “psychotherapy” throughout the section.
2. Change “therapist” to “mental health professional” throughout the section and add the qualifier “California licensed” to the first instance of the term in the first paragraph of this term and condition of probation.
3. Add “according to the requirements of this section” to the first sentence.
4. Increase the time frame for a respondent to propose a mental health professional from 15 days to 30 calendar days.
5. Clarify that the respondent must submit proposed mental health professionals to the Board in writing by mail or email.
6. Specify that the written request shall include the proposed mental health professional’s license type, license number and a statement describing how they meet the criteria for Board approval specified in paragraphs 1-5 of the criteria listed below the first paragraph.
7. Specify that the mental health professional must meet the following criteria for Board approval:
 - a. Holds a current, active, and unrestricted license or registration issued by this Board as a LMFT, LCSW, LPCC, or issued by the California Board of Psychology as a Psychologist, or as a Physician and Surgeon issued by the

- Medical Board of California or the Osteopathic Medical Board of California (paragraphs 1-3);
- b. Require a Physician and Surgeon to be certified in psychiatry by the ABPN (see section JJ for purpose and rationale);
 - c. Does not have a current or prior financial, personal, business, professional or therapeutic relationship with the respondent (see section JJ for purpose and rationale); and,
 - d. Has never been the subject of a disciplinary action against their license, and defines “disciplinary action” (see section JJ for purpose and rationale).
8. Strike the existing sentence requiring the psychotherapist to possess a valid California license to practice and prohibiting the “supervisor” from having a prior business, professional or personal relationship with respondent or being respondent’s supervisor.
 9. Add new language which specifies that psychotherapy shall be provided “upon approval” and “on an individual basis” to existing requirements for weekly psychotherapy.
 10. Specify that, in addition to the Board, the Board’s designee may determine whether to deviate from the requirement that the probationer participate in psychotherapy on an individual basis at least once a week.
 11. Strike the paragraph that requires the probationer to receive the Board’s written permission to receive therapy via videoconferencing after good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area and specifies requirements for providing written documentation as proof of good faith attempts.
 12. Specify that the respondent shall “sign” (rather than “execute”) a Release of Information.
 13. Specify that the Release of Information shall authorize the mental health professional to communicate with the Board, rather than “divulge information to” the Board.
 14. Require the respondent to provide the mental health professional with a copy of the Board’s Decision prior to the first psychotherapy session.
 15. Change “psychotherapist” to “mental health professional”.
 16. Strike the “FYI” sentence regarding Board requirements for therapists to have appropriate knowledge, training and experience in the area involved in the violation.

Rationale: The changes are necessary for the following reasons:

1. Changing “therapy” and “counseling” to “psychotherapy” throughout the section provides for consistency with the section title and more accurately describes the term.

2. Changing “therapist” to “California licensed mental health professional” or “mental health professional” and “psychotherapist” to “mental health professional” throughout the section provides a more comprehensive term that covers all types of health care practitioners authorized by California law to provide specified types of psychotherapy and apply psychotherapeutic techniques in counseling clients (see BPC sections 2038, 2052, 2903, 4980.02, 4996.9, and 4990.20) who would be accepted and approved by the Board as meeting its qualifying criteria. These requirements are necessary to ensure that the mental health professional is authorized to provide such therapy in California. It also more clearly explains what is meant by “therapist” or “psychotherapist” and provides for consistency with the wording of the first sentence of this section.
3. Adding “according to the requirements of this section” to the first sentence provides notice and clarifies that Board approval of the mental health professional would be done according to specified criteria required in this section.
4. Increasing the timeframe for a respondent to submit their proposed mental health professional from 15 to 30 days ensures a respondent has adequate time (in the Board’s experience) to locate and select a qualified mental health professional and is consistent with the time frame specified or other optional terms that allow for the respondent to select a supervisor or evaluator.
5. Requiring the respondent to submit to the Board or its designee for prior approval a request by mail or email that includes the name and qualifications of one or more proposed mental health professionals provides advance notice regarding what is required to request approval from the Board and helps ensure the respondent provides the Board with the documentation necessary to make a determination.
6. Specifying that the request must include the proposed mental health professional’s license information and a statement describing how they meet the criteria helps the Board identify and investigate the qualifications of the proposed mental health professional and assists the Board in determining whether the qualifications are met as such information will be used to investigate the proposed evaluator’s background, verify that the proposed evaluator is appropriately licensed as required and has no disqualifying conditions.
7. Requiring the mental health professional to hold a current, active, and unrestricted license is necessary to ensure that they are actively practicing and in compliance with requirements for active practice. These requirements also provide assurances that the individual has a current knowledge and experience base, is minimally competent to perform their duties, and is not limited in their competency or restricted in any manner from discharging those duties. Requiring a California license will help to ensure that they are knowledgeable about California practice, including legal and ethical standards.
8. Striking the existing sentence that the mental health professional possess a valid California license is necessary because the criteria for proposed mental health professional has been fully specified in the paragraphs above this one; striking

the text prohibiting a therapist from having a prior business, professional, or personal relationship with respondent or being respondent's supervisor is necessary to avoid duplication because these prohibitions are proposed to be subsumed within the new criteria in paragraphs 4 and 5. The phrase "shall not be the respondent's supervisor" is not explicitly stated in paragraph 4 because being the respondent's supervisor is a type of "professional" relationship and is therefore already included as such in paragraph 4.

9. Clarifying that psychotherapy shall be provided on an individual basis upon approval is necessary to ensure that the probationer receives individual as opposed to group therapy, and that the probationer will receive adequate individual attention to the concerns related to their case. It also helps to ensure an understanding that the Board must approve the mental health professional prior to initiating psychotherapy to ensure the Board's requirements are met.
10. Specifying that, in addition to the Board, the Board's designee may determine whether to deviate from the requirement that the probationer participate in individual psychotherapy at least once a week, allows for a much faster determination since the Board only meets periodically; this proposal therefore allows the mental health professional qualification concerns to be quickly and thoroughly addressed through administration by staff of the standardized criteria proposed in this section.
11. Striking the paragraph that requires the respondent to receive the Board's written permission to receive therapy via videoconferencing is necessary because during the COVID-19 pandemic, in-person psychotherapy was completely unavailable, and the Board had to allow all probationers to receive psychotherapy in this manner. During that time, psychotherapy via videoconferencing was found to be effective, and therefore the Board has determined that a request justifying psychotherapy via videoconferencing is not necessary.
12. Requiring the respondent to provide the mental health professional with a copy of the Board's Decision prior to the first psychotherapy session ensures that the mental health professional understands all of the facts supporting the Board's Decision and findings of violation, including respondent's background and history as a particular licensee of the Board, as well as the Board's requirements for an evaluation. This helps an evaluator to be fully informed prior to conducting an evaluation, and helps ensure that the psychotherapy provided will address areas of specific concern raised by the Board's Decision with the overall goal of helping the Board to determine whether a respondent is able to safely practice their particular profession.
13. Specifying that the respondent shall "sign" (rather than "execute") a Release of Information resolves confusion and provides advance notice about what is required of the respondent. "Execute" implies carrying out an action and may lead the probationer to question whether other steps need to be taken in addition to a signature.

14. Specifying that the Release of Information authorizes the mental health professional to “communicate with” the Board ensures that the mental health professional is able to freely discuss the probationer’s progress in psychotherapy with the Board, and to ensure the Board is able to make effective decisions regarding the respondent’s safety to practice with the public.
15. Striking the “FYI” in regard to Board requirements for appointment of qualified psychotherapists is necessary because having knowledge, training and experience in the area involved in the violation is not always possible, and while it may be helpful, it is not necessary for conducting psychotherapy. The proposed criteria for psychotherapists have been determined to be sufficient for the Board to obtain an expert opinion on the respondent’s fitness to practice with safety to the public.

MM. Amend Optional Term and Condition of Probation: Clinical Diagnostic Evaluation (Pages 40-41)

Purpose: In addition to the changes noted above in item JJ, the proposed changes would amend the optional term and condition of probation “Clinical Diagnostic Evaluation” as described below:

1. Increase the time frame for undergoing a clinical diagnostic evaluation (evaluation) from within “20 days” to within “30 calendar days” of the effective date of the Decision, and adds an alternative that allows the evaluation to take place “within 30 calendar days of the date of the written order” by the Board “or its designee”.
2. Specify that the respondent must undergo the clinical diagnostic evaluation “by an evaluator approved by the Board or its designee and according to the requirements specified in this section.
3. Move the sentence requiring the respondent to provide the evaluator with a copy of the Board’s Decision from the first paragraph to the third paragraph for better logical flow and organization of these requirements.
4. Require the respondent to submit to the Board or its designee for prior approval a request by mail or email that includes the name and qualifications of one or more proposed evaluators.
5. Specify that the request shall include the proposed evaluator’s license type, license number and a statement describing how they meet the criteria for approval specified in paragraphs 1-5.
6. Specify the following criteria for evaluators:
 - Holds a current, active, and unrestricted license as a Psychologist issued by the California Board of Psychology or a Physician and Surgeon license issued by the Medical Board of California or Osteopathic Medical Board of California, and
 - Requires a licensed physician and surgeon to also be certified in psychiatry

- by the ABPN (see section JJ for purpose and rationale);
- Possesses a minimum of three years of experience performing clinical diagnostic evaluations of health professionals with substance use disorders;
 - Does not have a current or prior financial, personal, business, professional, or therapeutic relationship with the respondent (see section JJ for purpose and rationale); and,
 - Has never been the subject of a disciplinary action against their license and defines “disciplinary action” (see section JJ for purpose and rationale).
7. Require the clinical diagnostic evaluation report to set forth, in the evaluator’s opinion, whether the respondent has a substance use disorder, whether the respondent is a threat to self or others, and recommendations for the respondent’s substance use disorder treatment, recommendations for practice, recommendations for practice restrictions, or other recommendations related to the respondent’s rehabilitation and safe practice.
 8. Move the sentence specifying that the cost of the evaluation shall be paid by the respondent from the last paragraph to the 4th paragraph for better organization and advance notice of this existing requirement. Retaining this requirement is necessary to effectuate the Board policy that the individual responsible for the violation should be responsible for the costs associated with remediating the conduct.
 9. Specify that failure to pay for the evaluation within the time frame specified by the evaluator constitutes a violation of probation.
 10. Require the respondent to sign a Release of Information authorizing the evaluator to communicate with the Board and to furnish the Board with a current diagnosis and written report regarding the respondent’s judgment and ability to practice safely.
 11. Require the respondent to immediately cease practice for 30 calendar days pending the results of the evaluation and strike the requirement that their license be automatically suspended for one month pending the results of a clinical diagnostic evaluation.
 12. Add “and alcohol” to existing “random drug testing” requirements for submission while the results of the clinical diagnostic evaluation are pending.
 13. Strike the requirement that “Respondent shall cause” the evaluator to submit the report, and instead specify that the evaluator shall submit the report to the Board or its designee.
 14. Add the word “calendar” before “days” to the report submission requirement so that it would require the report to be submitted within 10 “calendar” days from the date the evaluation was completed, unless an extension, not to exceed 30 “calendar” days is granted.
 15. Specify that the Board or its designee may issue an extension for submission of the evaluation for “good cause” upon written request from the evaluator.

16. Specifies that the request for extension by the evaluator must be mailed or emailed to the Board prior to the expiration of the initial 30-day period, and in cases where the extension is granted for good cause, the written report shall be mailed or emailed to the Board prior to the expiration date of the 30-day extension period.
17. Defines “good cause” as including the inability to complete the evaluation in the time allowed due to the evaluator’s or respondent’s personal or family illness or disability, or due to the evaluator’s workload.
18. Replace the terms “remain suspended” with “shall cease practice” until the Board determines that respondent is able to safely practice and has had at least one month of negative drug “and alcohol” tests.

Rationale: The changes are necessary for the following reasons:

1. Increasing the time frame for undergoing an evaluation from within 20 days to within “30 calendar days” of the effective date of the Decision allows, in the Board’s experience, an adequate amount of time for the evaluation to take place. Specifying the time frame in “calendar” days is necessary to resolve ambiguity and provide accurate notice of the time frame. Adding an alternative that allows the evaluation to take place “within 30 calendar days of the date of the written order” by the Board “or its designee” reflects the fact that an evaluation may be either part of the Decision, or ordered by the Board or its designee when the Board determines that further evaluation during probation is necessary to determine a respondent’s ability to safely practice. Adding “or its designee” is necessary for public protection to ensure effective evaluations of respondents because the Board only meets periodically, and a designee is able to act much more quickly.
2. Specifying that the Board or its designee must approve the evaluator according to the requirements specified in the section is necessary so that the respondent is aware that they must obtain prior approval of their desired evaluator, and that the evaluator must meet certain requirements. This will help improve compliance with this term and condition of probation.
3. Moving the sentence requiring the probationer to provide the evaluator with a copy of the Board’s Decision from the first paragraph to the third paragraph improves readability and flow. The Board retains this requirement for the reasons specified in sections KK and LL above.
4. Requiring the respondent to submit to the Board or its designee for prior approval a request by mail or email that includes the qualifications of one or more proposed evaluators resolves confusion about the approval process and provides advance notice of what is required to request approval of an evaluator, and will help ensure the Board receives the documentation necessary to make a determination.
5. Specifying that the request shall include the proposed evaluator’s license information and a statement describing how they meet the criteria for approval

helps the Board identify and verify the qualifications of the proposed evaluator as such information will be used to investigate the proposed evaluator's background, verify that the proposed evaluator is appropriately licensed as required and has no disqualifying conditions. Therefore, these requirements assist the Board overall in determining whether the qualifications are met.

6. Specifying criteria for evaluators will assist probationers in finding qualified evaluators and help ensure competency and skill in performing these evaluations.
 - Specifying that an evaluator must hold a current, active, and unrestricted license is necessary to ensure that the evaluator is actively practicing and in compliance with requirements for active practice without restrictions. Requiring a California license is necessary because it will help to ensure that the evaluator is knowledgeable about California practice, including legal and ethical standards.
 - Specifying that an evaluator must possess a minimum of three years of experience performing clinical diagnostic evaluations of health professionals with substance use disorders helps to ensure that the evaluator possesses an adequate level of expertise in conducting such evaluations, which is critical as ensuring an effective evaluation is necessary to help ensure safe practice for public protection.
7. Requiring the clinical diagnostic evaluation report to set forth whether the respondent has a substance use disorder, is a threat to self or others, and recommendations for respondent's substance use disorder treatment, practice restrictions, or other recommendations related to the respondent's rehabilitation and safe practice is necessary so that the Board or its designee can determine whether any additional enforcement actions or restrictions may be necessary to protect the public.
8. Moving the sentence specifying that the cost of the evaluation shall be paid by the respondent from the last paragraph to the 4th paragraph provides for improved readability and flow.
9. Specifying that it is a violation of probation if the probationer fails to pay for the evaluation within the time frame specified by the evaluator is necessary for advance notice of this requirement and transparency and will help the respondent understand exactly when they must pay the evaluator.
10. Requiring the respondent to sign a Release of Information that authorizes the evaluator to communicate with the Board, and to furnish the Board with a current diagnosis and written report regarding respondent's judgment and ability to practice safely, ensures that the evaluator is able to freely discuss the respondent's evaluation, including any diagnoses with the Board, and to ensure the Board is able to make informed and effective decisions regarding the respondent's safety to practice with the public.
11. Requiring the respondent to immediately cease practice for 30 calendar days

pending the results of the evaluation, and striking the requirement that their license be automatically suspended for one month is necessary to more accurately describe the order that would be issued by the Board pending the results of this evaluation.

12. Adding “and alcohol” to “random drug testing” is necessary to clarify that drug testing always includes testing for alcohol for consistency with the rest of the Uniform Standards/Disciplinary Guidelines and the Board’s policy of complete abstention from psychoactive substances that could impair a respondent’s judgment and ability to practice safely.
13. Specifying that the “evaluator shall submit” the evaluation report (instead of “Respondent shall cause” the evaluator to submit the report) to the Board “or its designee” is necessary to clarify that the evaluator is responsible for submitting the report rather than the respondent, and allows for the report to be handled by in-office staff at the address where the report will be mailed to and more expeditiously provided by the respondent to help ensure greater compliance with this term.
14. Requiring the evaluation report to be submitted within 10 “calendar” days from the date the evaluation was completed, unless an extension, not to exceed 30 “calendar” days is granted, is necessary to resolve confusion and provide greater notice regarding the time frames and, in the Board’s experience, provides an adequate amount of time for the requirement to be met.
15. Specifying that the Board or its designee may issue an extension for submission of the evaluation “for good cause upon written request from the evaluator” is necessary because circumstances may occur outside of the respondent’s or evaluator’s control and there no current guidelines on how an extension may be requested, under what circumstances and by whom. This proposal would resolve those concerns by specifying under what circumstances the Board would generally grant such an extension.
16. Specifying that the request for extension must be mailed or emailed to the Board prior to the expiration date of the initial 30-day submission period provides clarity in the time frame, and, in the Board’s experience, allows an adequate amount of time for the request to be submitted for processing by the Board. Specifying the time frame for submission in cases where an extension is granted for good cause provides clarity as to when the evaluation report is due, and in the Board’s experience allows adequate time for receipt of the report.
17. Defining “good cause” would enable respondents and evaluators to have greater understanding and assurances regarding what constitutes “good cause” for granting an extension from the deadlines for submission of the report. As such, “good cause” would be defined as including the inability to complete the evaluation in the time allowed due to the evaluator’s or respondent’s personal or family illness or disability, or due to the evaluator’s workload. This is necessary as there are currently no guidelines about which types of situations allow for an extension to be granted. It has been determined by the Board that these

particular situations are examples that may warrant an extension due to being outside of the evaluator's or respondent's control.

18. See #11 above for rationale for replacing the terms "remain suspended" with "shall cease practice".

NN. Amend Optional Term and Condition of Probation: Supervised Practice (Pages 41-43)

Purpose: In addition to the changes noted above in item JJ, the proposed changes would amend the optional term and condition of probation "Supervised Practice" as described below:

1. Specify that a request for approval of a proposed supervisor and plan for supervision must be submitted within 30 "calendar" days of the effective date of the Decision.
2. Require the respondent to submit a request for approval of a proposed supervisor by mail or email.
3. Specify that the request shall include a plan "for supervision" by each "proposed" supervisor and specify that the supervision plan must describe how the supervisor and supervisee will meet the requirements of the section, including frequency, duration and type of supervision.
4. Specify that the request shall include the proposed supervisor's license type, license number and a statement describing how the supervisor meets the criteria for Board approval in paragraphs 1-5 of this section.
5. Specify the following criteria for supervisors:
 - a. Holds a current, active, and unrestricted California license to practice psychotherapy or psychological counseling;
 - b. Specifies that a registration is not considered a license for purposes of qualifying as a supervisor under this term and condition;
 - c. Has practiced for at least two years immediately preceding any supervision in California or any other state as a LPCC, LMFT, LCSW, LEP, licensed psychologist, licensed physician and surgeon who is certified in psychiatry by the ABPN, or equivalent out-of-state license;
 - d. Has provided psychotherapy or psychological counseling, or has provided direct clinical supervision of psychotherapy performed by marriage and family therapist trainees, AMFTs, APCCs, or ASWs, for at least two years within the five-year period immediately preceding any supervision;
 - e. Does not have a current or prior financial, personal, business, professional, for therapeutic relationship with the respondent (see section JJ for purpose and rationale); and,
 - f. Has never been the subject of a disciplinary action against their license and

defines “disciplinary action” (see section JJ for purpose and rationale).

6. Specify that if a supervisor has not been approved within 45 calendar days of the effective date of this Decision, the respondent shall cease practice until a supervisor has been approved by the Board or its designee.
7. Strike the requirement that the supervisor be “independent” and “with no prior business, professional or personal relationship with respondent.”
8. Strike the words “quarterly basis” and add new language requiring the supervisor to submit “quarterly” written reports verifying required supervision occurred for greater comprehension and notice of this existing requirement.
9. Strike the options that may be considered by the Board when a respondent is unable to secure a supervisor (receiving supervision via videoconferencing or permitting respondent to secure a supervisor not in the respondent’s field of practice) and strike the requirement for those options to be considered and exhausted by the Board. Also strike the provision that allows the Board to require the respondent provide written documentation of their good faith attempts to secure face-to-face supervision, supervision via videoconferencing, or to locate a professional that is licensed in the respondent’s field of practice.
10. Require the respondent to sign a Release of Information authorizing the supervisor to communicate with the Board (instead of “completing any required consent forms”).
11. Specify that failure to file the required quarterly written reports “within the time frames specified by the Board” (instead of “in a timely fashion”) is a violation of probation.
12. Move the sentence that specifies that supervision shall consist of at least one hour per week in individual face to face meetings from the last paragraph to the prior paragraph.
13. Move the sentence that specifies all costs of supervision shall be borne by respondent from the last paragraph to the prior paragraph.
14. Clarify that supervision obtained from a probation supervisor shall not be “accepted by the Board” (instead of “used”) as experience toward licensure.
15. Specify the following provisions that are applicable when the supervisor is no longer available:
 - a. Reduces the time frame for the respondent to notify the Board from 15 days to 10 calendar days of the date the supervisor is no longer available;
 - b. Requires the respondent to submit by mail or email for prior approval by the Board “or its designee” the name and qualifications of one or more proposed new supervisors, and a plan for supervision by each supervisor as specified in this section within 20 calendar days of the date the supervisor is no longer available;
 - c. Prohibits the respondent from practicing if a new supervisor has not been

approved within 20 calendar days of the date the supervisor is no longer available, until a new supervisor has been approved by the Board or its designee; and,

- d. Specifies that it constitutes a violation of probation for a respondent to fail to submit a proposed new supervisor and plan for supervision for approval, or for the respondent to fail to cease practice in accordance with the section when there is no supervisor approved by the Board or its designee.
16. Delete the sentence that prohibits the supervisor from being the respondent's therapist as it is already subsumed within the list of supervisor criteria (#4 in the list).
 17. Strike the optional condition that would prohibit the respondent from practicing until they have received notification that the Board has approved the respondent's supervisor.

Rationale: The changes are necessary for the following reasons:

1. Specifying that a request for approval of a proposed supervisor and plan for supervision must be submitted within 30 "calendar" days resolves ambiguity and provides advance notice regarding the time frame for compliance and, in the Board's experience, allows for adequate time for these actions to be completed.
2. Requiring the respondent to submit a request for approval of a proposed supervisor by mail or email informs the probationer about how to submit the request via an acceptable method, and thereby helps ensure that the Board receives the documentation necessary to make a determination.
3. Specifying that the request shall include a plan "for supervision" by each "proposed" supervisor resolves ambiguity in regard to the type of plan, and specifies that the plan pertains to the request for a proposed (as opposed to an approved) supervisor. Requiring the plan for supervision to describe how the requirements specified will be met assists the Board or its designee in determining the adequacy of the plan and such specificity helps ensure greater compliance with this requirement.
4. Specifying that the request shall include the proposed supervisor's license information and a statement describing how they meet the criteria for approval helps the Board identify the proposed supervisor and provide necessary information to allow the Board to properly investigate the background and qualifications of the proposed supervisor, which assists the Board in determining whether the Board's criteria for an approved supervisor are met.
5. The proposed criteria for supervisors are necessary for the effective enforcement of this term and condition of probation as follows:
 - a. Requiring a current, active, and unrestricted California license to practice psychotherapy or psychological counseling ensures that the supervisor is actively practicing and in compliance with requirements for active practice and helps to ensure that the supervisor is knowledgeable about California

practice including legal and ethical standards. These requirements also provide assurances that the individual has a current knowledge and experience base, is minimally competent to perform their duties, and is not limited in their competency or restricted in any manner from discharging those duties. Specifying that a registration is not a license for purposes of this section is necessary because the Board has noted that the use of the term “license” in these guidelines includes a registration “unless otherwise specified” (see Introduction on p. 1). Since a registrant is not allowed to practice independently and therefore is not yet qualified to supervise others this notice “specifies” that the term license as used herein is limited to those who are fully licensed, and authorized by California law to supervise trainees, interns, associates and others.

- b. Requiring the supervisor to have practiced for at least two years immediately preceding any supervision as a LPCC, LMFT, LCSW, LEP, licensed psychologist, licensed physician and surgeon who is certified in psychiatry by the ABPN is necessary for public protection, as it will ensure the supervisor has enough experience to oversee the practice of another mental health professional, and is up to date on legal and ethical requirements, for example.
 - c. Specifying that the supervisor must have provided psychotherapy or psychological counseling, or direct supervision of psychotherapy performed by trainees or associates for at least two out of the five years immediately preceding supervision is necessary to ensure recent clinical knowledge and experience that supports their ability to provide effective supervision to a professional providing clinical services (psychotherapy).
6. Requiring the respondent to cease practice if a supervisor has not been approved within 45 calendar days of the effective date of the Decision, until a supervisor has been approved, is necessary because practicing without supervision risks harm to the public as there is no licensed professional to help monitor and ensure minimum standards of the profession are met.
 7. Striking the requirement that the supervisor be “independent” is necessary because it is unclear exactly what “independent” means in this context. The list of prohibited current or prior relationships with the probationer (financial, personal, business, professional, or therapeutic) would be subsumed by the proposed addition new criteria paragraphs (specifically addressed by paragraph no. 4) and such criteria suffices to provide for public protection by helping to ensure the supervisor’s ability to be qualified to provide supervision according to those more comprehensive criteria.
 8. Deleting the sentence that prohibits the supervisor from having a prior business, professional or personal relationship with the respondent to the list of supervisor criteria in a prior paragraph is necessary to avoid duplication as this concept is covered in the new criteria as noted above.
 9. Striking provisions that allow the Board to consider permitting the respondent to

receive supervision via videoconferencing or working under a supervisor not in the probationer's field of practice (and requiring the respondent provide documentation of good faith attempts to secure the specified type of supervision or supervisor) is necessary because during the COVID-19 pandemic, in-person supervision was completely unavailable. The Board had to allow all probationers to receive supervision via videoconferencing during this time. In the Board's experience during that time, supervision via videoconferencing is effective, and therefore a request from a probationer to have supervision via these other options is not necessary. It is also not necessary to require a request for a supervisor who is "not licensed in the Respondent's field of practice" because the proposed new list of criteria for supervisors lists all types of mental health professionals qualified to supervise the Board's licensees and registrants; therefore, no other type of supervisor could be approved.

10. Requiring the respondent to sign a Release of Information authorizing the supervisor to communicate with the Board (instead of completing any required consent forms) is necessary for specificity in what is required, and to ensure that the supervisor is able to freely discuss the probationer's performance and any concerns with the Board, and to ensure the Board is able to make informed and effective decisions regarding the respondent's safety to practice with the public.
11. Specifying that failure to file the quarterly reports "within the time frames specified by the Board" (instead of "in a timely fashion") is necessary to resolve ambiguity and so that the probationer and supervisor know exactly when the reports are due.
12. Moving the sentence that requires supervision to consist of at least one hour per week in individual face to face meetings from the last paragraph to the prior paragraph assists in readability and flow.
13. Moving the sentence that requires all costs of supervision to be borne by respondent from the last paragraph to the prior paragraph is necessary for readability and flow and retention of this requirement ensures that those responsible for the violation continue to account for the violation through payment of costs associated with remediating the violation.
14. Clarifying that supervision obtained from a probation supervisor shall not be "accepted by the Board" (instead of "used") as experience toward licensure better conveys to respondents and affected stakeholders that the Board will reject experience gained under a probation supervisor toward meeting licensure requirements. This helps ensure that those who demonstrate they are in greatest need of additional supervision get it and are not afforded an added benefit for their violations.
15. The following provisions, applicable when the supervisor is no longer available, are necessary as described below:
 - a. Reducing the time frame for the respondent to notify the Board from 15 days to 10 calendar days of the date the supervisor is no longer available is in the interest of public protection, as practicing without supervision risks harm to

the public as there is no licensed professional to help monitor and ensure minimum standards of the profession are met. The shorter timeframe helps ensure respondents are supervised for safe practice and is sufficient time for a respondent to seek alternate supervision or wind down practice until a new supervisor is located and approved. Specifying calendar days is necessary to resolve ambiguity and provide greater notice regarding the time frame.

- b. Requiring the respondent to submit for approval by mail or email the qualifications of proposed new supervisors and supervision plans within 20 calendar days of the date the supervisor is no longer available ensures that the respondent understands how to request approval under these circumstances. It also helps ensure that the Board receives the information necessary for the Board or its designee to make a determination and, in the Board's experience, allows adequate time for compliance. Allowing the Board's designee to receive the request and make a determination conforms with the supervisor selection process that occurs at the initiation of probation.
 - c. Prohibiting the respondent from practicing when a new supervisor has not been approved within the specified time frame until a new supervisor has been approved is necessary because practicing without supervision risks harm to the public as there is no licensed professional to monitor and ensure minimum standards of the profession are met.
 - d. Specifying that it is a violation of probation for a respondent to fail to request approval of a proposed new supervisor and plan for supervision, or to fail to cease practice as specified when there is no supervisor approved increases transparency and encourages greater compliance by helping to ensure that the probationer understands the ramifications of such occurrences.
16. Deleting the sentence that prohibits the supervisor from being the respondent's therapist is necessary because it is covered by #4 in the list of supervisor criteria which prohibits a "business" or "professional" relationship.
17. Striking the optional condition that would prohibit the respondent from practicing until receiving notification of approval of the supervisor is necessary because this would create an immediate disruption in mental health services provided to the licensee's clients. The Board believes that the safeguards proposed in this section provide a sufficient balance between protecting the public from harm due to the licensee's potential to reoffend while unsupervised vs. the harm that can result from a disruption to clients.

OO. Amend Optional Term and Condition of Probation and Title: Education (Page44)

Purpose and Rationale: The proposed changes would amend the optional term and condition of probation "Education" as described below:

1. Change the section title from "Education" to "Education Pertaining to the Violation". This is necessary to indicate to affected licensees that required

education must pertain to the violation. Education must pertain to the violation to help ensure that the Board's rehabilitative goals are met, and therefore the title change is a more accurate reflection of the requirements of this condition. In addition, the description of this penalty states "Course content shall be pertinent to the violation..."

2. Strike "the equivalency of" and "semester units" and, replace with "hours of Board-approved coursework". This is necessary because the Board is proposing to strike the requirement that the course be taken at the graduate level, and instead may be taken from a continuing education (CE) provider, and such providers typically offer CE in "hours" and not semester units.
3. Strike the requirement that coursework be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor. This is necessary as graduate institutions often won't accept individuals who are not seeking a degree, and if they do, the cost for a non-degree-seeker is often prohibitively high. Since the Board approves the courses as qualifying to meet the requirements of this term, it can determine relevance of the course content and objectives to the violation based on the course outline or syllabus.
4. Specify that each course selected by the respondent must be approved by the Board prior to completion as provided in the section. This is necessary to provide notice to the respondent that they must wait to sign up for courses until approved and ensures that the courses are pertinent to the respondent's case and meet the requirements of this section to comply with this term and condition of probation. Specifying this requirement helps ensure that respondents do not pay for or enroll in unnecessary and non-compliant educational courses that will not address their probationary conditions.
5. Strike the classroom attendance requirement. This is necessary because during the COVID-19 pandemic, classroom attendance was completely unavailable. The Board had to allow all probationers to attend remotely during this time. In the Board's experience during this time, remote course completion is effective and therefore this outdated classroom attendance requirement should be repealed.
6. Require courses to be completed within 18 months (instead of one year as currently required and proposed to be repealed under this proposal) from the effective date of the Decision. This is necessary to provide the respondent with adequate time for completion, in the Board's experience. The current one-year time frame includes the 90 days for submission of proposed courses, as well as the time for the Board to review (and possibly reject) the proposed courses, which shortens the time frame to complete the courses. Some courses are not available to take on demand, and this has at times resulted in licensees being unable to take or complete a course as required by this term.
7. Specify that the respondent's education plan for meeting the Board's requirements must be submitted by the respondent "in writing by mail or email" within 90 "calendar" days of the effective date of the Decision. This is necessary to resolve ambiguity for respondents regarding the required methods of

- submission and time frame for compliance.
8. Add new language that specifies that the plan submitted is for prior approval “by the Board or its designee” to more clearly specify who is authorized to approve the plan submitted by the respondent and to allow plans to be approved by the Board’s designee. This is necessary for public protection to ensure respondents receive timely and relevant training because the Board only meets periodically, and a designee is able to act much more quickly to address qualification issues using standardized criteria set by the Board as proposed in this section.
 9. Specify that all courses must be selected from a Board-accepted CE provider as specified in 16 CCR section 1887.4.3. This ensures that the CE provider meets standards that have already been determined necessary to ensure quality in education for licensees.
 10. Require the respondent’s plan, for each proposed course, to include the name of the course provider; a copy of the course outline or syllabus containing the title of the educational program, the length of the educational program, an outline of subject matter to be addressed, and instructional mode or methods (for example, in-person, or online (live and interactive or asynchronous)). These items will allow the Board sufficient factual information to analyze the sufficiency of the proposed educational program(s) as well as determine whether they might address any applicable deficiencies in skills or knowledge. This allows the Board to evaluate the pertinence and potential efficacy of the proposed coursework based on the respondent’s case as set forth in the Board’s Decision. Listing examples of instructional mode or methods provides users with more information to help understand the requirements of this term and decreases the chances that the respondent will misunderstand what an “instructional mode or methods” means. It also assists the respondent with locating this type of information on the outline or syllabus.
 11. Change “course work” to “coursework”, and change “used” to “accepted by the Board” (in the sentence that prohibits counting units obtained toward continuing education required for renewal). This change will more accurately convey that the Board will reject any CE units completed as part of probation requirements toward renewal requirements, which will help avoid a CE audit failure since a licensee who takes a course as a condition of probation resulting from disciplinary action by the Board may not apply the course as credit towards the continuing education requirement (see 16 CCR section 1887.3(f)).
 12. Strike the FYI that specifies this term is appropriate when the violation is related to record keeping, and defines applicable types of records (record keeping, documentation, treatment planning, progress notes, security of records, billing and reporting requirements). This is necessary to avoid confusion for users because the Education term is a recommended penalty for many violations, not just recordkeeping.
 13. Adds “hours” as an option to “units” as courses to more accurately describe course options as courses may be completed that offer units or hours, as determined by the course provider.

PP. Amend Optional Term and Condition of Probation: Take and Pass Licensure Examinations (Page 44)

Purpose and Rationale: The proposed changes would amend the optional term and condition of probation “Take and Pass Licensure Examinations”. As currently written, the wording throughout the section “Take and Pass Licensure Examinations” is inconsistent, using the term “examinations”, “exam(s)” and “examination” interchangeably. This leads to confusion about which examination(s) may be required. The Board currently requires one exam for LEP licensure, and two examinations for LMFT, LCSW and LPCC licensure (a California Law and Ethics examination and a clinical examination). Therefore, it is necessary to change “examination” and “examinations” to “examination(s)” in the title and in the body of this section to more accurately convey to respondents that one or more exams may be required to be taken and passed, i.e., that the Board may require a LMFT, LCSW or LPCC probationer to take one or both of the required licensing examinations as it deems appropriate on a case-by-case basis, but there is only one examination available for LEPs. The Board would also capitalize the “r” in respondent and the “d” in “decision” for consistency of the use of this term throughout the Guidelines.

QQ. Add New Optional Term and Condition of Probation: Attend Recovery Support Program (Page 45)

Purpose: This amendment adds a new optional term of probation with title requiring a respondent to attend a recovery support program. Recovery support programs are designed to assist with a person’s ongoing recovery process, with Alcoholics Anonymous being an example of such a program. Attending a recovery support program has also been added as a minimum term in the Penalty Guidelines for violations involving substance use. This new term would do all of the following:

1. Require the respondent, within 30 calendar days of the effective date of the Decision, to begin attending a recovery support program approved by the Board or its designee no less than (users are directed to “insert frequency number here”) times per week.
2. Require the respondent to submit via mail or email to the Board or its designee for prior approval the name of one or more recovery support programs, and information about the program that includes the location, and the program’s elements and methods for providing recovery support services.
3. Require the respondent to provide proof of attendance at said recovery program with each Quarterly Report (as reported on proposed Quarterly Report Form DCA BBS 37M-443 (Revised [OAL Inset Effective Date]) with each Quarterly Report.
4. Specify that failure to attend as required, or to show proof of attendance consisting of copies of attendance sheets from the recovery support program

provider, or other document prepared by the recovery support group provider verifying respondent's attendance, constitutes a violation of probation.

5. Require the Board to consider the following when determining the type and frequency of required recovery support program meeting attendance:
 - a. The documented length of sobriety / time that has elapsed since substance use; and
 - b. The licensee's treatment history; and
 - c. The nature, duration, and severity of substance use.

Rationale: Existing Guidelines do not set forth that recovery support programs or groups are an option for helping address or remediate issues involving substance use and related mental health concerns for respondent probationers. This proposal would add such an optional term and provide the criteria for Board acceptance of the respondent's selection of a recovery support program. The addition of this term is necessary because in cases involving substance use, the recovery support provided by these programs helps respondents to maintain sobriety, which then strengthens their ability to meet the terms of their probation and assists in public protection by helping ensure practice without impairment. The specific provisions are necessary as described below:

1. Requiring the respondent to begin attending a recovery support program no less than (the specified frequency would be set by the Board based on the facts of the particular case) times per week within 30 calendar days of the effective date of the Decision resolves ambiguity regarding time frames for compliance, and provides an adequate length of time, in the Board's experience, for the respondent to locate, select, and submit to the Board the information for one or more recovery support programs for consideration by the Board.
2. Requiring the respondent to submit to the Board for prior approval via mail or email the name of one or more recovery support programs, and information about the proposed program that includes the location, and the program's elements and methods for providing recovery support services helps to ensure that the respondent attends an established program that uses generally accepted methods of recovery support to help ensure the program demonstrates the ability to provide the support services to respondent that are necessary to help make progress in remediating substance use and related mental health concerns for the benefit and the protection of the clients served by these licensees. Providing the information about the location assists the Board with identifying the program and verifying respondent's compliance with this term when approving the program and reviewing attendance documentation.
3. Requiring the respondent to provide proof of attendance at said program with each Quarterly Report demonstrates that the probationer has been meeting this probation term as required. Attendance requirements are established here to ensure meaningful participation as informed through consultation with recovery

support experts in the substance use recovery field to further the remediation goals of abstinence from alcohol and drugs and improved mental health for the licensees regulated by the Board.

4. Specifying that it is a violation of probation when the probationer does not attend as required, or does not show proof of attendance as specified, increases transparency and helps to ensure that the probationer understands the ramifications of such occurrences. Specifying what constitutes proof of attendance is necessary to avoid confusion for probationers and conforms with the Quarterly Report form as proposed in this rulemaking.
5. For transparency and notice, the proposal further specifies how it would determine the type and frequency of meeting attendance (as noted in the first sentence) and the criteria recommended by staff in its experience working with recovery support group facilitators and probationers with substance use violations. This includes evaluating the factors listed in this section with the goal of ensuring the most effective and meaningful use of this approach to addressing substance use by applying these criteria. Requiring the Board to consider the documented length of sobriety / time that has elapsed since substance use; the licensee's treatment history; and, the nature, duration, and severity of substance use when determining the type and frequency of required recovery support program meeting attendance is necessary for public protection, as it helps to ensure that the required frequency is determined based on the respondent's history with substance use in consideration of what would best support their sobriety. Conversely, this also allows for fairness for respondents whose history of substance use is less severe.

RR. Amend Optional Term and Condition of Probation: Rehabilitation Program (Page 45)

Purpose and Rationale: The proposed changes would amend the optional term and condition of probation "Rehabilitation Program" as described below:

1. Specify that the respondent shall enter and "begin attending" a Board-approved rehabilitation program within 15 "calendar" days after "the date of written notification" of the Board's approval of the program. This provides advance notice and resolves ambiguity regarding the time frame for initiating compliance with this term and, in the Board's experience, provides adequate time to begin attending such program after written notice of approval by the Board.
2. Strike "and monitoring" after "rehabilitation" in two places to avoid confusing terminology. This is necessary because these programs are more commonly referred to as "rehabilitation" programs and not monitoring programs. The monitoring aspect is usually handled under a separate term by the Board under the "Abstain from Drugs and Alcohol/Submit to Drug and Alcohol Testing" term noted below since the Uniform Standards specify drug testing standards for Board probationers, and the Board requires probationers to test through a

specific drug testing vendor to “monitor” compliance, which would be separate from the rehabilitation program.

3. Specify that the respondent shall enter a program within 15 “calendar” days after “the date of written” notification of Board’s program approval. This provides clarity as to the method of notice to the respondent by the Board (“written”) and helps set the specific time frame for compliance after receipt of such notice (i.e., time for entry starts from the date of the written notice to the respondent) and in the Board’s experience, provides adequate time to enter such program.
4. Specify that the release signed by the respondent shall allow the program to “communicate with” the Board. This ensures that the rehabilitation program is able to freely discuss the probationer’s progress with the Board, and ensures the Board is able to make effective decisions regarding the probationer’s safety to practice with the public and determinations whether further restrictions are required to protect the public.
5. Add “components” to the end of the sentence describing components of the treatment contract. This change is necessary for clarity and accuracy. The last phrase in the sentence is “or other appropriate rehabilitation programs”. However, “participation in chemical dependency rehabilitation programs” is listed earlier in the sentence, and therefore “rehabilitation programs” is duplicative. The Board believes the sentence should end with “or other appropriate rehabilitation program components” to clarify that such other components may be included in the treatment contract to avoid confusion.

SS. Amend Optional Terms and Conditions of Probation: Abstain from Controlled Substances / Submit to Drug and Alcohol Testing and Abstain from Use of Alcohol / Submit to Drug and Alcohol Testing (Page 46)

Purpose and Rationale: The proposed amendments combine two nearly identical optional terms and conditions of probation: “Abstain from Controlled Substances / Submit to Drug and Alcohol Testing” and “Abstain from Use of Alcohol / Submit to Drug and Alcohol Testing” into one term titled, “Abstain from Use of Drugs and Alcohol / Submit to Drug and Alcohol Testing”. The Board anticipates that combining the two terms as noted above will ensure that all licensees and applicants for whom use of drugs and alcohol has been determined by the Board to be an issue will have to abstain from the ingestion or use of alcohol and controlled substances while on probation with the Board for the protection of the public. If the Board has concerns about possibly addictive behavior, the Board in its experience, would require abstention from both drugs and alcohol, and require testing to prove that abstention occurred. However, in the Board’s experience, ALJs will often fail to include both abstention requirements and testing for all of these prohibited substances.

As a result, to address the need to enforce abstention requirements all addictive substances through testing, the Board would historically have to reject the proposed Decision when the only issue to be addressed was to add the abstention term for

alcohol or controlled substances (drugs). This would lead to unnecessarily protracted case prosecution where neither the respondent nor the public would be assured of an outcome in a reasonable amount of time. Since this is an easy oversight, it made sense to combine the conditions to avoid recurrence of this problem.

Additional changes and rationale for these changes are as follows:

1. Add language that specifies that the respondent shall completely abstain from the “consumption” of controlled or illegal substances “and alcohol during the period of probation” (added to existing standard that prohibits only “use or possession”) since “consumption” presents the greatest risk of harm to the public due to possible impairment of the judgment or competency of the licensee. This clarifies that prohibited substances may not be consumed, which is another route that may lead to testing positive and a violation of probation, and also clarifies that the respondent must abstain from alcohol.
2. Specify that “a controlled substance” lawfully prescribed by a medical practitioner for a bona-fide illness “or other medical condition” is exempt from the abstention requirement. This uses the proper terminology for the types of substances prescribed by medical practitioners since only certain controlled substances may be lawfully prescribed (see e.g., federal Controlled Substances Act at 21 U.S.C. § 829) and therefore the Board would consider exempting from the abstention requirements of this section. This “other medical condition” change is necessary to permit exemption for medical conditions which are not illnesses (such as an injury) to be included in this exemption since prescriptions may be issued for a variety of medical reasons and not limited only to a “bona fide illness”.
3. Clarify that any confirmed positive finding will be immediately reported to the “Respondent’s” supervisor, which is necessary to avoid confusion and give greater notice to respondents regarding compliance by specifying whose supervisor will receive the report.
4. In the third paragraph, add “or illegal” substance “or alcohol” to provide consistency with the first paragraph of this section and to effectively combine existing abstention terms for all types of prohibited substances, including all drugs and alcohol as explained above.
5. Specify that the probationer shall “take the” drug test rather than “submit” their drug test, which is necessary to accurately describe the Board’s drug testing process because the probationer does not submit their own test, they simply take the test at a designated testing location, and the Board is notified of the results by the testing company.

TT. Amend Optional Terms and Conditions of Probation: Restricted Practice; Restitution; Physical Evaluation; and Standard Term and Condition of Probation Change of Place of Employment or Place of Residence (Pages 47 and 53)

Purpose and Rationale: The amendments to the optional terms and conditions of probation under the Restricted Practice (#11), Restitution (#12), Physical Evaluation (#13), and the standard term and condition of probation entitled Change of Place of Employment or Place of Residence (#22) sections would add the word “calendar” before “days” so that the specified time frames for certain actions to be taken are in “calendar” days. This provides notice of the exact time frame for the benefit of the probationer and would make it easier to understand their obligations under these terms, and in the Board’s experience, provides a reasonable time frame for compliance with the requirements set forth in these sections.

UU. Amend Optional Term and Condition of Probation and Title: Monitor Billing System (Pages 47-48)

Purpose and Rationale: The proposal would amend the optional term and condition of probation and title “Monitor Billing System” as follows, and for the reasons specified below:

1. Change the title of the section from “Monitor Billing System” to “Billing Monitor” and change references to “billing system monitoring service” to “billing monitor” throughout the section. This is necessary for accuracy as it is not the overall “billing system” that is being monitored. Rather, a billing monitor oversees the probationer’s actual billing of clients or insurance.
2. Strike the requirement that the respondent submit for approval to the Board the name(s) of billing monitor(s) within 15 days of the effective date of the Decision, and strike the requirement that the respondent obtain the services of a billing monitor within 15 days of the Board’s approval of such program as unnecessary since the billing monitor engagement requirement is already covered by the first sentence of this term. Instead, this proposal would require the respondent to obtain the services of a Board-approved independent billing monitor in accordance with this section within 30 calendar days from the effective date of the Decision.

These changes are necessary because this section is proposed to be modified to instead require obtaining the services of a billing monitor within 30 calendar days from the effective date of the Decision to address current compliance problems with this term as respondents appear to need more time and a better understanding of the timeframes for compliance with this term. The proposed time frame of 30 calendar days allows enough time, in the Board’s experience, for both respondent submittal and Board review/approval. Even if the respondent

waits until near the end of the 30 calendar days to submit the names of billing monitor(s) for approval, Board staff are able to review and provide a response quickly. The existing term does not explain that compliance with this term is contingent upon the respondent obtaining an independent billing monitor that complies with the Board's requirements. As a result, to address this oversight and avoid confusion for probationers, the Board proposes to add language that states that respondent shall "obtain the services of a Board-approved independent billing monitor in accordance with this section."

3. Specify that if the respondent is a registrant, they shall instead obtain the services of a billing monitor within 30 calendar days of the issuance of their license. This is because registrants are not permitted to bill clients directly, and therefore a monitor would not have any bills to review.
4. Require the respondent to submit "in writing by mail or email" to the Board or its designee the name(s) and qualifications of billing monitor(s) for approval, which is necessary to resolve ambiguity and provide advance notice to respondents regarding how to submit billing monitor(s) for prior Board approval, and to help ensure the Board receives the documentation by which a determination can be made regarding approval of the proposed independent billing monitor.
5. Specify that the billing monitor shall oversee respondent's billing processes in accordance with the Decision and all requirements of the section. This is necessary to clarify the obligations of the billing monitor.
6. Set the criteria for Board approval of a proposed billing monitor as specified below and for the reasons specified below:
 - a. Holds a current, active, and unrestricted California license to practice psychotherapy or psychological counseling. This is necessary to ensure that the billing monitor is actively practicing and in compliance with requirements for active practice without restrictions and will help to ensure that the monitor is knowledgeable about California practice and pertinent laws.
 - a. Possesses a minimum of two (2) years of direct experience with the maintenance and performance of billing-related matters in their practice as a LPCC, LMFT, psychologist, LCSW, LEP or physician and surgeon certified in psychiatry by the ABPN. This will help to ensure that the billing monitor is knowledgeable about mental health billing practices and requirements, and therefore possesses the ability to identify any concerns in billing by the probationer. Requiring a billing monitor who is a licensed physician and surgeon to be certified in psychiatry by the ABPN is necessary because the state does not issue "psychiatrist" licenses, it issues physician and surgeon licenses. Requiring certification by the ABPN, the only organization that issues widely accepted psychiatrist certifications, helps to ensure that the licensee has expertise in billing for the provision of mental health services.
 - b. Does not have a current or prior relationship with the probationer. This helps to avoid potentially biased billing monitoring due to the current or previous relationship.

- c. Has never been the subject of a disciplinary action against their license and defines “disciplinary action” defined as “the license has been placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned”. This helps to avoid potentially biased billing monitoring that could provide the probationer with a reason to question their credibility if their quarterly report is unfavorable to the probationer. Defining “disciplinary action” provides clarity by listing the types of disciplinary actions and ensures understanding of which licensees are prohibited.
7. Specify that clients “shall” (rather than “are to”) sign documentation stating dates and times of services rendered, which is necessary to more accurately convey that the client must sign such documentation in order for the respondent to be permitted to bill the client for services rendered.
8. Clarify that the billing service is a “monitoring” service for consistency in the use of the terms with the rest of this section.
9. Specify that failure to pay for billing monitoring within the time frame specified by the monitoring service is a violation of probation, which provides consistency as it mirrors language in the “Monitor Billing System Audit” term of probation. This puts respondents on notice regarding the payment requirement of this term with the goal of encouraging greater compliance with this term and helps to provide the Board with recourse should a probationer fail to pay for the required billing monitoring.
10. Specify that if the billing monitor is no longer available, the respondent shall notify the Board within 10 calendar days. This is necessary for public protection, and for Board staff to monitor for compliance with submission of a proposed new billing monitor(s). Specifies that within 20 calendar days, the respondent shall submit in writing by mail or email to the Board or its designee for approval the name and qualifications of one or more proposed new billing monitor(s). This provides adequate time, in the Board’s experience, for submission and approval of a new billing monitor and provides respondents with the method of submission of their proposed billing monitor(s) for review and possible approval. Specifies that if a new monitor is not approved within 20 calendar days of the date the monitor is no longer available, respondent shall not practice until a new monitor has been approved. This is necessary for public protection, as a lack of monitoring may result in further violations. Specifies that if respondent does not submit a proposed new monitor as required or fails to cease practice when there is no monitor approved constitutes a violation of probation. This is necessary to provide notice and transparency to the respondent of the consequences of failure to comply with the requirements of this section.

VV. Amend Optional Term and Condition of Probation and Title: Monitor Billing System Audit (Page 49)

Purpose and Rationale: The proposal would amend the optional term and condition of probation and title “Monitor Billing System Audit” as follows:

1. Change the title of the section from “Monitor Billing System Audit” to “Billing Auditor” and change “billing system auditor” to “billing auditor” throughout the section to clarify that it is not the billing “system” that is being audited. Rather, a billing auditor is a certified public accountant who audits the probationer’s billing records in accordance with accepted auditing/accounting standards and practices.
2. Specify that the respondent shall provide to the Board or its designee “in writing by mail or email for prior approval in accordance with this section” the names and qualifications of one or more (instead of three) proposed billing auditor(s) within 60 “calendar” days of the effective date of the Decision. This is necessary to resolve ambiguity regarding the type of auditor required, the time frame and method of submission of proposed auditor(s) to the Board for selection, thereby ensuring the respondent understands exactly how to comply with this term and, in the Board’s experience, allows an adequate time frame for submission of proposed auditor(s). Reducing the required number of proposed billing auditors from three to “one or more” reflects that is not difficult to find a qualified billing auditor, so submission of three auditors is not necessary. The changes to this section also helps the Board obtain the documentation necessary to make an informed decision and determination regarding approval of the proposed auditor(s) more expeditiously so that these requests can be processed more promptly.
3. The amendments also specify that failure to pay for the audits “within the time frame specified by the billing system auditor” (rather than “in a timely fashion”) shall constitute a violation of probation. This is necessary to resolve ambiguity and more accurately convey that the time frame is specified by the auditor, as “in a timely fashion” does not provide an actual time frame, nor does it specify who sets the time frame for payment. Since the respondent pays the auditor directly, it would be more accurate to specify that the Board considers it a violation of probation if the respondent fails to pay for the audits “within the time frame specified by the billing auditor.”
4. Specify the criteria for approval of a billing auditor as follows and for the reasons specified below:
 - a. Holds a current, active, and unrestricted certified public accountant (CPA) license to practice public accountancy by the California Board of Accountancy. This is necessary to ensure the billing auditor has knowledge of

- accepted auditing/accounting standards and practices in California and has the required license to practice public accountancy in California.
- b. Does not have a current or prior relationship with the probationer. This helps to avoid potentially biased billing auditing due to the current or previous relationship.
 - c. Has never been the subject of a disciplinary action against their license and defines “disciplinary action” as “the license has been placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned.” This helps to avoid potentially biased billing auditing that could provide the probationer with a reason to question their credibility if their quarterly report is unfavorable to the probationer. Defining “disciplinary action” provides clarity by listing the types of disciplinary actions and ensures understanding of which licensees are prohibited.

WW.Amend Optional Term and Condition of Probation: Law and Ethics Course (Pages 49-50)

Purpose and Rationale: The proposed changes would amend the optional term and condition of probation “Law and Ethics Course” as described, and for the reasons set forth below:

1. Add “three quarter units” as an option for clarity since it is equivalent to two semester units and add “(30 hours) of Board-approved coursework” after “two semester units”. This is necessary because the Board is proposing to strike the requirement to take this coursework at the graduate level and to allow the course to be taken through a Board-accepted CE provider, and such courses are typically offered in hours rather than units. This provides clarity in the length of course required. It is the Board’s experience that one semester unit is considered the equivalent to 15 hours of coursework by educational institutions or CE providers.
2. Strike the requirement that coursework be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor. This is necessary as graduate institutions often won’t accept individuals who are not seeking a degree, and if they do, the cost for a non-degree-seeker is often prohibitively high. Since the Board approves the courses as qualifying to meet the requirements of this term, it can determine appropriateness of the course based on the course outline or syllabus.
3. Specify that each course selected by respondent must be approved by the Board prior to completion as provided in the section. This provides notice to the respondent that they must wait to sign up for courses until approved.
4. Strike the classroom attendance requirement. This is necessary because during the COVID-19 pandemic, classroom attendance was completely unavailable. The Board had to allow all probationers to attend remotely during this time. In the

Board's experience during that time, remote course completion is effective. Therefore, this outdated classroom attendance requirement should be repealed.

5. Require courses to be completed within 18 months (and strikes the current requirement of one year) from the effective date of the Decision. This added time should provide the probationer with adequate time for completion, in the Board's experience. The current one-year time frame includes the 90 days for submission of proposed courses, as well as the time for the Board to review (and possibly reject) the proposed courses, which shortens the time frame to complete the course. Some courses are not available to take on demand, and this has at times resulted in licensees being unable to take or complete a course as required by this term of probation.
6. Specify that the plan for meeting this requirement must be submitted "in writing by mail or email" within 90 "calendar" days. This is necessary to resolve confusion regarding the method of, and time frame for, submission of the required plan.
7. Allow courses to be approved by the Board's designee. This is necessary for public protection because the Board only meets periodically, and a designee is able to act much more quickly to address qualifying courses using standardized criteria proposed to be added to this term.
8. Specify that all courses must be selected from a Board-accepted CE provider as specified in 16 CCR section 1887.4.3. This ensures that the provider meets standards that have already been determined necessary to ensure quality in education for licensees.
9. Require the plan, for each proposed course, to include the name of the course provider; a copy of the course outline or syllabus containing the title of the educational program, the length of the educational program, an outline of subject matter to be addressed, and instructional mode or methods. Provide examples of instructional mode or methods (for example, in-person, or online (live and interactive or asynchronous)). This allows the Board to evaluate the acceptability and potential efficacy of the proposed coursework. Listing examples of instructional mode or methods provides users with more information to help them understand the requirements of this term and decreases the chances that the respondent will misunderstand what an "instructional mode or methods" means. It also assists the respondent in locating this information on the outline or syllabus.
10. Add "hours" as an option to "units". This is necessary because the Board is proposing to allow the course to be taken through a CE provider, and such courses are typically offered by CE providers in hours rather than units.
11. Change (shall not be) "used" to "accepted by the Board" for CE required for license renewal. This clarifies that the Board will reject any CE units completed as part of probation requirements toward renewal requirements, which will help probationers avoid a CE audit failure since a licensee who takes a course as a condition of probation resulting from disciplinary action by the Board may not apply the course as credit towards the continuing education requirement (see 16 CCR section 1887.3(f)).

12. Strike the FYI that specifies this term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions and including examples such as violations involving boundary issues, transference/counter transference, breach of confidentiality and reporting requirements. This is necessary because this term is now a recommended penalty for all violations, not just for this list of cited examples. Keeping this note would therefore cause confusion and inconsistent application of this coursework requirement.

XX. Amend Introduction to Standard Terms and Conditions of Probation (Page 51)

Purpose and Rationale: The amendments to the introduction to the “Standard Terms and Conditions of Probation” section reduce the number of terms and conditions referenced in the introductory sentence from sixteen to fifteen and removes “Notification to Referral Services” from the table of contents (see section FFF for purpose and rationale for removal of “Notification to Referral Services” term). In addition, “- Tolling” has been added after “Failure to Practice” for consistency with changes proposed to the Failure to Practice term and condition (see section AAA). The proposed amendments also add “Costs” to the section title “Reimbursement of Probation” to conform with the proposed new title of the section this refers to.

YY. Amend Standard Term and Condition of Probation: Obey All Laws (Page 51)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “Obey All Laws” as follows and for the following reasons:

1. Require the respondent to submit fingerprints within 30 “calendar” days of the effective date of the Decision, which resolves ambiguity and provides notice of the required time frame and, in the Board’s experience, allows for adequate time for fingerprinting to be completed.
2. Specify that the respondent is not required to submit fingerprints if the “fingerprints are currently on file with the Board and the respondent has not been provided with written notice from the Board of the need to submit fingerprints in accordance with Title 16, California Code of Regulations section 1815”, instead of if the fingerprints were “previously submitted as part of the licensure application process” (proposed to be deleted in this rulemaking). This is necessary because it is possible that the Board no longer has access to the fingerprints previously submitted as part of the application process under rules set by the California Department of Justice (DOJ), the agency required to maintain state summary criminal history information (CORI) per Penal Code section 11105. According to rules set by the DOJ, the Board loses access to CORI when the Board no longer has an active file on the individual (for example, their registration has been cancelled for over 30 days). However, the Board is authorized by CCR section 1815 to require all licensees for whom an electronic record of the licensee’s fingerprints does not exist in the DOJ’s criminal offender

record identification database to shall successfully complete a state and federal level criminal offender record information search as a condition of continued licensure. Referencing CCR section 1815 is necessary as it pertains to fingerprinting requirements that respondents are subject to and provides respondents with notice of these requirements to help ensure greater compliance with this fingerprinting and CORI requirement.

3. Define, for the purposes of this section, that fingerprints “on file” means the Board has received notice from the DOJ that the probationer has successfully transmitted their fingerprint images to the DOJ for the conduct of a state and federal CORI search required by CCR section 1815 and the Board currently has access to probationer’s CORI in the DOJ’s database. This is necessary for clarity and specificity. In addition, the DOJ verification is necessary as it provides assurance that the fingerprints have been received. Referencing CCR section 1815 is necessary as it pertains to fingerprinting requirements. Requiring the Board to have access to the probationer’s CORI is necessary because otherwise the Board has no way of independently verifying the status of the probationer’s current criminal history and compliance with the law, which is the main purpose of this term and condition of probation. Such independent verification would be obtainable only through a DOJ authorized CORI search, which is initiated when respondent authorizes the Board to access through CORI with the DOJ as prescribed by CCR section 1815.

ZZ. Amend Standard Term and Condition of Probation: File Quarterly Reports and Amend Form Incorporated by Reference “Quarterly Report Form, Form No. DCA BBS 37M-443 (Revised [OAL to insert effective date]) (Page 52 and Proposed Text to be Added at subsection (d) of CCR section 1888)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “File Quarterly Reports” by striking “as scheduled” and replacing it with “according to the reporting schedule specified in the Quarterly Report Form” for greater specificity and to avoid confusion, as the form as proposed to be amended would contain the exact reporting schedule dates. In addition, the proposal strikes “Notwithstanding any provision for tolling of requirements of probation” from the sentence specifying that quarterly reports must continue to be submitted during the cessation of “any” practice. This is necessary because the “notwithstanding” language provides for an exception during any period of non-practice, and the “Failure to Practice – Tolling” section is proposed to no longer exempt filing of Quarterly Reports during any period of non-practice (see section AAA).

This proposal would also amend the Quarterly Report Form last revised on 1/12/01 to “(Form No. DCA BBS 37M-443 Revised [OAL to insert effective date])”, proposed to be incorporated by reference into CCR section 1888, and currently incorporated by reference into the Disciplinary Guidelines document in this term (this term would be revised to simply cross-reference the form incorporated by reference at CCR

section 1888 by form number and effective date), as described below for the following reasons:

1. Add an “INFORMATION AND INSTRUCTIONS” section to the beginning of the form that contains the following:

General Information section: Provides information pertaining to the Board's authority to require probationers to provide quarterly reports pertaining to compliance with the terms and conditions of their probation pursuant to CCR, Title 16, Division 18, Article 9, section 1888, and instructs the probationer to use the attached Quarterly Report (QR) Form when submitting their required reports. This is necessary for transparency and to provide clarity about submission requirements. These instructions are necessary to help ensure that the Board receives all information it needs to investigate and verify a respondent's compliance with the terms and conditions of the Board's Decision and, in particular, the requirements of this term of probation as set forth in Standard Term and Condition #18. The instructions also provide respondents with comprehensive guidance on what they need to do to report the status of their compliance with their terms and conditions of probation.

Also, the instructions specify that “No other documentation or communication can be substituted for a completed Quarterly Report Form (e.g., other Board forms, letters, emails, telephone calls, etc.)” because no other reporting method is allowed per the “File Quarterly Reports” term and condition of probation as specified in the Disciplinary Guidelines.

Quarterly Report Schedule section: The information in this section, proposed to be added as described below, provides clarity regarding QR Form submission requirements, thereby ensuring that the probationer understands exactly when and how to submit their QR Forms to avoid violating the terms and conditions of their probation:

- Specifies that QR Forms must be submitted for the entire duration of probation by email, mail or faxed to the Board as specified in the “instructions for submission” section and according to the specified schedule listed in this section. This provides the Board with documentation necessary for the probationer's file, which the Board reviews for compliance with probation terms and conditions.
- Provides a Quarterly Report Schedule with instructions on how and when to submit these forms, which includes the date ranges for each quarterly reporting period and the dates by which the QR Forms are due for each quarter. Sets the due date for each quarter as 10 calendar days past the end of the quarterly reporting period, which in the Board's experience provides sufficient time for submission.
- Existing law and regulation do not specify the requirements of a complete report, methods of delivery, reporting periods or due dates for these quarterly

compliance reports. This proposal is necessary to set forth those requirements to facilitate compliance and avoid inadvertent mistakes in compliance by the probationers. This would be achieved through specific direction to submit “completed quarterly report forms” quarterly along with any required attachments and submitted by mail, email, or fax or in-person at the addresses listed in #5 of the instructions (to make it as simple as possible to submit a report in a timely manner) in accordance with the prescribed schedule. Setting these reporting periods and compliance dates in these instructions facilitates compliance with these existing reporting obligations by setting clear expectations for reporting and filing in advance, and the timeframes allow the Board sufficient time to evaluate and investigate any issues that may be uncovered in these reports.

- Specifies that completed QR Forms and any required attachments must be emailed, postmarked (if mailed), or faxed to the Board no earlier than the end of the reporting periods and no later than the due dates listed. This provides clarity regarding the required time frames and methods for submission, and ensures the QR Form covers the entire reporting period.
- Specifies that if others are required to submit quarterly reports to the Board pursuant to the probationer’s terms and conditions, their quarterly reports must also be submitted to the Board according to the schedule listed via email, mail or fax. This will prompt probationers to track submission of quarterly reports by others, such as a supervisor, thereby helping to avoid a probation violation, and provides the Board with the documentation necessary for the probationer’s file, which the Board reviews for compliance with probation terms and conditions.
- Encourages the probationer to develop their own reminder system to ensure that they submit QR Forms as required. This will help encourage probationers to avoid probation violations and underscores the importance of putting processes in place to remember their compliance obligations.

First and Final Quarterly Reports section: Specifies that the respondent’s first and final QR Forms, including all required attachments, must be submitted by the due dates, even if the QR Form only covers a portion of the time period of the total quarter (e.g., probation started in the middle of a quarter). This is necessary to ensure that reporting is provided to the Board for the full length of time that a licensee is on probation and to help monitor the respondent’s progress while on probation with Board for that entire time.

Tolling of Probation Requirements section: Specifies that, except under certain circumstances, if a licensee or associate who is on probation with the Board voluntarily stops practicing or residing in California, their probation may be subject to tolling. Also specifies that if probation is tolled, QR Forms and any required attachments must still be submitted to the Board according to the schedule listed in the “Quarterly Report Schedule” section. These requirements

are necessary because a probationer is still required to comply with terms and conditions of probation while they are tolling, as specified in the proposed changes to this term and condition (see page 52 of the Disciplinary Guidelines).

Instructions for Submission section: Provides instructions for the probationer about how to complete and submit their QR Form and attachments. This will ensure the probationer has all of the information necessary to comply with their QR Form requirement, and ensures the Board has the documentation necessary for the probationer's file, which allows the Board the ability to determine a probationer's compliance with probation terms and conditions. The instructions are written in a clear and step-by-step manner that will help the probationer avoid a probation violation. The proposed instructions would include the following requirements:

- Make a photocopy of the QR Form or download it from the Board's website (www.bbs.ca.gov) and complete all sections that apply to their probation terms and conditions, including signing and dating the form.
- Attach additional sheets if more space is needed or if further explanation is required.
- Attach a separate sheet if the probationer did not comply with any term or condition of their probation to include a written, narrative explanation of the facts or circumstances that led to the noncompliance. In addition, attach additional documentation, if needed, to further support and/or demonstrate the probationer's explanation regarding the noncompliance, with examples provided to include medical records, disaster declaration, etc. This enables the probationer to provide explanation or mitigating evidence for the Board to consider when determining whether a probation violation has occurred and allows the Board to conduct a more efficient and complete investigation of the probation issues associated with each probationer.
- Indicate "Not Applicable" if a section or question does not apply to their probation terms and conditions.
- If their probation has any term(s), condition(s), or deadline(s) that are not specified on the Quarterly Report Form, attach a separate sheet to the QR Form outlining them and describing what the probationer has done during the quarter to maintain compliance.
- Attach all required documentation as specified on the QR Form and as described below:
 - Proof of payments made for any term or condition of probation (for example, for cost recovery or restitution), consisting of BreZE online system receipts (a method of online payment available on the Board's website), electronic fund transfer receipts, or payment records such as cancelled checks, bank statements or credit card statements. This is consistent with the requirements specified in the Cost Recovery term and condition (see page 55 of the Disciplinary Guidelines). This instruction is

necessary because the Board requires proof of payment to ensure they have been received by the State Controller and credited to the Board's Fund. For this section, "proof" means items listed here since these are the payment methods generally accepted by the Board.

- Proof of course completion consisting of a certificate of completion from the course provider, or an official transcript in an envelope sealed by the school. To identify respondent and validate their efforts to comply with specified coursework requirements, the certificate or transcript shall include their name, course title, number of hours earned, date(s) of attendance and course provider name. This is consistent with the requirements specified in the Education Pertaining to the Violation and Law and Ethics Course terms and conditions (see pages 44 and 49 of the Disciplinary Guidelines). These requirements are also necessary to verify that the respondent attended and successfully completed any coursework required as a term and condition of their probation.
- Proof of attendance that conforms with the requirements specified in the Attend Recovery Support Program term and condition (see page 45 of the Disciplinary Guidelines), consisting of attendance sheets from the recovery support program provider, or other document provided by the program representative that verifies the respondent's attendance. These requirements are necessary to verify attendance using commonly used methods to record and track attendance for these types of programs and helps ensure that respondents have notice of the documentation required to show compliance with this term. Requires proof of attendance to include all of the following for each meeting attended to ensure that the probationer is attending the recovery support program approved by the Board in compliance with the "Attend Recovery Support Program" term and condition in the Guidelines:
 - In-Person Meetings: Provide the meeting name, date, time, location and designated recovery support program representative signature.
 - Live Videoconferencing Meetings: Meeting name, date, time and meeting/conference ID or number.
- Submit the form with attachments via email, mail (with specified address for easier access and notice), or fax (to (916) 574-8625) to their assigned Probation Analyst. Specifying these methods of delivery helps ensure that the Board receives timelier QR forms, and such notice helps encourage greater compliance with the quarterly reporting requirement.
- Specifies that failure to submit the QR Form and attachments as required is considered non-compliance with the terms and conditions of their probation and may result in further disciplinary action. This would help the regulated community understand how such failures would be managed. As a result, this change is necessary to implement how the Board would respond to a

licensee who fails to submit the QR Form and attachments as required, and in accordance with the adjudicative provisions of the Administrative Procedure Act (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.)) and would include a right to a hearing.

Questions section: Directs the probationer to contact their assigned Probation Analyst for questions and specifies that in an urgent matter where the probationer is unable to contact their assigned analyst, the probationer may contact the Board's Probation Unit at the email address provided. This ensures that the probationer knows who to contact for questions and what to do in an urgent situation where they cannot reach their assigned Probation Analyst, thereby avoiding a possible probation violation.

Notice on Collection of Personal Information: The form includes the required notices and disclosures to the probationer for the Board's collection of personal information for transparency, and in compliance with Civil Code section 1798.17. This notice specifies that the information required on the QR Form is mandatory and will be used to determine compliance with the requirements of their probation; explains that the information may be provided to other governmental agencies, or in response to a court order, subpoena, or public records request; explains that the probationer has a right of access to records containing personal information unless the records are exempted from disclosure pursuant to Civil Code section 1798.40; and, provides information on how individuals may obtain information regarding the location of their records.

2. Amend the portion of the QR Form entitled "Quarterly Report Form" (proposed to be revised from "Quarterly Written Report Form") that is filled out by the probationer as described below, and amended for the reasons set forth below:
 - A. Strikes the Board's letterhead, as the letterhead will instead appear on the first page of the QR Form Instructions and Information section; and, adds the Board's logo to indicate that this is a Board form since the letterhead is being stricken.
 - B. Amends the form footer to add the form number, strikes "rev 1/12/01" and replaces it with "(Revised [OAL to insert effective date])" to more accurately reflect when this form was last amended by this Board and to allow for OAL to show the correct adoption date as the Board will not know the effective date until the regulations have been approved; and, adds "State of California" which is necessary since the letterhead is being stricken.
 - C. Adds a form header on all pages, except for the first page, which provides the form title and a field for the probationer's name, which is necessary should any pages of a completed form become separated.

- D. Changes the form title as follows: “Quarterly ~~Written~~ Report Form”. It is not necessary to say “written” since there is no other format, and no other type of quarterly report required of a probationer other than this form.
- E. Makes nonsubstantive capitalization, formatting, and minor grammatical changes for accuracy and readability throughout.
- F. Strikes “Please complete this report and submit it to the Board quarterly (following the reporting schedule) during your probationary period. Any other type of form, correspondence, or telephone call will not be accepted. Reports are due postmarked seven (7) days from the close of each quarter. Early submission of the report will be returned to you. Failure to submit a quarterly report seven (7) days from the close of each quarter may constitute a violation of probation.” Also strikes “Complete only those provisions below that are applicable to your probationary terms and conditions.” All such text containing information and instructions has been moved to the new “Information and Instructions” pages (and has been modified as detailed in #1 above). This is necessary in order to place all information and instructions in one place for ease of reference.
- G. Adds a line for case number to assist the probation analyst who receives a completed QR Form in locating the probationer’s case file.
- H. Adds the quarterly reporting period dates, and QR Form due dates (as discussed more fully above in “Quarterly Report Schedule” section above) and check boxes for the probationer to mark to indicate the reporting period for the form being submitted. This provides the probationer with the information necessary to avoid a probation violation due to not filing their QR Form properly or timely and informs staff of the reporting period for the form being submitted, which assists staff in tracking compliance with QR Form submission requirements. Also, this section of the form provides date fields for the first and last quarterly reports to account for the fact that the first and last periods may be shorter than a full quarter, which assists in tracking a respondent’s progress and compliance.

Personal Information section: Changes “Address” to Address of Record” and specifies “number and” in addition to street, city and zip code to ensure the address reported matches the address in the Board’s records. Strikes the language pertaining to “residence address” as the Board does not need the residence address on the QR Form for purposes of probation monitoring. Strikes the box asking if this is an address change, as the QR Form is only intended for the Board’s probation staff’s use and is not provided to Board staff who are authorized to perform address changes. All licensees are directed to make address changes online on the Board’s website, or by using the Board’s paper form that can be printed and mailed and also available on the Board’s website. Also adds a field for the email address to enable a faster option for communication and response to Board inquiries.

Employment section: Adds a note specifying that if the probationer is self-employed, they are to write “Self” next to “Employer”, indicate the address where

they see clients, and provide their business telephone number. These changes are necessary to give notice and specific direction about how to fill out this section when the probationer is self-employed. Adds “Is this a change of your place of employment?”, Yes and No check boxes, and “If Yes, specify the date of change”. This is necessary to monitor a probationer’s progress while on probation as the standard terms and conditions of probation require the probationer to notify the Board of any change of place of employment in writing within 30 days (see #22, page 53 of the Disciplinary Guidelines), and also require the probationer to provide the Board with the names, physical addresses and telephone number of all employers, and to sign consent forms that allow the Board to communicate with their employer (see #25, page 53 of the Disciplinary Guidelines).

Employment Status section: This section includes non-substantive, clean-up changes to correct capitalization, grammar, punctuation, and add the words “worked” instead of “been” and “practice” after “Solo” or “Group” to more accurately convey the type of employment setting the respondent is employed. This allows the Board to have the most accurate and current information when determining compliance with respondent’s probation, including compliance with the employment and tolling provisions of the Guidelines.

Suspension section: This section addresses compliance with terms and conditions of probation for probationers that have suspension as a term and condition of their probation including under Optional Term No. 1 (“Actual Suspension), according to the Uniform Standards terms and conditions for substance-abusing licensees (Clinical Diagnostic Evaluations, Major Violations, Positive Test for Drugs and Alcohol). These changes would resolve ambiguity and provide greater notice of the requirements for verifying compliance with these terms. Deletes “If Yes, did you submit certification verifying suspension of practice?” and adds “If Yes, did you cease any and all activities authorized by your license or registration?” This is because a separate certification verifying suspension is not necessary, as this form serves as the certification. It also adds immediately after this question, “If Yes, specify the dates that you suspended your practice:” and “If No, attach a separate sheet providing an explanation.” Requiring the dates that the licensee suspended their practice is necessary to determine the licensee’s compliance with this term if they check “Yes” in response to the first question. Requiring an explanation if they did not cease practice is necessary to provide a record for the Board’s files to allow the Board to investigate the accuracy of the probationer’s response, and to determine whether further action is necessary to address any possible issues raised by the response.

Restricted Practice section: This section addresses compliance with terms and conditions of probation for probationers that have restricted practice as a term and condition of their probation including under Optional Term No. 11. For

probationers who mark “Yes” to having any special Board-ordered restrictions on their practice, the form now directs them to complete all of the following (questions) which are now numbered, providing for better organization and readability. Strikes, “on a separate sheet, please explain in what way(s) your practice is restricted and steps you have taken during this quarter to comply” and replaces it with question 4 which states, “Attach a separate sheet, providing an explanation of the way(s) in which your practice is restricted and the steps that you have taken during this quarter to comply.” This change provides for greater specificity and makes it clear that the attachment is required for the report to be considered compliant. Also adds “or Individual’s” name to question 2, to more accurately convey that if another licensed individual other than a supervisor is required to be present at specific therapy sessions, the probationer must list that individual’s name and license number.

Supervision/Supervised Practice - Licensees Only section: Changes the title of the section from “Supervision” to “Supervised Practice – Licensees Only” for consistency with the name of the term and condition of probation in the Disciplinary Guidelines (Optional Term No. 5) and adds “Licensees Only” to ensure notice that it applies only to licensees and not registrants. In addition, adds a note that says, “This section is only for Board licensees who are required to have supervised practice pursuant to the terms and conditions of their probation.” This helps to avoid confusion that only licensees under supervised practice need to complete this section, and not registrants, since all registrants are already required to practice under supervision and therefore supervised practice would not be a part of any registrant’s probation terms and conditions. The following additional changes are proposed to this section and for the following reasons:

- A. Adds question numbers for ease of reference and readability.
- B. Makes the following changes for clarity and specificity, and to provide improved instruction on how to fill out this section: “In this quarter, were you required to have supervision a supervisor monitor your practice? If Yes, complete all of the following: Required Frequency: _____ times per week or month (mark one)”.
- C. Strikes the language that requires specifying dates of supervision separately depending on where the supervision was held, and instead just requires all dates of supervision to be listed. The Board does not need to know whose office in which the supervision took place, and in addition, the supervision may take place via videoconferencing so specifying “held at your office” is no longer necessary.
- D. Adds “Did you or your supervisor miss or cancel any required supervision appointment(s)? If Yes, attach a separate sheet listing the date(s) and reasons(s) for each missed or cancelled supervision appointment(s).” This is necessary to allow the Board to determine compliance with probation terms and conditions and whether further action needs to be taken to address any

compliance issues.

- E. Strikes “This quarter” as it is duplicative. The second sentence in this section already specifies “In this quarter”.
- F. Strikes “Number of billing logs____” (that the supervisor reviewed). This change is necessary because not all probationers under supervision are required to have their supervisor review billing logs. This would instead be done under a separate billing monitor and/or auditor term and condition of probation.
- G. Adds the question “Did you confirm that your Supervisor submitted their quarterly report to the Board as required?” Adds “If No, attach a separate sheet providing an explanation.” This prompts the probationer to check with their supervisor to ensure that the supervisor has submitted their quarterly report to the Board by the deadline, which is important because it is a violation of probation if the supervisor does not submit their quarterly report to the Board by the deadline. This also ensures the probationer provides an explanation if they either did not check with their supervisor, or if they did check but the supervisor did not submit it, which allows the probation analyst to evaluate this information and for the Board to take any necessary action.
- H. Adds the question, “In this quarter, were you required to submit to the Board for prior approval the name and qualifications of one or more proposed supervisors?” and “If Yes did you submit this information to the Board?” This is necessary in order to further determine probationer compliance with probation terms and conditions (if applicable) and provides the Board with necessary information to track receipt of this pending documentation.

Examination section: This section tracks compliance with Optional Condition No. 7 and any potential probationer who was reinstated contingent upon passing an examination (see model language on p. 61 for law and ethics examinations requirements). Strikes “or special” examination because the Board does not require any probationer to take a special examination, only established Board examinations. Adds “Of” before “Exam” to more accurately convey that the Board is seeking the date they took the exam, if applicable.

Law and Ethics Course section: Adds this section because “Law and Ethics Course” is proposed to be added to the Disciplinary Guidelines as a term and condition of probation or nearly all recommended penalties starting on p. 17 of the Guidelines. Therefore, a section is needed on this form for reporting purposes to report compliance and track progress with this term and condition. The following questions are proposed to be added to this section, which will allow the probation analyst to determine compliance consistent with the requirements specified in the Disciplinary Guidelines, and to assist the probationer in completing the form and ensuring they know to submit the required attachments:

- “In this quarter, were you required to submit a plan for taking a Law and

Ethics course to the Board for approval?”

- “If Yes, did you submit the plan as required?”
- “If No, attach a separate sheet providing an explanation.”
- “If Yes, was your plan approved by the Board?”
- “If the Board **approved your plan**, have you completed the course(s) in your plan? If Yes, specify the course(s) below and attach proof of completion (See “INSTRUCTIONS FOR SUBMISSION #7.B”).”
- “If No, list the course(s) in your plan that you have not completed and the status of it/them:”

Education/Education Pertaining to the Violation section: This section tracks a probationer’s progress with Optional Term No. 6 of the Guidelines. Changes the title of this section from “Remedial Education” to “Education Pertaining to the Violation” to conform with the title of this term and condition (see p. 44 of the Disciplinary Guidelines). Makes the following additional changes for greater notice and comprehension, and to allow the probation analyst to determine compliance with this term and condition consistent with the requirements specified in the Disciplinary Guidelines:

- Makes clarifying changes that resolve ambiguity regarding what and to whom to submit the plan, including that the educational plan is submitted “to the Board” for approval and adding “educational” before the word “plan”.
- Changes the question about submitting the educational plan “for approval” to submitting the plan “as required” because a follow-up question is being added that addresses plan approval.
- Adds the following questions, which will assist the Board with more complete information to investigate compliance with probation and will assist the probationer in understanding the Board’s requirements for completing the form and providing required attachments thereby avoiding a probation violation (as described in the “File Quarterly Reports” Standard Term no. 18.):
 - “If No, attach a separate sheet providing an explanation.”
 - “If Yes, was your educational plan approved by the Board?”
 - “If the Board **approved your educational plan**, have you completed the course(s) in your educational plan?”
 - “If Yes, specify the course(s) below and attach proof of completion (See “INSTRUCTIONS FOR SUBMISSION” #7.B).”
 - “If No, list the course(s) in your educational plan that you have not completed and the status of it/them:”
- Strikes all of the following questions/instructions, which are no longer necessary due to the questions above being added, as well as instructions being added to the “Information and Instructions” portion of the QR Form:

- “Are you attending or have you completed the assigned remedial coursework?”
- “In this quarter, did you enroll in any required courses?”
- “If yes, please attach an attendance sheet signed by your instructor and include transcripts in a sealed envelope. If transcript is not available, please explain on a separate sheet.”
- “If you are developing your education plan for Board approval or continuing with a class/course from a prior quarter, please submit a separate sheet detailing all actions you have taken to meet this requirement.”

Psychological/Psychiatric Evaluation section: Changes the title to add “/Psychiatric” and adds “or psychiatric” to the first question to reflect the specific title of this term and condition of probation in the Disciplinary Guidelines at Optional Term No. 2. Makes the following additional changes and for the following reasons:

- Directs the probationer to “complete all of the following” (questions) if they were required to undergo an evaluation and adds question numbers for better organization and readability. Specifies that the probationer needs to add “Date(s) of” the evaluation instead of dates “scheduled for and/or occurred” to more accurately convey what needs to be provided in this field, and also because the Board does not need to know when the evaluation was “scheduled” it only needs to know when it took place. Adds instructions to “(See “INSTRUCTIONS FOR SUBMISSION” #7.A).” after “Attach Billing/Proof of Payment” to prompt the probationer to include required attachments thereby avoiding a probation violation (as described in the “File Quarterly Reports” Standard Term and Condition no. 18).
- Strikes “If you are awaiting Board notification of some aspect of this process, or if evaluation was required, but not begun, please attach a separate sheet explaining the status.” Adds, “If you are required to undergo a psychological or psychiatric evaluation during this quarter but have not done so, attach a separate sheet providing an explanation.” This is necessary to allow the Board to investigate the information received and evaluate proposed actions to be taken, if necessary. Striking “If you are awaiting Board notification of some aspect of this process” as unnecessary is because the Board would already be aware that the probationer is pending a Board notification. Striking, “or if evaluation was required but not begun, please attach a separate sheet explaining the status” is necessary because this wording is being replaced by the sentence being added to this section, as described above, which provides improved clarity and specificity.

Psychotherapy section: This section addresses monitoring of compliance for those probationers who are subject to the Optional Term “Psychotherapy” (Term

No. 3 of the optional terms and conditions of the Guidelines). The changes and the rationales for each are as follows:

- Specifies to the probationer “If Yes, complete all of the following” (questions), and adds question numbers to assist in clarity and readability.
- Changes “Doctor/Therapist’s” Name to “Mental Health Professional’s” Name to reflect changes proposed to be made in terminology for this term and to avoid confusion that this item refers to one of the types of mental health professionals described within the Psychotherapy term and condition (see pages 39-40 of the Disciplinary Guidelines).
- Strikes the requirement to provide the license type and number because the Board was already provided with this information when it approved the psychotherapist as more fully described above in the rationale for changes to the Psychotherapy term.
- Adds the words “times per” before “week/month to resolve confusion over what is being requested to be inserted in the blank preceding these words. For the question that asks the probationer to “List the dates” of appointments, the amendments change (List the dates) “of your scheduled appointments during the quarter” to (List the dates) “that you completed psychotherapy sessions with the above listed mental health professional”. This is because the Board does not need to know the dates scheduled, it only needs to know the dates psychotherapy actually occurred to verify compliance with this term. In addition, “during the quarter” is stricken as it is duplicative, as “In this quarter” is included at the top of this section.
- Changes “your therapist” to “the above listed mental health professional” in two places for consistency with the terminology used in this term and for specificity.
- Adds the questions, “In this quarter, were you required to submit to the Board for prior approval the name and qualifications of one or more mental health professionals? If Yes, did you submit this information to the Board as required?” This is necessary in order to further determine probationer compliance with probation terms and conditions (if applicable for this term) and provides the Board with necessary information regarding this pending documentation to effectively evaluate compliance with this term.
- Strikes “If you or your therapist missed/cancelled any appointments please explain on a separate sheet.” This is necessary to eliminate redundant information. The same information is obtained/provided in #5 of this section.

Rehabilitation Program/Biological Fluid Testing section: This section addresses monitoring of compliance for those probationers who are subject to the Optional Term “Abstain from Drugs and Alcohol / Submit to Drug and Alcohol Testing” (Term No. 10 of the optional terms and conditions of the Guidelines). The changes and the rationales for each proposed change are as follows:

- Moves Rehabilitation Program” title to its own section, including moving the first question to that section to the new “Rehabilitation” section (discussed in more detail below) to avoid confusion because this is a separate term and condition of probation (see page 45 of the Disciplinary Guidelines).
- Changes the title of this section to “Abstain from Drugs and Alcohol / Submit to Drug and Alcohol Testing” to conform with proposed changes to the title of this term and condition (see page 46 of the Disciplinary Guidelines).
- Changes “random biological fluid” (testing) to “drug and alcohol” (testing) to conform with the new proposed wording used in the Uniform Standards/Disciplinary Guidelines.
- Strikes the question that asks the probationer to list the dates they were tested, as it is being replaced with question 1b which asks, “Did you complete your testing as required?”. This is necessary because the Board receives test results directly from the testing company, and therefore already has a record of the dates the probationer was tested.
- Adds “If Yes, complete questions 1 – 3 (if applicable):” and adds question numbers for better organization and readability.
- Strikes “In this quarter” as it is duplicative since “In this quarter” is also included at the top of this section.
- Changes the question “Were you required to abstain from alcohol and/or controlled substances” to “Were you required to abstain from the use, possession, and consumption of drugs and alcohol and to submit to drug and alcohol testing?” to conform with the wording used under this term and condition specified in the Disciplinary Guidelines.
- Adds “If Yes, complete both of the following: a. Did you abstain from the use, possession, and consumption of drugs and alcohol during this quarter? b. Did you complete your testing as required?”. This is necessary to assist the Board in determining the probationer’s compliance with their probation terms and conditions to abstain from drugs or alcohol or to test as required by this term.
- Strikes “If yes, and you did not, attach a separate sheet giving an explanation regarding the circumstances surrounding your use of controlled substances and/or alcohol.” Also adds “If you answered “No” to #1a. or #1b. above, attach a separate sheet providing a detailed explanation.” These changes conform with proposed wording changes throughout the Disciplinary Guidelines (replacing controlled substances with drugs) and add clearer and more specific questions in order to determine the probationer’s compliance with their probation terms and conditions. The Board needs to know more than just the “circumstances surrounding” the probationer’s use of drugs or alcohol. This change will help and ensure a fuller explanation is provided so that the Board has sufficient information to investigate compliance with this term.
- Adds the questions, “Did the Board order you to cease practice as a licensee or registrant due to a positive test result? If Yes, did you cease practice as

required?” to help the Board determine the probationer’s compliance with their terms and conditions of probation if ordered to cease practice and to correctly reflect the terminology used of ordering “cease practice” proposed to be added to this term. Also adds “If No, attach a separate sheet providing a detailed explanation.” This will provide the Board with information necessary to proceed with taking further action if a violation of probation has occurred.

- Adds the questions, “In this quarter, have there been any additions or changes to your prescription or over-the-counter medications? If Yes, submit a letter from your prescribing physician listing all prescription medications and a list of your current over-the-counter medications to the Board.” This is necessary so that the Board has current and updated records related to compliance with the abstention requirements of this term and provides documentation in case the probationer has a positive drug test result for a prescribed or over-the-counter medication.
- Strikes, “Contact the Probation Monitor for guidance about documentation in your specific case,” as duplicative and therefore unnecessary since the proposed changes to this section already specify the required documentation, and because the Information and Instructions section already directs probationers to contact their probation analyst for any questions.

Recovery Support Program section: Adds a section for the newly proposed probation optional term and condition no. 8 titled “Attend Recovery Support Program” (see page 45 of the Disciplinary Guidelines). This section contains the following questions and instructions, which will allow the Board to determine the probationer’s compliance with this term and condition of probation consistent with the Disciplinary Guidelines; provide necessary documentation for the probationer’s file; and prompt the probationer to include required attachments or explanations thereby avoiding a probation violation (as described in the “File Quarterly Reports” Standard Term and Condition no. 18):

“In this quarter, were you required to attend a recovery support program? If Yes, complete all of the following:

1. Recovery Support Program Name:
2. Required Frequency: _____ times per week month (mark one)
3. Did you miss any required recovery support program meetings? If Yes, attach a separate sheet providing the date(s) and reason(s) for each missed meeting.
4. Attach proof of attendance **for each meeting** (See (INSTRUCTIONS FOR SUBMISSION” #7.C).”

Rehabilitation Program section: This section addresses compliance with optional term and condition no. 9 “Rehabilitation Program” and makes changes to the current QR Form for the following reasons. Makes “Rehabilitation Program” its

own section and moves the questions pertinent to rehabilitation programs from the former “Rehabilitation Program/Biological Fluid Testing section” to this section for easier comprehension and better organization of the form. Also changes “substance abuse treatment program” from the prior existing question to “rehabilitation” program to conform with the title of this term and condition (see page 45 of the Disciplinary Guidelines); adds “If Yes, complete all of the following” to prompt the probationer to complete required questions; and adds the questions “Did you confirm that your program submitted their quarterly report to the Board as required? If No to either of the above, attach a separate sheet providing an explanation.” Adding these questions will help prompt the probationer to check with their Rehabilitation Program about submission of their required report as it is a violation of probation if the report was not submitted, and provides the Board with more complete and accurate information relating to compliance with this term and assists in determining any necessary action.

Community Service section: Completely strikes the “Community Service” section as this is not a standardized term and condition of probation referenced in the Board’s Disciplinary Guidelines and is rarely part of any disciplinary order.

Obey All Laws section: This section monitors compliance with the Standard Term and Condition No. 17 of the Guidelines as well as the Board’s laws involving criminal convictions, including reporting requirements prescribed by that term as well as by extension under the obey all “state laws” authority, compliance with all laws under the jurisdiction of this Board involving substantially related convictions (e.g., BPC section 490), and discipline in another state or territory (e.g., BPC sections 21 and 141). This proposal makes the following changes to this section for the following reasons:

- For reporting violations “in this quarter,” strikes, “did you violate any federal, state or local law?” and replaces it with “have you been cited for, arrested for, charged with, convicted of, or pled no contest to, a violation of any law of the United States, in any local, state, federal jurisdiction or territory of the United States, including criminal convictions, traffic or driving infractions, or convictions that were subsequently dismissed”. This change broadens the question to provide greater specificity and information that will allow the Board to determine whether the probationer did or did not obey all laws and determine whether a violation of probation occurred. It also provides greater notice and understanding to probationers regarding what they need to report and what the Board needs to investigate whether respondent has obeyed “all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation.” Gathering information regarding whether the probationer has been cited, arrested, charged, convicted or pled no contest to a violation of any laws of the listed jurisdictions (see BPC section 490, territories are included as per BPC section 21, “state” laws include laws of the territories of the U.S.), or has had criminal convictions, traffic or driving infractions, or convictions

that were subsequently dismissed, helps the Board thoroughly investigate a probationer's current criminal background (if any) and determine whether the probationer is in compliance with this term for the specified quarter, or whether further investigation is needed to track respondent's progress while charges are pending.

- Adds to the question that begins with "If yes", to attach "a detailed explanation" and adds original certified copies of "police records and court documents (e.g., police or arrest report" to the list of documents required that pertain to the conviction and/or sentencing. This will provide the Board with the information necessary to evaluate the potential probation violation and take any necessary action as requested or required from official documents that commonly would assist the Board in determining whether additional investigation was needed to determine whether a violation of probation had occurred or to track potential legal proceedings that may be occurring while a probationer is on probation for possible future action if a final determination of a violation is later made by any state, federal, or local court or jurisdiction.
- Strikes the following questions pertaining to individuals on criminal probation "If yes, complete the following: Formal Probation (submit a statement from probation officer); Summary Probation (attach a statement indicating what actions you have taken to comply this quarter); and Discharged/Expunged this quarter (attach certified copy of court documents)" and replaces it with, "If Yes, and your case was discharged or expunged during this quarter, attach a certified copy of the court record(s)." This will eliminate unnecessary, information and provide clearer instructions regarding the Board's documentation requirements for discharged or expunged criminal probation cases. The Board is notified if the probationer is not in compliance with their criminal probation (e.g., the probationer is arrested). The Board also receives court documents re: probationers' formal or informal probation according to this QR report, as proposed to be amended, and also if they petition for modification or early termination of Board probation. Evidence of expungement also is seen as evidence of mitigation in many cases and would be helpful to the Board in determining whether any further action is necessary.
- Adds, "In this quarter, do you have any other license or registration (in California, another state or territory of the United States, or a foreign country) that was cited, denied, suspended, disciplined or voluntarily surrendered? If Yes, attach a separate sheet providing a detailed explanation." This will allow the Board to determine whether a violation of probation occurred since discipline in another jurisdiction, as specified, would be considered a finding of a "violation" (although civil as opposed to criminal in the first question noted above for this section) and whether there are grounds for further action pursuant to BPC section 141, which states:

"For any licensee holding a license issued by a board under the jurisdiction of

the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.”

This reporting requirement is therefore also necessary to obtain additional information that may be necessary to take action, if warranted, pursuant to this authority.

Cost Recovery/Restitution section: This section addresses compliance with Standard Term and Condition No. 31 and Optional Term and Condition No. 12. The proposed changes to this section of the QR form and the rationale for each are as follows:

- Changes the title from “Recovery Costs/Restitution” to “Cost Recovery/Restitution” to conform with the title of this term and condition (see page 55 of the Disciplinary Guidelines).
- Adds “and conditions” (of probation) for clarity and consistency with the use of the term in the Guidelines.
- Modifies the following question: “If Yes, have you paid cost recovery in full or as directed in accordance with a payment plan?” This is necessary to allow the Board to determine whether cost recovery payments have been completed in full, and whether the probationer has complied with their cost recovery payments/terms and conditions of probation. Also strikes the question “Do you want to establish a payment plan?” because a payment plan is established at the onset of probation under this term and as specified by the Board or its designee taking into consideration all of the following: (1) Respondent’s ability to pay, (2) the total amount of cost recovery owed, and (3) the length of the probationary period. (See changes to this term noted under section HH.)
- Modifies the question about financial restitution to add “Board” to clarify that the question pertains only to financial restitution that is a term and condition of the probationer’s Board probation, and to strike “or your criminal probation” because the Board uses other methods to determine compliance with criminal probation through investigation and contact with criminal probation monitors.
- Adds the questions, “If Yes, have you paid the financial restitution in full or as directed in accordance with a payment plan?” and “If Yes, attach proof of compliance with your financial restitution requirements (See “INSTRUCTIONS FOR SUBMISSION” #7.A).” This will allow the Board to determine whether the probationer has complied with their restitution terms and conditions of probation and provides documentation necessary for the

probationer's file and establishing a history of monitoring a probationer's progress in complying with their terms and conditions of probation.

- Modifies the following question as shown: "If yes, please you are required to pay cost recovery or financial restitution and have not paid as required, attach a separate sheet and provide providing a detailed explanation, status of the investigation, all documentation relating to the imposed discipline, and/or proof of payment." This is necessary because a question has been added as described above that directs the probationer to attach proof of compliance. The rest of the question has been stricken as it pertains to criminal probation, and the Board uses other methods to determine compliance with criminal probation. The newly rephrased question is necessary to obtain an explanation for the Board's files when the probationer has not complied, and also assists the Board in determining possible further action needed due to the probation violation.

Tolling section: This section addresses compliance with the Standard Term of Probation No. 21 entitled "Tolling" and, in addition to correcting capitalization errors, changes "twelve consecutive weeks" to "30 calendar days" to conform with the Failure to Practice - Tolling term and condition (see page 52 of the Disciplinary Guidelines).

Shaded Box Above the Declaration: Strikes, "if your particular probation has any terms and conditions or deadlines not specified on this form, please attach a separate sheet outlining the other term(s) and what actions toward compliance you have taken during this quarter." The proposal would add "Attach additional sheets if more space is needed or if further explanation is required." This is necessary because the Information and Instructions portion of the QR Form now contains the information being stricken. The new sentence is intended to provide a simple reminder to the probationer to attach additional information if necessary to help encourage greater compliance with their quarterly reporting obligations.

Declaration section: Modifies the Declaration to read, "I declare under penalty of perjury under the laws of the State of California that ~~the foregoing, and the enclosed statements or documents are true and correct, and I further declare that I have obeyed all federal, state and local laws, including all statutes and regulations governing my license and that during this period of my probation all~~ statements within, and all documents attached in support of this Quarterly Report, contain true, correct, and complete information. I further declare that during this quarter, unless otherwise noted in this Quarterly Report or its attachments, I have fully complied with the terms and conditions of my probation program established by the Board." In addition, adds "Probationer" prior to "Signature".

These changes are necessary to more accurately convey the requirements for a submitting an accurate and complete QR form to the Board; to certify

completeness of the form and attachments; and, to ensure understanding that the certification pertains to the probationer's Board probation established by this Board (and not, for example, their criminal probation).

The existing form and as modified would require a certification under penalty of perjury. The Board would modify that certification to require the applicant certify under penalty of perjury under the laws of the State of California that all statements within, and all documents attached in support of the quarterly report contain true, correct and complete information to help ensure accuracy in the monitoring of a respondent's compliance with the respondent's terms and conditions of probation. The Board relies upon a probationer's self-reported information in evaluating compliance. This requirement helps ensure that the representations on the form are accurate and made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) If Board staff discover an omission or misstatement, then the applicant's signature under penalty of perjury can be used in an administrative disciplinary case or other civil or criminal action against the licensee in those cases where the Board deems it necessary for the protection of the public.

AAA. Amend Standard Term and Condition of Probation: Failure to Practice - Tolling (Page 52)

Purpose: In addition to non-substantive changes to correct capitalization and numbering, the proposal would amend the standard term and condition of probation "Failure to Practice" as follows:

1. Add "Tolling" to the title of this section.
2. Define "tolled" by specifying that probation is tolled when the respondent voluntarily stops practicing or residing in California.
3. Specify that probation shall not be tolled if the respondent's license has been suspended by the Board.
4. Require the probationer to notify the Board or its designee in writing "by mail or email a minimum of" (instead of "within") 30 calendar days prior to the dates of "departure and return to California, or the dates of" non-practice and return to practice.
5. Clarify that the code sections referenced in the last sentence of the first paragraph are "as applicable".
6. Strike the text that exempts probationers from complying with certain probation terms and conditions during any period of non-practice, and instead specify that any period of non-practice will "not" relieve the probationer of the responsibility to comply with (all) probationary terms and conditions.
7. Strike the requirement that the probationer's license/registration shall be

automatically cancelled if the period of non-practice totals two years.

8. Specify that the probationer shall not be relieved of the obligation to maintain an active and current license with the Board (see “Maintain Valid License” term and condition on page 54 of the Disciplinary Guidelines).
9. Specify that it shall be a violation of probation for probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of two years.

Rationale: The proposed changes are necessary as described below:

1. Adding “Tolling” to the title of this section is necessary to resolve ambiguity for the benefit of those affected by it and for consistency, as this wording is used to describe the same circumstances on page 13 of the Uniform Standards and is helpful since the word “tolled” is being added to this section in several places.
2. Defining “tolled” is necessary because tolling can be a difficult concept for probationers to understand, so the Board is adding an additional sentence to help probationers understand that their probation is tolled “when Respondent ceases practicing in California or residing in California.” These changes will also provide better guidance on the factual “trigger” for when probation is tolled and the consequences of noncompliance with the practice requirement.

The current description of this term specifies that it applies when the probationer stops “practicing” for more than 30 calendar days in California. Adding “voluntarily” clarifies that this section does not apply when the Board has ordered a licensee to cease practice. Adding that tolling is also required when the probationer stops “residing” in California is necessary because a probationer who resides in another state or country could legally provide services via telehealth to clients located in California. Although this is legally allowed in terms of their license, it would be extremely challenging to provide the type of oversight necessary for public protection should a probationer reside outside of California and practice with California clients. For example:

- The supervised practice term requires the probationer to have a California-licensed supervisor. If the probationer’s supervisor resides in California (as most California licensees do), it would be difficult and cost-prohibitive for the supervisor to make what may be a necessary unannounced visit to another state or country to inspect the probationer’s treatment records, for example.
- A probationer ordered to participate in psychotherapy is required to select a psychotherapist licensed in California. If a probationer resides outside of California, a psychotherapist who only holds a California license could not legally provide psychotherapy to the probationer, as they would be in violation of the licensing laws of the state or country where the probationer resides.
- Billing monitor services are typically performed by an individual who practices in the same state as the probationer because billing and insurance laws vary by state. If a probationer is providing services to clients located in California, a

- billing monitor who can provide accurate oversight would be typically located in California. It would be difficult and cost-prohibitive for a billing monitor to visit a probationer's office in another state or country to select cases to monitor at random. Instead, they would have to rely on the probationer to send them cases to review.
3. This term exists to address those who attempt to avoid complying with probation by simply deciding not to practice or moving out of state. Specifying that probation shall not be tolled if respondent's license has been suspended by the Board is necessary to more accurately convey when a licensee will have their probation tolled (i.e., extended beyond the time specified in the probationary order) as this is currently unclear. Since suspension occurs by formal action of the Board and is typically included as a term and condition of an applicable probationary order (see Optional Term and Condition No. 1 "Suspension" in the Guidelines) and not due to a voluntary decision to cease practice or move out of state, it is necessary to accurately convey that a respondent who has a suspension term imposed upon them as part of probation by is still working and residing in California will not have their probation further extended due to that suspension term being a part of their probationary order..
 4. Requiring the probationer to notify the Board or its designee in writing "by mail or email a minimum of" (instead of "within") 30 calendar days prior to the dates of "departure and return to California, or the dates of" non-practice and return to practice is necessary to more accurately convey how and when the probationer must notify the Board. Requiring notification 30 calendar days prior instead of within 30 calendar days provides more adequate time for the Board to prepare for the probationer's return to practice, including evaluating proposed supervisors, psychotherapists, etc. Being notified of exact dates of departure and return, or dates of non-practice and return to practice, is necessary so that the Board can track the length of tolling against the maximum, and also to know when to re-institute terms and conditions of probation such as supervised practice.
 5. Adding terms clarifying that the code sections referenced in the last sentence of the first paragraph are "as applicable" is necessary to avoid giving the impression that all code sections listed apply to all probationers. The sections apply depending on the probationer's license type, as each code section references a license type's scope of practice.
 6. Striking the text that exempts probationers from complying with certain probation terms and conditions during any period of non-practice, and instead specifying that any period of non-practice will "not" relieve the probationer of the responsibility to comply with (all) probationary terms and conditions, is necessary because this could lead to probationers avoiding complying with the most serious aspects of probation, including obeying all laws, by simply moving out of state or not practicing. The amendments will help eliminate this compliance loophole and ensure consistent treatment of all probationers and allow for active monitoring by the Board for the protection of the public.

7. Striking the requirement that the probationer's license/registration shall be automatically cancelled if the period of non-practice totals two years is necessary to implement how the Board would respond to a licensee who's probation remain tolled pursuant to the provisions of this condition for a period exceeding a total of two (2) years in accordance with the adjudicative provisions of the Administrative Procedure Act (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act ("APA" -- Gov. Code, § 11500 et seq.) and would include a right to a hearing).
8. Specifying that the probationer shall not be relieved of the obligation to maintain an active and current license is necessary for clarity and to avoid confusion, as in the Board's experience, some probationers believe that not practicing or moving to another state somehow eliminates the need to keep an active license to comply with probation.
9. Specifying that it shall be a violation of probation for a respondent's probation to remain tolled for a period exceeding a total of two years is necessary because existing regulation implies that tolling could be indefinite. It is contrary to public protection to allow individuals to toll for many years, which happens under these current guidelines, where the probationer thereby avoids compliance with the most serious aspects of probation terms and conditions, such as obey all laws. In the Board's experience, two years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation, or request voluntary surrender of the license (all possible methods for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within two years and would help the regulated community understand how such nonpractice violations would be managed.

BBB. Amend Standard Term and Condition of Probation: Notification to Clients (Page 53)

Purpose and Rationale: The proposal amends the standard term and condition of probation "Notification to Clients" by striking the FYI stating that respondents should seek guidance from Board staff regarding appropriate application of this condition. This change is necessary because this FYI is not intended to be included in decisions, nor is an FYI appropriate to include in decisions. Yet it is often erroneously included even though it is just an "FYI" and leads respondents to believe it is a requirement of this condition rather than a suggestion. Guidance is provided when necessary and upon request to probationers to help them address specific factual concerns with providing notice in compliance with this term.

CCC. Amend Standard Term and Condition of Probation: Notification to Employer (Page 53)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “Notification to Employer” and for the following reasons, as follows:

1. Specify that the probationer shall provide each of their current or future employers, “including any client or third-party for whom Respondent performs or will perform contracted-for services (“contract employer”)”, with a copy of their Decision and Statement of Issues or Accusation before commencing employment. The Board’s licensees and registrants work in a variety of practice settings and may face a variety of enforcement actions for violations of the Board’s laws regulations.

The provision of the required notification provides the employer or prospective employer additional context and greater understanding about the respondent’s potential work restrictions and their possible attendant responsibilities to monitor the respondent. Including clients and contract employers in the language addresses situations where the respondent may be working outside of a traditional employee/employer relationship and allows for prospective employers, clients, or contractors to have a better understanding of the respondent’s disciplinary or denial case prior to employment. This is necessary for public protection, and for consistency since under this existing erm this information is already required to be provided to other types of employers. All types of employers need to be aware of what to monitor for, and the addition of contract employers also makes transparent that the Board may discuss the probationer’s work status, performance, and monitoring with a contract employer. Defining “contract employer” is necessary to resolve ambiguity and give greater notice to the respondent of their obligations under this term.

2. Require the probationer to provide “in writing by mail or email” to the Board the names, physical addresses, and telephone numbers for all employers, supervisors, and contract employers. This is necessary so that the Board has the documentation needed in order to communicate with the probationer’s employers, as well as to provide a record for the probationer’s file of their compliance with the “cooperation” requirements of their probation (see Standard Term and Condition No. 19 “Comply with Probation Program”).
3. Change “contractors” and “contractor” to “contract employer”; and, add “contract employer” to the list of employers that the probationer must sign a consent form and agreement with to allow communication with the Board regarding the licensee’s work status, performance, and monitoring, which is necessary for consistency and clarity. Adding “contract employer” to the list of individuals required to communicate with the Board regarding the licensee’s work status,

performance, and monitoring is necessary for public protection as described in #1 above.

DDD. Amend Standard Term and Condition of Probation: Violation of Probation (Page 54)

Purpose and Rationale: In addition to capitalization and grammatical changes, the proposal would amend the standard term and condition of probation “Violation of Probation” by describing the process the Board uses when probation has been violated and the Board seeks to revoke or suspend the license, which is “by filing and serving on Respondent an Accusation and/or Petition to Revoke Probation”. This is necessary to make all parties that utilize the Disciplinary Guidelines aware of the process the Board follows in accordance with the Administrative Procedure Act. The amendments also clarify that “if the Board has requested” (instead of “Attorney General’s Office has been requested”) the AG’s office to prepare an Accusation, or Petition to Revoke Probation, or Statement of Issues, that the probation period shall be automatically extended in the circumstances described in the section. This is necessary to more accurately describe the process for how the AG’s office proceeds (after the Board’s request) in this situation.

EEE. Amend Standard Term and Condition of Probation: License Surrender (Pages 54-55)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “License Surrender” by requiring a request for license surrender to be submitted in writing by mail or email to the Board, and to include the following: Respondent’s name, license number, case number, address of record, and an explanation of the reason(s) why the respondent seeks to surrender their license. This is necessary to document the request, ensure receipt by the Board, and provide a record in the Board’s files. Currently, there is no requirement specifying what is exactly needed for the Board to process a request for surrender for their license, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and consider approval or “consent” to it in accordance with Business and Professions Code section 118. These items are necessary to provide sufficient information necessary for the Board to evaluate the request. The proposal also changes the time frame for the respondent to deliver their renewal and wall certificates, if applicable to the Board within 30 calendar days. In the Board’s experience 30 days is a more reasonable time frame for surrender the indicia of licensure (wall certificate renewal or initial depending on the licensee’s status) and allow a licensee time to wind down practice due to the surrender and consistent with the other surrender requirements in the Model Orders section. Lastly, the proposal replaces “license” certificate with “renewal” certificate because the Board issues a wall certificate and a renewal certificate. The term “license certificate” could mean

either type of certificate, but both need to be returned to show relinquishment of the license.

FFF. Amend Standard Term and Condition of Probation: Notification to Referral Services (Page 55)

Purpose and Rationale: The amendment strikes the entire term “Notification to Referral Services” because the Board no longer regulates referral services pursuant to Senate Bill 1491 (Chapter 703, Statutes of 2018), which repealed BPC section 650.4. Without BPC section 650.4, referral services offered for compensation or other inducement are unlawful pursuant to BPC section 650.

GGG. Amend Standard Term and Condition of Probation: Reimbursement of Probation Program (Page 55)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “Reimbursement of Probation Program” by adding “Costs” after “Program” in the title of the section, which provides notice and clarity as to what is being reimbursed and is consistent with how this phrase is listed throughout the penalty chart.

HHH. Amend Standard Term and Condition of Probation: Cost Recovery (Page 55)

Purpose and Rationale: The proposal would amend the standard term and condition of probation “Cost Recovery”. Instead of requiring that a cost recovery payment plan be incorporated into the text of this term, it would instead include a statement that the respondent shall make payments pursuant to a payment plan outlined by the Board. This is necessary because payment plans are not standardized, and how the costs are paid over time vary by probationer based on the criteria outlined in this section. Removing this language from the Decision provides consistency in the way the payment plans are developed and allows Board staff to make the determinations in a consistent manner and provide it to the probationer separately. It also makes it less likely that the payment plan will need to be modified later (for example, because a payment plan was determined in a manner that is inconsistent from the norm).

The proposal also specifies that the Board or its designee shall take into consideration the respondent’s ability to pay, the total amount of cost recovery owed, and the length of the probationary period, which is consistent with current Board practice and helps to ensure the probationer’s payment plan is reasonable.

In addition, the amendments also make a minor change to the sentence in regard to the required note on a check or money order to ensure the payment is appropriately applied or credited to the particular probationer and inform the probationer that they may instead make a payment online via the Board’s website as specified. This

option is a newer feature of the Board's Breeze database system and was not previously available.

The Board would also change the payment due date in the last paragraph from six months to "180 days" prior to the termination of probation to make it easier to calculate, and give prior notice to the respondent, when cost recovery is due.

6. PROPOSED CHANGES TO BOARD POLICIES AND GUIDELINES

Section IV of the Uniform Standards/Disciplinary Guidelines provides Board policies and guidelines containing factors for the Board to consider when determining whether to reinstate a license or whether to reduce a penalty.

III. Amend Board Policies and Guidelines: Stipulated Settlements (Page 56)

Purpose and Rationale: Currently, the Disciplinary Guidelines state that for a stipulated settlement, the respondent should be informed that they may be required to admit to the violations set forth in the "Accusation". However, accusations are filed for licensees undergoing a denial action, but statement of issues are used for applicants who are not yet licensed or registered and undergoing disciplinary action. Therefore, the term "Statement of Issues" needs to be added to this language, as well as language adding that the Board will consider entering into stipulated settlements to expedite "licensing" Decisions. A "Petition to Revoke Probation" has also been added because it is another type of enforcement action document that would contain factual statements such as admissions that the Board may consider when entering into a stipulated settlement.

The proposal would also remove unnecessary language regarding a requirement that a Deputy Attorney General accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation. Since these matters change over time, are handled confidentially and are not regulatory requirements, the Board proposes to remove this statement from the Guidelines.

JJJ. Amend Board Policies and Guidelines: Recommended Language for License Surrenders: Add New Title "Recommended Model Order Language for Surrender of License in Lieu of Revocation" and Repeal template language for accepting a license surrender in Lieu of Revocation (Pages 56-57)

Purpose and Rationale: The proposal strikes all of the current, recommended template language in this section as obsolete and unnecessary since settlement agreements are managed individually on a case-by-case basis and the existing language is not consistently used in these types of settlement agreements any longer.

The existing language would be replaced by a new title “Recommended Model Order Language for Surrender of License in Lieu of Revocation” to describe the type of surrender action more accurately and add recommended model order language that is used currently and consistently by the Board in these types of cases. This section provides recommended language for the DAG and Board staff to use for license surrenders in settlement agreements that occur after an Accusation has been filed (as opposed to when the licensee is on probation as noted above). This model language is needed when the licensee, after receiving notice of a possible revocation by the Board by way of an Accusation, proposes to settle the matter by surrendering their license (see settlement authority at Government Code section 11415.60). In addition, BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee’s surrender is done without the written consent of the Board. This model order is therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board’s conditions and requirements for acceptance of a surrender and the consequences of a surrender.

The proposal advises that the surrender would be effective as of the date of the Decision, and requires the respondent to relinquish and forward or deliver their wall certificate and renewal certificate, if applicable to the Board. The proposal provides a deadline of thirty calendar days, which in the Board’s experience is a reasonable amount of time for the licensee to comply with relinquishing the wall certificate and renewal certificate. The model order is also necessary to make clear to the licensee and the public that the license surrender, and Board acceptance of the surrender, constitutes the imposition of discipline against the licensee and becomes part of the licensee’s history with the Board. This is necessary to comply with BPC section 27(c)(9) (which requires public disclosure of all enforcement actions on the Internet) and the requirements of the California Public Records Act (Gov. Code §§ 7920.000 et seq.). The Board anticipates that ALJs, DAGs, and respondents will benefit by having standard language that could be included in a Decision or stipulated settlement, and the public will be better informed and thereby benefit from unambiguous language describing the implication of the surrender and that discipline will be considered imposed.

KKK. Amend Board Policies and Guidelines: Recommended Probation Language for Three Different Sections Relating to Applicants for Registration (Page 54), Registrants (Page 55) and Licensees (Pages 57-58)

Purpose and Rationale: The titles would be amended to add the words “Model Probation Order” (for all titles) and “Applicants for” (for Applicants for Registration only) to describe the content of these model orders sections more accurately. The proposed amendments provide recommended probation language for inclusion in disciplinary orders for applicants, registrants, and licensees. For applicants and registrants, a statement has been added explaining that the terms “license” and

“licensee” also includes the meanings “registration” and “registrant” and refers to BPC sections 23.7 and 23.8 specifying that the use of the term “license”, when used in the BPC, also includes the term “registration” within its meaning, and defines “licensee” as including any person who holds a registration. In other words, when the law uses the term “license”, that reference includes both license holders and registration holders. This will help avoid confusion for registrants, which often occurs when they read their terms and conditions of probation and come across the term “license” and believe it does not apply to them.

In addition, the proposal strikes language stating “IT IS HEREBY ORDERED THAT” in each section, as it is not necessary to include in the Disciplinary Order since the entire document is an order. It also strikes blank lines in the recommended language and replaces it with the specific information necessary to be provided in the order, which includes “INSERT RESPONDENT’S NAME”; “INSERT RESPONDENT’S LICENSE TYPE” or “INSERT RESPONDENT’S REGISTRATION TYPE” (as applicable); and, “INSERT RESPONDENT’S REGISTRATION NUMBER” or “INSERT RESPONDENT’S LICENSE NUMBER” (as applicable). This will ensure that the DAG or ALJ formulating the disciplinary order are provided clear guidance as to the information necessary to properly identify the respondent and execute the order.

Lastly, under “Recommended Probation Language for Applicants for Registration”, language is being added to clarify that a respondent shall be issued a registration “upon successful completion of all registration requirements”. The Board’s laws require applicants to meet specified qualifications and pay a prescribed fee before issuance of a registration. This model order is therefore necessary to implement these requirements, provide adequate notice to the applicant that additional action may be needed prior to issuance of the registration, and to provide clear and consistent language to be used in the Board’s decision to grant the registration application and issue the registration upon successful completion of all registration requirements, including payment of all registration fees.

LLL. Amend Board Policies and Guidelines: Recommended Model Revocation of License Order Language for Registrants and Licensees (Page58)

Purpose and Rationale: This proposed amendment provides recommended model language for inclusion in disciplinary orders for registrants and licensees. This model order language is necessary to instruct the ALJs and DAGs of the clear and concise language to be included in the disciplinary order for the Board’s approval. This model order reflects the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation. The language specifies that the respondent shall relinquish and forward or deliver their wall license and renewal certificate, if applicable to the Board within thirty calendar days of the effective date of the Decision. This is necessary to provide a clear and reasonable deadline for relinquishing the wall certificate and renewal certificate;

such action is necessary to ensure that all indicia of licensure is returned, consistent with the Board's revocation action.

The language also indicates when a respondent can reapply or petition the Board for reinstatement of their revoked license. The three-year time frame is specified in BPC section 4990.30, which provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than three years has elapsed from the effective date of the Decision. A note to users has also been included, as it contains an option that is also specified in BPC section 4990.30, because in unprofessional conduct cases, the Board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years instead of three years. The note also explains that if a shorter reinstatement filing period is specified, an explanation shall be included in the Decision of the pertinent facts or circumstances that warrant recommendation of the imposition of the shorter, two-year filing period.

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

MMM. Amend Board Policies and Guidelines: Proposed Decisions (Page 59)

Purpose and Rationale: The proposed amendments clarify that multiple code section“(s)” should be included in proposed decisions, which will help to clarify that there may be more than one code section that needs to be listed. It also renumbers the Standard Terms and Conditions due to the deletion of the “Notification to Referral Service” term.

NNN. Amend Board Policies and Guidelines: Reinstatement / Reduction of Penalty Hearings (Pages 59-60)

Purpose and Rationale: In addition to non-substantive changes to correct capitalization and correct gendered pronouns, the proposal would amend the Board's policies and guidelines for Reinstatement / Reduction of Penalty Hearings as described below and for the reasons set forth below:

1. Strike a reference to BPC section 4982.2, which is necessary as this section no longer exists. Add a reference to BPC section 4990.30, which is necessary

because it lists factors for the Board to consider in reaching a determination on whether to grant a petition.

2. Replace professional clinical “counselor” with “counseling”, which is necessary for consistency in the sentence that describes practice of the professions (rather than the names of the professions).
3. Strike “The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts” and replace it with “Whether the petitioner has demonstrated a recognition of wrongdoing” as a factor for the Board to consider in reaching its determination. This is necessary because “attitude” is difficult to quantify, and the Board believes it is fairer to use objective criteria that can be demonstrated.
4. Add the following as factors for the Board to consider in reaching its determination, all of which are necessary for consistency with statute, as these are all factors listed in BPC section 4990.30, and this brings all factors into one place for ease of reference and makes this section consistent with current law.
 - Activities of the petitioner since the disciplinary action was taken;
 - The petitioner’s activities during the time petitioner’s license was in good standing (unrestricted);
 - The petitioner’s general reputation for truth;
 - The petitioner’s professional ability.

OOO. Amend Board Policies and Guidelines: Recommended Language for Petitions for Reinstatement or Reduction of Penalty (Pages 60-61)

Purpose and Rationale: This proposal would add the following new titles to existing language for greater comprehension and better organization of this subject matter by type of potential action that may be taken on a petition. Following formal discipline, BPC section 4990.30 authorizes licensees to petition the Board for reinstatement of a revoked or suspended license not less than three years (and in certain cases, two years) from the effective date of the Board’s Decision to revoke or suspend the license. The model order language is necessary to make clear to the respondent and the public of the possible outcomes of a licensee’s petition for reinstatement.

Deny Petition or Reinstatement or Reduction of Penalty (Petition). One possible outcome of a petition is outright denial of the petition. This model order would provide that the petition for reinstatement filed by the petitioner is denied. This proposed model language is necessary to specify the clear and concise language to be used by an ALJ drafting a proposed decision when the petition for reinstatement of the license is denied by the Board. This change is also needed to ensure consistency in the issuance and application of the Board’s orders.

Grant Petition with No Restrictions on License/Registration. In those cases where the Board agrees to grant the petition outright with no restrictions on the reinstated license, this model order would specify that the Board granted the petition for reinstatement of the license/registration, and that it will be fully restored. It also includes direction to insert the license type and license number for proper identification of the respondent and issuance of the order.

Grant Petition and Place Licensee/Registrant on Probation. Pursuant to the authority to stay any order under Government Code section 11519, the Board may stay any order and place a license on probation with terms and conditions. This template language is necessary to provide ALJs and other interested parties notice of how to draft an order to reflect the Board's intent to reinstate a license on probation pursuant to section 11519's authority. This model order specifies that if the Board grants the petition for reinstatement of the license, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions. This model order is necessary in circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license or registration through probation before restoring the license to an unrestricted license status. It also includes direction to insert the license type and license number for proper identification of the respondent and issuance of the order.

Grant Petition and Place Licensee/Registrant on Probation After Completion of Conditions Precedent. This model order would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which common examples from the Board's own experience at remediating violations are provided so ALJs and DAGs have a clearer understanding what can be required as a condition precedent to be satisfied before a license or registration is reinstated. The order would allow an ALJ or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and that minimum standards for licensure or registration are met. Examples include paying restitution, cost recovery (as required by BPC section 125.3 if not already paid), completion of CE, completion of a law and ethics course, or take and pass licensure examinations (e.g., California Law and Ethics Examination). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee or registrant and ensuring competency in the profession.

This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations more effective and related to the violations alleged. The Board has had issues with different ALJ interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a

license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the Disciplinary Guidelines when outright denial of a reinstated license or registration is not warranted.

To ensure that an applicant's petition does not persist indefinitely with no resolution, the Board proposes to add a condition that the conditions precedent must be completed within a specified time frame from the effective date of the Decision or petition (to be inserted by the ALJ or Board based upon the particular case and the type of condition to be satisfied except for law and ethics exams as noted in the next paragraph). If not satisfied, the petition shall be deemed abandoned by the applicant. This helps ensure finality of action on any Board petition and provides petitioners with advance notice of the time frame to complete their petition action and restore their license or registration.

For cases where the condition precedent includes taking and passing the Board's California Law and Ethics examination, the Board would provide additional model language that specifies the requirements petitioners would need to meet to satisfy this condition precedent including setting a reasonable time for taking and passing the exam, the opportunities to pass the exam (one), and submission of a fee and completed examination application in compliance with CCR section 1816.2. These provisions are necessary to give advance notice of the Board's requirements and help ensure the Board is aware of what has traditionally been considered fair opportunity to correct deficiencies through the examination process. One time is considered a fair opportunity in light of the fact that a licensee or registrant would not be "new" to the profession and the inability to pass the first time may indicate competency issues that need further education or training to address before resumption of practice.

The model order also includes a different provision that upon completion of the conditions precedent and satisfaction of all statutory and regulatory requirements for issuance of a license or registration (see discussion and rationale above under "Grant Petition with No Restrictions on License/Registration"). The model order also includes a different provision that upon completion of the conditions precedent, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted status. This means that once the petitioner completes the conditions precedent specified in the order their license or registration would be placed on probation subject to terms and conditions. This order helps guide users as to how that order should be drafted for the reasons set forth above for the need to standardize petition orders.

UNDERLYING DATA

1. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees – Revised March 2019
2. Department of Consumer Affairs “CONSUMER PROTECTION ENFORCEMENT INITIATIVE: *“A Systematic Solution to a Systemic Problem”*,” – Updated 1/21/10
3. Office of the Attorney General, State of California, Opinion No. 13-202 (April 8, 2015)
4. Legislative Counsel Bureau Opinion: Healing Arts Boards: Adoption of Uniform Standards - #1124437, dated October 27, 2011
5. Office of the Attorney General, State of California, Informal Opinion (February 29, 2012)
6. DCA Legal Affairs memorandum: Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB1441), dated April 5, 2012
7. SB 1172 (Lieu) (Chapter 835, Statutes of 2012)
8. SB 1172 Analysis – Senate Committee on Business, Professions and Economic Development (for bill as amended April 16, 2012)
9. Policy and Advocacy Committee Meeting July 29, 2022: Agenda, Relevant Meeting Materials and Meeting Minutes
10. Policy and Advocacy Committee Meeting October 14, 2022: Agenda, Relevant Meeting Materials and Meeting Minutes
11. Policy and Advocacy Committee Meeting January 13, 2023: Agenda, Relevant Meeting Materials and Meeting Minutes
12. Policy and Advocacy Committee Meeting July 21, 2023: Agenda, Relevant Meeting Materials and Meeting Minutes
13. Board Meeting August 18, 2023: Agenda, Relevant Meeting Materials and Meeting Minutes
14. Board Meeting September 20, 2024: Agenda, Relevant Meeting Materials and Draft Meeting Minutes

BUSINESS IMPACT

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts:

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number of licensees and

applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction.

Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing practice in California.

ECONOMIC IMPACT ASSESSMENT

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

This regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because the proposed regulation sets out standard guidance for disciplinary and denial cases. Individuals in compliance with their license's or registration's practice act and associated regulations will not be affected by the proposed regulations.

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will enhance the Board's ability to take appropriate action against licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations. Additionally, this proposal will benefit DAGs, ALJs, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary actions.

This regulatory proposal does not affect worker safety because it does not relate to worker safety.

This regulatory proposal does not affect the state's environment because it is not related to the environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

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

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

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

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